

1 of the prescribed oxycodone. (*Id.* at 2.)

2 On February 12, 2016, the assigned magistrate judge filed findings and recommendations
3 recommending that plaintiff’s motion for a court order requiring that he be provided Oxycodone
4 for his pain be denied. (Doc. No. 13.) The magistrate judge reasoned that plaintiff’s complaint in
5 this action had just been dismissed with leave to amend so there was no actual case or controversy
6 before the court as necessary for the court to have jurisdiction to issue the order sought by
7 plaintiff. (*Id.* at 2.) Additionally, the magistrate judge reasoned that plaintiff had not made the
8 required showing that the prison officials were acting with deliberate indifference to his serious
9 medical needs in violation of the Eighth Amendment. (*Id.* at 2–3.) Specifically, the magistrate
10 judge stated “[d]espite Plaintiff’s opinions as to what the proper medical treatment is, there is no
11 indication that Plaintiff is in immediate need of the treatment he seeks and is under significant
12 threat of irreparable harm without the medication.” (*Id.* at 3.) The findings and recommendations
13 were served on plaintiff and contained notice that objections thereto were to be filed within thirty
14 days. (*Id.*)

15 Plaintiff filed objections on February 29, 2016. (Doc. No. 16.) Therein, he objected that
16 the medication currently being prescribed to him is not comparable to that listed in his medical
17 records. (*Id.* at 1.) He states that defendants have given him Tylenol #4, which contains
18 acetaminophen that is causing irreparable damage to his liver. (*Id.* at 3.) Plaintiff also objected
19 that he “had to have that particular medication to alleviate his seizures,” but that “[d]efendants
20 constantly allow pain medications and seizure and psych medications to lapse.” (*Id.* at 2–4.)

21 On April 6, 2016, plaintiff filed his first amended complaint in this action. (Doc. No. 20.)
22 His first claim in that amended complaint alleges violation of his constitutional right to adequate
23 medical care as a result of his seizure medication being canceled. In addition, plaintiff alleges: “I
24 also have severe trauma to my back for which I take oxycodone in a pure form, without
25 acetaminophen, because I also have Hep. C, a liver disease that acetaminophen does irreparable
26 harm to.” (*Id.* at 6.) However, later in his amended complaint plaintiff alleges:

27 This response to these grievances also states that I’m currently
28 receiving treatment for Hep. C. This is a lie. Medical records
included within, will show that this is a lie, and it isn’t even listed

1 as an illness I have, nor is there a prescription contained therein for
2 this deadly disease.

3 (*Id.* at 14.)

4 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a
5 *de novo* review of this case. Because plaintiff has now filed an amended complaint, there is an
6 actual case or controversy before the court now that did not exist when the magistrate judge
7 issued the findings and recommendations.

8 LEGAL STANDARD

9 “[I]njunctive relief [is] an extraordinary remedy that may only be awarded upon a clear
10 showing that the plaintiff is entitled to such relief.” *Winter v. Natural Res. Def. Council, Inc.*, 555
11 U.S. 7, 22 (2008). The legal principles applicable to requests for injunctive relief, such as a
12 temporary restraining order or preliminary injunction, are well established. “The proper legal
13 standard for preliminary injunctive relief requires a party to demonstrate ‘that he is likely to
14 succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary
15 relief, that the balance of equities tips in his favor, and that an injunction is in the public
16 interest.’” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (quoting *Winter*, 555
17 U.S. at 20); *see also Center for Food Safety v. Vilsack*, 636 F.3d 1166, 1172 (9th Cir. 2011)
18 (“After *Winter*, ‘plaintiffs must establish that irreparable harm is likely, not just possible, in order
19 to obtain a preliminary injunction.’); *Am. Trucking Ass’n, Inc. v. City of Los Angeles*, 559 F.3d
20 1046, 1052 (9th Cir. 2009). The Ninth Circuit has also held that “[a] preliminary injunction is
21 appropriate when a plaintiff demonstrates...that serious questions going to the merits were raised
22 and the balance of hardships tips sharply in the plaintiff’s favor.” *Alliance for Wild Rockies v.*
23 *Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011) (quoting *Lands Council v. McNair*, 537 F.3d
24 981, 97 (9th Cir. 2008) (en banc)).¹

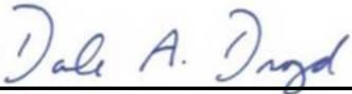
25 ¹ The Ninth Circuit has found that this “serious question” version of the circuit’s sliding scale
26 approach survives “when applied as part of the four-element *Winter* test.” *Alliance for Wild*
27 *Rockies v. Cottrell*, 632 F.3d 1127, 1134 (9th Cir. 2011). “That is, ‘serious questions going to the
28 merits’ and a balance of hardships that tips sharply towards the plaintiff can support issuance of a
preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable
injury and that the injunction is in the public interest.” *Id.* at 1135.

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Accordingly, the recommendation (Doc. No. 13) that plaintiff's motion be denied is adopted for the specific reasons set forth above and plaintiff's motion for court ordered medical treatment (Doc. No. 11) is denied.

IT IS SO ORDERED.

Dated: July 28, 2016



UNITED STATES DISTRICT JUDGE