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

LEONARD FARLEY,

Plaintiff,

No. 2:11-cv-1830 KJN P

vs.

TIM VIRGA, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding without counsel. By order filed July 26, 2011, plaintiff was directed to file, within thirty days, an application to proceed in forma pauperis and a certified copy of plaintiff’s prison trust account statement. On July 26, 2011, plaintiff filed a motion for preliminary injunction.

Plaintiff claims that he has a cancerous tumor inside his stomach, which can become deadly if traumatized. Plaintiff alleges defendants put plaintiff’s life in danger by keeping plaintiff housed on one of the most dangerous mainline yards in California. Plaintiff alleges two violent racial riots have occurred on B-Facility at New Folsom where plaintiff is housed. Plaintiff contends he will suffer irreparable harm if defendants are allowed to continue ignoring plaintiff’s serious medical needs. Plaintiff further contends that he will suffer irreparable harm if he is not transferred because plaintiff is at risk from the “race war,” that is, he

1 is at risk of being attacked by Hispanic inmates because of the color of plaintiff's skin. Plaintiff
2 seeks transfer from New Folsom to California Medical Facility or California Men's Colony.

3 "The proper legal standard for preliminary injunctive relief requires a party to
4 demonstrate 'that he is likely to succeed on the merits, that he is likely to suffer irreparable harm
5 in the absence of preliminary relief, that the balance of equities tips in his favor, and that an
6 injunction is in the public interest.'" Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th Cir.
7 2009), quoting Winter v. Natural Res. Def. Council, Inc., 129 S. Ct. 365, 374 (2008).

8 A Ninth Circuit panel has found that post-Winter, this circuit's sliding scale
9 approach or "serious questions" test survives "when applied as part of the four-element Winter
10 test." Alliance for Wild Rockies v. Cottrell, 2011 WL 208360, at *7 (9th Cir. Jan. 25, 2011).
11 "That is, 'serious questions going to the merits' and a balance of hardships that tips sharply
12 towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also
13 shows that there is a likelihood of irreparable injury and that the injunction is in the public
14 interest." Id. In cases brought by prisoners involving conditions of confinement, any preliminary
15 injunctive relief "must be narrowly drawn, extend no further than necessary to correct the harm
16 the court finds requires preliminary relief, and be the least intrusive means necessary to correct
17 the harm." 18 U.S.C. § 3626(a)(2).

18 Initially, the principal purpose of preliminary injunctive relief is to preserve the
19 court's power to render a meaningful decision after a trial on the merits. See 11A Charles Alan
20 Wright & Arthur R. Miller, Federal Practice and Procedure, § 2947 (2d ed. 2010). As noted
21 above, in addition to demonstrating that he will suffer irreparable harm if the court fails to grant
22 the preliminary injunction, plaintiff must show a "fair chance of success on the merits" of his
23 claim. Sports Form, Inc. v. United Press International, Inc., 686 F.2d 750, 754 (9th Cir. 1982)
24 (internal citation omitted).

25 Plaintiff's motion is premature. First, plaintiff's complaint has not yet been
26 screened. No defendant has been served with process at this early stage of the litigation. Good

1 cause appearing, plaintiff's motion will be denied without prejudice to its renewal following the
2 appearance of any defendant in this action.

3 Second, plaintiff's motion is largely duplicative of the motion for injunctive relief
4 filed in Farley v. Capot, et al., 1:06-cv-1760 LJO MJS, on October 4, 2010.¹ Plaintiff's motion
5 was filed after the July 21, 2011 incident at issue in the instant action. The court found plaintiff
6 failed to demonstrate he was likely to suffer irreparable harm if plaintiff was not moved to one of
7 the facilities requested. Id., Dkt. No. 58 at 3. The court found that "the evidence indicates
8 [plaintiff's] condition is stable with the current treatment regimen at [plaintiff's] current facility."
9 Id. The court further noted that granting plaintiff's "request to be transferred would disrupt, not
10 maintain, the status quo." Id. at 4. Finally, the court found that plaintiff was given the option of
11 moving to the Out-Patient Housing unit ("OHU") in plaintiff's current facility, on
12 recommendation by plaintiff's primary care physician, but plaintiff apparently refused this
13 reassignment. Id., at 2. The district court adopted the findings and recommendations. Id., Dkt.
14 No. 60. Plaintiff filed an appeal, and on March 16, 2011, the Court of Appeals for the Ninth
15 Circuit summarily affirmed the order denying plaintiff's motion for preliminary injunctive relief.
16 Id., Dkt. No. 68. Although plaintiff claims his life is put at risk daily, plaintiff alleges no further
17 incidents of fighting other than the July 21, 2011 incident herein.

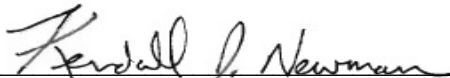
18 Third, plaintiff provided the September 22, 2010 letter from Dr. Preet Sahota,
19 M.D., Chief Physician and Surgeon at California State Prison, Sacramento, who states there is no
20 medical reason for plaintiff to be housed at either California Men's Colony or California Medical
21 Facility. (Dkt. No. 6 at 38.) Moreover, plaintiff provided Dr. Sahota's August 25, 2010 letter in
22 which Dr. Sahota explained that plaintiff's primary care physician recommended plaintiff's
23 housing at the OHU for plaintiff's safety, but that it was not medically necessary for plaintiff to

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25 ¹ A court may take judicial notice of court records. See, e.g., Bennett v. Medtronic, Inc.,
26 285 F.3d 801, 803 n.2 (9th Cir. 2002) ("[W]e may take notice of proceedings in other courts,
both within and without the federal judicial system, if those proceedings have a direct relation to
matters at issue") (internal quotation omitted).

1 be housed in the OHU. (Dkt. No. 6 at 36.) Plaintiff apparently declined this alternative housing
2 assignment. (Dkt. No. 6 at 37.) Inmates do not have a constitutional right to be housed at a
3 particular facility or institution or to be transferred, or not transferred, from one facility or
4 institution to another. Olim v. Wakinekona, 461 U.S. 238, 244-48 (1983); Meachum v. Fano,
5 427 U.S. 215, 224-25 (1976); Johnson v. Moore, 948 F.2d 517, 519 (9th Cir. 1991) (per curiam).
6 Plaintiff has provided no probative medical evidence to contradict Dr. Sahota's medical findings.

7 For all of the above reasons, IT IS HEREBY ORDERED that plaintiff's July 26,
8 2011 motion for injunctive relief (dkt. No. 6) is denied without prejudice.

9 DATED: August 8, 2011

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11 
12 KENDALL J. NEWMAN
13 UNITED STATES MAGISTRATE JUDGE

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