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2 UNITED STATES DISTRICT COURT
3 FOR THE EASTERN DISTRICT OF CALIFORNIA
4

5 GARDELL COWART,

6 Plaintiff,

7 v.

8 RAHMAN, et al.,

9 Defendants.

No. 1:16-cv-00004-AWI-SKO (PC)

**FINDINGS AND RECOMMENDATIONS
THAT PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTIVE RELIEF BE
DENIED and ORDER REQUESTING
ASSISTANCE OF WARDEN AND
LITIGATION COORDINATOR**

(Doc. 32)

THIRTY (30) DAY DEADLINE

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13 Plaintiff, Gardell Cowart, is a state prisoner proceeding *pro se* and *in forma pauperis* in
14 this civil rights action pursuant to 42 U.S.C. § 1983. On May 10, 2017, Plaintiff filed a request
15 for injunctive relief to obtain various forms of medical care, (Doc. 32), mirroring previous
16 motions, (Docs. 16, 20, 22, 25, 28, 29), which have all been denied (Docs. 17, 19, 30).

17 As stated in the findings and recommendations on Plaintiff's prior request for injunctive
18 relief, "[a] plaintiff seeking a preliminary injunction must establish that he is likely to succeed on
19 the merits and to suffer irreparable harm in the absence of preliminary relief, that the balance of
20 equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural*
21 *Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008) (citations omitted). "A preliminary
22 injunction is an extraordinary remedy never awarded as a matter of right. In each case, courts
23 must balance the competing claims of injury and must consider the effect on each party of the
24 granting or withholding of the requested relief. In exercising their sound discretion, courts of
25 equity should pay particular regard for the public consequences in employing the extraordinary
26 remedy of injunction." *Id.*, at 24 (citations and quotations omitted). An injunction may only be
27 awarded upon a clear showing that the plaintiff is entitled to such relief. *Id.*, at 22.

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1 Requests for prospective relief are further limited by 18 U.S.C. § 3626 (a)(1)(A) of the
2 Prison Litigation Reform Act, which requires that the Court find the “relief [sought] is narrowly
3 drawn, extends no further than necessary to correct the violation of the Federal Right, and is the
4 least intrusive means necessary to correct the violation of the Federal Right.”

5 As a threshold matter, Plaintiff must establish that he has standing to seek preliminary
6 injunctive relief. *Summers v. Earth Island Institute*, 555 U.S. 488, 493-94, 129 S.Ct. 1142, 1149
7 (2009); *Mayfield v. United States*, 599 F.3d 964, 969 (9th Cir. 2010). Plaintiff “must show that
8 he is under threat of suffering an ‘injury in fact’ that is concrete and particularized; the threat
9 must be actual and imminent, not conjectural or hypothetical; it must be fairly traceable to
10 challenged conduct of the defendant; and it must be likely that a favorable judicial decision will
11 prevent or redress the injury.” *Summers*, 555 U.S. at 493 (citation and quotation marks omitted);
12 *Mayfield*, 599 F.3d at 969.

13 The medical care claims which Plaintiff alleges arise from events which occurred at the
14 Substance Abuse Treatment Facility (“SATF”) in Corcoran, California. Plaintiff is currently
15 housed at the California Institution for Men (“CIM”) in Chino, California. Accordingly, Plaintiff
16 lacks standing to seek relief directed at remedying his current conditions of confinement at CIM.
17 Further, to the extent that his motion for temporary restraining order seeks relief to remedy his
18 conditions of confinement for the time he was at SATF, it was rendered moot on his transfer to
19 CIM. *See Dilley v. Gunn*, 64 F.3d 1365, 1368 (9th Cir. 1995); *Johnson v. Moore*, 948 F.2d 517,
20 519 (9th Cir. 1991). Thus, Plaintiff’s motion for a preliminary injunction must be denied.
21 However, the Warden and Litigation Office are requested to look into the matter and facilitate
22 Plaintiff’s access to medical care that has been ordered for him by his treating physicians and any
23 specialists.¹

24 Accordingly, the Court HEREBY RECOMMENDS that Plaintiff’s motion for injunctive
25 relief, filed on May 10, 2017, be DENIED. The Clerk’s Office is directed to forward a copy of
26 this order and Plaintiff’s motion to the Warden and the Litigation Coordinator at California

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28 ¹ How access is best facilitated in light of Plaintiff’s housing status and other custody or classification factors is left to the sound discretion of prison officials.

1 Institution for Men to facilitate Plaintiff's access to the medical care ordered for him by his
2 treating physicians and any specialists.

3 These Findings and Recommendations will be submitted to the United States District
4 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). **Within**
5 **thirty (30) days** after being served with these Findings and Recommendations, Plaintiff may file
6 written objections with the Court. Local Rule 304(b). The document should be captioned
7 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
8 within the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772
9 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

10 IT IS SO ORDERED.

11 Dated: May 12, 2017

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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