



1           A preliminary injunction will not issue unless necessary to prevent threatened injury that  
2 would impair the court’s ability to grant effective relief in a pending action. *Sierra On-Line, Inc.*  
3 *v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984); *Gon v. First State Ins. Co.*, 871  
4 F.2d 863 (9th Cir. 1989). A preliminary injunction represents the exercise of a far reaching  
5 power not to be indulged except in a case clearly warranting it. *Dymo Indus. v. Tapeprinter, Inc.*,  
6 326 F.2d 141, 143 (9th Cir. 1964). In order to be entitled to preliminary injunctive relief, a party  
7 must demonstrate “that he is likely to succeed on the merits, that he is likely to suffer irreparable  
8 harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an  
9 injunction is in the public interest.” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir.  
10 2009) (citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7 (2008)). The Ninth Circuit has  
11 also held that the “sliding scale” approach it applies to preliminary injunctions—that is, balancing  
12 the elements of the preliminary injunction test, so that a stronger showing of one element may  
13 offset a weaker showing of another—survives *Winter* and continues to be valid. *Alliance for Wild*  
14 *Rockies v. Cottrell*, 622 F.3d 1045, 1050 (9th Cir. 2010). “In other words, ‘serious questions  
15 going to the merits,’ and a hardship balance that tips sharply toward the plaintiff can support  
16 issuance of an injunction, assuming the other two elements of the Winter test are also met.” *Id.*  
17 In cases brought by prisoners involving conditions of confinement, any preliminary injunction  
18 “must be narrowly drawn, extend no further than necessary to correct the harm the court finds  
19 requires preliminary relief, and be the least intrusive means necessary to correct the harm.” 18  
20 U.S.C. § 3626(a)(2).

21           Here, plaintiff has not shown a likelihood of success on the merits, nor has he shown any  
22 relationship between the preliminary relief sought and the subject matter of this lawsuit. This  
23 action proceeds on plaintiff’s claims that defendants retaliated against him by interfering with his  
24 diabetes treatment. *See* ECF Nos. 194, 200. In contrast, plaintiff’s motions for injunctive relief  
25 involve completely different issues not raised in this action; i.e., plaintiff’s claimed need for a  
26 single cell, his allegations regarding the falsification of paperwork, and his allegations that prison  
27 and court officials are not “following all legal mailing procedures.” Furthermore, apart from  
28 plaintiff’s unsupported allegations, there is no evidence establishing that plaintiff is likely to

1 prevail on those unrelated claims or on his retaliation claims in this case, or that the injunctions  
2 sought are necessary to preserve the court's ability to grant effective relief on those claims and  
3 that it is the least intrusive means for doing so.

4 Moreover, the allegations on which plaintiff bases his motion for preliminary injunctive  
5 relief are properly the subject of another lawsuit and cannot be cannot be adjudicated in this  
6 action, where they cannot be properly exhausted through the administrative appeals process. *See*  
7 *McKinney v. Carey*, 311 F.3d 1198, 1199-1201 (9th Cir. 2002) (per curiam) and *Rhodes v.*  
8 *Robinson*, 621 F.3d 1002, 1004-07 (9th Cir. 2010) (together holding that claims must be  
9 exhausted prior to the filing of the original or supplemental complaint); *Jones v. Felker*, No. CIV  
10 S-08-0096 KJM EFB P, 2011 U.S. Dist. LEXIS 13730, at \*11-15 (E.D. Cal. Feb. 11, 2011); Fed.  
11 R. Civ. P. 20(a)(2) (multiple defendants may be joined in an action only where the suit regards  
12 "the same transaction, occurrence, or series of transactions or occurrences" or "any question of  
13 law or fact common to all defendants"). Accordingly, plaintiff's motions for preliminary  
14 injunctive relief must be denied.

15 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff's May 16, 2013 motion for  
16 a preliminary injunction (ECF No. 189) and August 2, 2013 motion to compel (ECF No. 193),  
17 construed as a request for a preliminary injunction, be denied.

18 These findings and recommendations are submitted to the United States District Judge  
19 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
20 after being served with these findings and recommendations, any party may file written  
21 objections with the court and serve a copy on all parties. Such a document should be captioned  
22 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections  
23 within the specified time may waive the right to appeal the District Court's order. *Turner v.*  
24 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

25 DATED: June 25, 2014.

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27   
28 EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE