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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

DAVID ESTRADA,)	Case No.: 1:15-cv-01292-AWI-SAB (PC)
)	
Plaintiff,)	
)	FINDINGS AND RECOMMENDATIONS
v.)	RECOMMENDING PLAINTIFF’S REQUEST
)	FOR PRELIMINARY INJUNCTION AND/OR
TERESA MACIS, et al.,)	TEMPORARY RESTRAINING ORDER BE
)	DENIED
Defendants.)	
)	[ECF No. 86]
)	

Plaintiff David Estrada is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff’s request for a preliminary injunction and/or temporary restraining order, filed March 31, 2017.

**I.
DISCUSSION**

A preliminary injunction should not issue unless necessary to prevent threatened injury that would impair the court’s ability to grant effective relief in a pending action. “A preliminary injunction ... is not a preliminary adjudication on the merits but rather a device for preserving the status quo and preventing the irreparable loss of right before judgment.” Sierra On-Line, Inc. v. Phoenix Software, Inc., 739 F.2d 1415, 1422 (9th Cir. 1984). A preliminary injunction represents the exercise of a far reaching power not to be indulged except in a case clearly warranting it. Dymo Indus. V. Tapeprinter,

1 Inc., 326 F.2d 141, 143 (9th Cir. 1964). “The proper legal standard for preliminary injunctive relief
2 requires a party to demonstrate ‘that he is likely to succeed on the merits, that he is likely to suffer
3 irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and
4 that an injunction is in the public interest.’” Stormans, Inc., v. Selecky, 586 F.3d 1109, 1127 (9th Cir.
5 2009), quoting Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7 (2008). In cases brought by
6 prisoners involving conditions of confinement, any preliminary injunction “must be narrowly drawn,
7 extend no further than necessary to correct the harm the court finds requires preliminary relief, and be
8 the least intrusive means necessary to correct the harm.” 18 U.S.C. § 3626(a)(2).

9 This action is proceeding against Defendants Garnett, Whitford, Vickjord, and Flores for
10 deliberate indifference to a serious medical need in violation of the Eighth Amendment. While the
11 Eighth Amendment of the United States Constitution entitles Plaintiff to medical care, the Eighth
12 Amendment is violated only when a prison official acts with deliberate indifference to an inmate’s
13 serious medical needs. Snow v. McDaniel, 681 F.3d 978, 985 (9th Cir. 2012), overruled in part on
14 other grounds, Peralta v. Dillard, 744 F.3d 1076, 1082-83 (9th Cir. 2014); Wilhelm v. Rotman, 680
15 F.3d 1113, 1122 (9th Cir. 2012); Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006). Plaintiff “must
16 show (1) a serious medical need by demonstrating that failure to treat [his] condition could result in
17 further significant injury or the unnecessary and wanton infliction of pain,” and (2) that “the
18 defendant’s response to the need was deliberately indifferent.” Wilhelm, 680 F.3d at 1122 (citing Jett,
19 439 F.3d at 1096). Deliberate indifference is shown by “(a) a purposeful act or failure to respond to a
20 prisoner’s pain or possible medical need, and (b) harm caused by the indifference.” Wilhelm, 680
21 F.3d at 1122 (citing Jett, 439 F.3d at 1096). The requisite state of mind is one of subjective
22 recklessness, which entails more than ordinary lack of due care. Snow, 681 F.3d at 985 (citation and
23 quotation marks omitted); Wilhelm, 680 F.3d at 1122.

24 In his motion, Plaintiff requests a court order to allow him to be sent to a specialist for brain
25 injuries and ear nose and throat treatment. Despite Plaintiff’s opinions as to what the proper medical
26 treatment is, there is no indication that Plaintiff is in immediate need of the treatment he seeks and is
27 under significant threat of irreparable harm without the referral to a specialist. Thus, Plaintiff has not
28 made the showing required to meet his burden as the party moving for preliminary injunctive relief.

1 Plaintiff has also not demonstrated that the balance of equities tips in his favor, or that an injunction is
2 in the public interest. As Plaintiff has failed to meet his burden of proving that he is entitled to a
3 preliminary injunction, his motion must be denied.

4 **II.**

5 **RECOMMENDATION**

6 Based on the foregoing, IT IS HEREBY RECOMMENDED that Plaintiff's motion for a
7 preliminary injunction and/or temporary restraining order be DENIED.

8 This Findings and Recommendation will be submitted to the United States District Judge
9 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **thirty (30) days** after
10 being served with this Findings and Recommendation, the parties may file written objections with the
11 Court. The document should be captioned "Objections to Magistrate Judge's Findings and
12 Recommendation." The parties are advised that failure to file objections within the specified time may
13 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)
14 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

15
16 IT IS SO ORDERED.

17 Dated: April 3, 2017

18 
19 _____
20 UNITED STATES MAGISTRATE JUDGE