

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

WALTER HOWARD WHITE,  
Plaintiff,  
v.  
SMYERS, et al.,  
Defendants.

No. 2:12-cv-2868 MCE AC P

ORDER and  
FINDINGS AND RECOMMENDATIONS

I. Introduction

Plaintiff is a state prisoner currently incarcerated at the California Health Care Facility (CHCF),<sup>1</sup> under the authority of the California Department of Corrections and Rehabilitation (CDCR). Plaintiff proceeds pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. Presently pending are: (1) plaintiff’s eighth and ninth motions to stay this action, see ECF No. 172 & 187, and (2) third motion for preliminary injunctive relief, see ECF No. 174. For the reasons set forth below, this court denies plaintiff’s motions to stay, and recommends that plaintiff’s motion for preliminary injunctive relief be denied.<sup>2</sup>

<sup>1</sup> Plaintiff informed the court on August 19, 2016, that he had been moved to CHCF. See ECF Nos. 187, 188. Plaintiff failed to inform the court of his prior move from High Desert State Prison to Salinas Valley State Prison, as required by Local Rules 182(f) and 183(b).

<sup>2</sup> This case has been pending in this court for nearly four years largely due to plaintiff’s repeated requests for extended time, stays, protective orders and preliminary injunctive relief, failure to complete his deposition, and repeated requests for reconsideration of the court’s orders.

1           II.     Background

2           This action proceeds on plaintiff's First Amended Complaint (FAC), filed July 15, 2013.  
3     See ECF No. 23. Pursuant to 28 U.S.C. § 1915A, this court found that the FAC states cognizable  
4     claims for deliberate indifference to plaintiff's serious medical needs in violation of the Eighth  
5     Amendment, against defendants Miranda, Mayes, Schmidt, Lee, Pomazal, Rofling, Lankford, and  
6     Swingle in their individual capacities; and for violation of the Americans with Disabilities Act  
7     (ADA), 42 U.S.C. § 12132 et seq., against defendant Swingle in his official capacity (HDSP  
8     Chief Medical Officer). See ECF No. 24 at 1-2.

9           Plaintiff challenges the quality of his care when incarcerated at High Desert State Prison  
10    (HDSP) from September 22, 2010 through March 27, 2013. FAC at ¶¶ 3, 24. As set forth in the  
11    FAC, plaintiff alleges that he "was received into HDSP with very serious spinal and right knee  
12    conditions," including spinal stenosis, herniated discs, disc protrusions, nerve impingements,  
13    spinal cord displacement, transitional L-5 vertebra, fissure of annulus fibrosis, degenerative disc  
14    disease, at least two fractured vertebra in his mid-thoracic spine, a large Baker's cyst behind his  
15    right knee, and a faulty right knee implant. Id. at ¶ 13. Plaintiff states that these conditions "were  
16    caused by, in part, a prison job-related accident which occurred on July 21, 2008," and "severe  
17    spinal injuries since 2005, 2008." Id. at ¶¶ 14, 24. Plaintiff contends that defendants were  
18    deliberately indifferent by, inter alia, failing to provide him adequate pain medication;  
19    withdrawing his chronos for a back brace and wheelchair; failing to provide extra bedding; and  
20    failing to make appropriate referrals to outside medical specialists.

21           After initiating this action, plaintiff was transferred to the California Substance Abuse  
22    Treatment Facility (CSATF) from April 2013 to April 2015. Plaintiff was transferred back to  
23    HDSP in April 2015. He was transferred to Salinas Valley State Prison (SVSP) sometime prior  
24    to March 2016, and then to CHCF in August 2016. See n.1, supra.

---

25    Plaintiff's filings have triggered extensive responsive briefing by defendants and required an  
26    inordinate amount of this court's time as compared to similar cases. This court has repeatedly  
27    admonished plaintiff to refrain from filing matters that impede the progress of this case. See e.g.,  
28    ECF No. 153 at 6-7, and n.5 (citing a similar admonishment at ECF No. 126 at 5-6). Plaintiff's  
  motions addressed herein were reviewed upon filing and found to be nonurgent for the reasons  
  stated herein.

1 III. Motions to Stay

2 Presently pending are plaintiff's eighth and ninth motions to stay this action.<sup>3</sup> See ECF  
3 Nos. 172 & 187. These motions are addressed ad seriatim.

4 A. Legal Standards

5 This court "possesses the inherent power to control its own docket and calendar."  
6 Mediterranean Enterprises, Inc. v. Ssangyong Corp., 708 F.2d 1458, 1465 (9th Cir. 1983) (citing  
7 Landis v. North American Co., 299 U.S. 248, 254-55 (1936), and Leyva v. Certified Grocers of  
8 California, Ltd., 593 F.2d 857, 864 (9th Cir.), cert. denied, 444 U.S. 827 (1979). When a stay is  
9 requested, this court:

10 . . . may, with propriety, find it is efficient for its own docket and  
11 the fairest course for the parties to enter a stay of an action before it,  
12 pending resolution of independent proceedings which bear upon the  
13 case. This rule applies whether the separate proceedings are  
judicial, administrative, or arbitral in character, and does not require  
that the issues in such proceedings are necessarily controlling of the  
action before the court.

