1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 MARINO ANTONIO HERNANDEZ, No. 1:16-cv-00716-DAD-MJS 12 Plaintiff. ORDER ADOPTING FINDINGS AND RECOMMENDATIONS TO DENY 13 v. PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION AND 14 WINFRED M. KOKOR, et al., TEMPORARY RESTRAINING ORDER 15 Defendants. (Doc. No. 47.) 16 17 Plaintiff Marino Antonio Hernandez ("plaintiff") is a state prisoner proceeding *pro se* and 18 in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. The action proceeds on 19 plaintiff's Eighth Amendment medical indifference claim against defendants Dr. Kokor and 20 Nurse Stronach for denying him medical treatment for his chronic left ankle pain. (Doc. No. 1.) 21 The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) 22 and Local Rule 302. 23 On September 26, 2017, the assigned magistrate judge issued findings and 24 recommendations recommending that plaintiff's requests for a preliminary injunction and 25 temporary restraining order ("TRO") be denied. (Doc. No. 47.) Plaintiff was directed to file any 26 objections to the findings and recommendation within fourteen days. Plaintiff's objections were 27 filed on October 10, 2017. (Doc. No. 48.) Defendants responded to the objections on October 28 18, 2017. (Doc. No. 50.)

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

1

In his objections plaintiff contends that the magistrate judge misinterpreted his allegation that the he told defendants that the Tylenol 3 they were giving him had caused him harm before and was doing so again. (Doc. No. 48 at 1.) Specifically, plaintiff alleges that the first sentence of the magistrate judge's summary of his complaint inaccurately frames his allegation. (*Id.*) The sentence in the findings and recommendations that plaintiff objects to states: "Plaintiff's complaint alleged that Dr. Kokor and Nurse Stronach continued to prescribe Plaintiff Tylenol 3 for ankle pain despite knowing that it did not alleviate his pain but instead caused adverse side effects." (Doc. No. 47 at 3.) Plaintiff asserts that this is inaccurate because he informed the medical staff that the Tylenol 3 harmed him while he was imprisoned in 2007. (Doc. No. 48 at 1.) The distinction drawn by plaintiff is of no consequence and does not call into question the magistrate judge's conclusions that the court should not substitute its judgment for that of trained medical personnel and that plaintiff has failed to make an adequate showing in support of his motion for injunctive relief.¹

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, the court has conducted a *de novo* review of plaintiff's request. The court finds the findings and recommendations to be supported by the record and by proper analysis. Plaintiff has failed to make the required showing that he is entitled to injunctive relief.

Accordingly:

- 1. The findings and recommendations filed on September 26, 2017 (Doc. No. 47) are adopted in full; and
- Plaintiff's motion for a preliminary injunction and temporary restraining order (Doc. No. 38) is denied.

IT IS SO ORDERED.

Dated: December 10, 2017

UNITED STATES DISTRICT JUDGE

27

28

25

²⁶

¹ Moreover, plaintiff states in his objections that he no longer requires injunctive relief because he has been scheduled for surgery. (Doc. No. 48 at 2.) Thus, it appears that plaintiff may be withdrawing his motion for injunctive relief and/or it has been rendered moot.