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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TIMOTHY O'KEEFE,
Plaintiff,
v.
JERRY BROWN, et al.,
Defendants.

No. 2: 11-cv-2659 KJM KJN P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on the fifth amended complaint filed November 14, 2014. (ECF No. 171.) Plaintiff alleges that defendants have failed to provide him with adequate mental health care for exhibitionism, voyeurism and paraphilia. (Id. at 4.) Plaintiff requests injunctive relief in the form of an order directing defendants to provide him with treatment for these conditions. (Id. at 14.)

Pending before the court is plaintiff's motion for a preliminary injunction. (ECF No. 223.) Plaintiff requests that he be transferred to Atascadero or Coalinga State Mental Hospitals where he can receive treatment for exhibitionism, voyeurism and paraphilia. In other words, plaintiff seeks injunctive relief as to the merits of the claims on which this action is proceeding.


The undersigned has concurrently granted plaintiff's motion for an extension of time to conduct discovery. The discovery deadline is now December 31, 2015, and the dispositive

1 motion deadline is March 31, 2016. Based on these new deadlines, and the fact that plaintiff is
2 still conducting discovery, it is appropriate to consider the merits of plaintiff's motion for
3 injunctive relief at the close of discovery and in the context of dispositive motions. For these
4 reasons, the undersigned recommends that plaintiff's motion for injunctive relief be denied
5 without prejudice.¹

6 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff's motion for injunctive
7 relief (ECF No. 223) be denied without prejudice.

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

16 Dated: October 1, 2015

17 
18 KENDALL J. NEWMAN
19 UNITED STATES MAGISTRATE JUDGE

20 Ok2659.pi(2)

21 ¹ The undersigned observes that defendants have previously filed briefing stating that the
22 treatment plaintiff seeks is not available within the California Department of Corrections and
23 Rehabilitation ("CDCR"). (ECF No. 190.) Defendants have also informed the court that the
24 treatment plaintiff seeks is not available to him at a state mental hospital. (Id.) According to
25 defendants, only persons in the Sexually Violent Predator Program ("SVP") at state mental
26 hospitals are eligible for a comprehensive program for sexual disorders. (Id.) Because plaintiff is
27 not in the SVP, he is not eligible for this treatment program. (Id.)

28 The undersigned further observes that plaintiff has filed documents indicating that he has
previously been diagnosed with voyeurism and exhibitionism. (ECF Nos. 21 at 40; 72 at 17.) On
September 24, 2015, plaintiff filed a report prepared by "R. Schwartz, Ph.D" dated August 13,
2015. (ECF No. 231 at 4.) This report does not include voyeurism or exhibitionism in the list of
plaintiff's disorders. (Id.) The undersigned expects defendants to address these differences in
diagnoses in any dispositive motion.