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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GERALD L. MILLER, JR.,

Plaintiff,

No. CIV S-07-1646 LKK EFB P

vs.

JANE WOODFORD, et al.,

Defendants.

ORDER

_____ /

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On May 27, 2009, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fifteen days from the date the findings and recommendations were served. Plaintiff has filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-304, this court has conducted a de novo review of this case. The court notes in describing the standard for issuance of a preliminary injunction and temporary restraining order, the magistrate

1 followed the approach that had been traditionally followed in the Ninth Circuit and articulated in
2 the en banc decision in Sw. Voter Registration Educ. Project v. Shelley, 344 F.3d 914, 918 (9th
3 Cir. 2003). This standard was repudiated in part by the Supreme Court's decision in Winter v.
4 Natural Res. Def. Council, Inc., ___ U.S. ___, 129 S. Ct. 365, 374 (2008), which held that a party
5 seeking a preliminary injunction must show "[1] that he is likely to succeed on the merits, [2]
6 that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance
7 of equities tips in his favor, and [4] that an injunction is in the public interest." Despite recitation
8 of the former standard, the magistrate's findings and recommendations are consistent with the
9 Winter rule.

10 Having carefully reviewed the entire file, the court finds the findings and
11 recommendations to be supported by the record and by proper analysis.

12 Accordingly, IT IS HEREBY ORDERED that:

13 1. The findings and recommendations filed May 27, 2009, are adopted in full,
14 except as to their recitation of the preliminary injunction standard; and

15 2. Plaintiff's January 7, 2009, motion for a temporary restraining order and
16 preliminary injunction is denied.

17 So ordered.

18 DATED: August 28, 2009.

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LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT