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

JAMES ARMSTEAD,

Plaintiff,

No. 2: 11-cv-1054 JAM KJN P

vs.

TIM V. VIRGA, et al.,

Defendants.

FINDINGS & RECOMMENDATIONS

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Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s motion for injunctive relief filed October 11, 2012. For the following reasons, this motion should be denied.

In the amended complaint, filed June 28, 2011, plaintiff alleges that he was subjected to an improper eleven month race-based lockdown. In the pending motion for injunctive relief, plaintiff alleges that medical staff have shown “complete indifference” to the infection he has been fighting for two months. Plaintiff requests that he be taken to U.C. Davis to see a physician.

The Supreme Court has held that a preliminary injunction is appropriate to grant relief of the “same character as that which may be granted finally.” De Beers Consol. Mines v. U.S., 325 U.S. 212, 220 (1945). A court may not issue an injunction in “a matter lying wholly


1 outside the issues in the suit.” Id. A court need not consider claims that were not raised in the  
2 complaint. McMichael v. Napa County, 709 F.2d 1268, 1273 n. 4 (9th Cir. 1983). Additionally,  
3 “a party moving for a preliminary injunction must necessarily establish a relationship between  
4 the injury claimed in the party's motion and the conduct asserted in the complaint.” Devose v.  
5 Herrington, 42 F.3d 470, 471 (8th Cir. 1994).

6 The claims in plaintiff’s motion for injunctive relief are unrelated to the claims  
7 contained in the amended relief. For this reason, plaintiff’s motion for injunctive relief should be  
8 denied. Plaintiff may file a separate civil rights action challenging his claims regarding  
9 inadequate medical care.

10 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff’s motion for  
11 injunctive relief (Dkt. No. 58) be denied.

12 These findings and recommendations are submitted to the United States District  
13 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-  
14 one days after being served with these findings and recommendations, any party may file written  
15 objections with the court and serve a copy on all parties. Such a document should be captioned  
16 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the  
17 objections shall be filed and served within fourteen days after service of the objections. The  
18 parties are advised that failure to file objections within the specified time may waive the right to  
19 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

20 DATED: October 17, 2012

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23 KENDALL J. NEWMAN  
24 UNITED STATES MAGISTRATE JUDGE

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