14 Leyva, 593 F.2d at 863-64 (citations omitted) (cited with approval by Mediterranean Enterprises,  
15 708 F.2d at 1465).

16 B. Analysis

17 1. October 2015 Motion to Stay

18 In his eighth motion to stay this action, ECF No. 172, plaintiff argued that: (1) his  
19 motions for reconsideration, ECF Nos. 157 & 173, were still pending before the district judge;  
20 and (2) due to the alleged retaliation of prison library staff, plaintiff was unable to timely copy,  
21 file and serve exhibits in support of one of those motions for reconsideration (ECF No 173), and  
22 in support of his instant motions for stay and preliminary injunctive relief.

23 Plaintiff's reasons for this stay request are now moot. First, plaintiff's motions for  
24 reconsideration, ECF Nos. 157 & 173, were ruled on by the district judge. See ECF Nos. 179,  
25 180. Second, in his new (and pending) motions for reconsideration, see ECF Nos. 182 & 184,

26 \_\_\_\_\_  
27 <sup>3</sup> Plaintiff's prior motions to stay are reflected on the docket at ECF Nos. 29 (addressed by court  
28 order at ECF No. 30); ECF Nos. 70 & 71 (addressed by the court at ECF No. 73); ECF No. 85 &  
108 (addressed by the court at ECF No. 126); ECF No. 134 (addressed by the court at ECF No.  
140); and ECF No. 143 (addressed by the court at ECF No. 153).

1 plaintiff filed the exhibits he alleges he was previously prevented from including in support of his  
2 prior similar motion for reconsideration. See ECF Nos. 182, 173. Additionally, plaintiff has  
3 submitted a “Supplemental Filing” containing the exhibits he was allegedly previously unable to  
4 submit in support of his instant motions to stay and for preliminary injunctive relief. See ECF  
5 No. 181.<sup>4</sup> The undersigned has considered the exhibits pertinent to plaintiff’s instant motion to  
6 stay, see ECF No. 181 at 2-18, which are offered in support of plaintiff’s allegations that he was  
7 improperly denied access to the law library computers and copying services and to adequate legal  
8 supplies. These matters have been resolved and plaintiff has now submitted his additional  
9 exhibits. Accordingly, a stay on this basis is unnecessary.

10 Because the reasons underlying plaintiff’s eighth stay request are now resolved, plaintiff’s  
11 motion to stay this action filed October 15, 2015, ECF No. 172, is denied as moot.

12 2. August 2016 Motion to Stay

13 On August 19, 2016, plaintiff filed his ninth motion to stay this action, which seeks a stay  
14 until plaintiff’s anticipated release from prison on January 5, 2017. See ECF No. 187. Plaintiff  
15 states that he was recently transferred from SVSP to CHCF, where he was placed in the Enhanced  
16 Outpatient Program (EOP), on suicide watch, and in administrative segregation. See ECF Nos.  
17 187, 188. Plaintiff states that his legal property remains at SVSP, and that he is currently  
18 deprived of writing materials, and thus is unable to currently participate in this action. Plaintiff  
19 informs the court that he made a settlement offer to defendants but, if they refuse to settle,  
20 plaintiff will retain private counsel upon his release from prison to continue to pursue this action.

21 The most pressing matter in this case is the necessity to conclude plaintiff’s deposition. In  
22 a separate order filed concurrently with this order, the court addresses the need to conclude  
23 plaintiff’s deposition, with due consideration to plaintiff’s current circumstances. In light of this  
24 companion order, and plaintiff’s history of delaying this action, the court finds it neither fair to  
25 defendants nor efficient for the court to issue a stay at this juncture. See Leyva, 593 F.2d at 863-  
26 64.

27 \_\_\_\_\_  
28 <sup>4</sup> Plaintiff also requests the district judge’s consideration of these exhibits, ECF No. 181, when  
ruling on plaintiff’s motion for reconsideration, ECF No. 182.

1           Therefore, plaintiff’s motion to stay this action filed August 19, 2016, ECF No. 187, is  
2 denied.

3           IV.    Motion for Preliminary Injunctive Relief

4           Also pending is plaintiff’s third motion for preliminary injunctive relief,<sup>5</sup> filed October 7,  
5 2015. See ECF No. 174. Plaintiff notes this is his “third (3rd) motion seeking Court intervention  
6 conducive to CDCR officials affording him curative and/or alleviating medical treatments called  
7 for by outside medical specialists[.]” Id. at 1. Plaintiff seeks a renewed prescription for morphine  
8 or other “more effective” pain medication, epidural pain injections, and surgeries on his thoracic  
9 and cervical spine. As described by plaintiff , he seeks, id. at 22 (with minor edits):

10                   [A] temporary restraining order and a preliminary injunction  
11 requiring defendants to, at a minimum, re-prescribe morphine (or  
12 EFFECTIVE alternative medication) for controlling his severe pain  
13 (at the times and dosage previously prescribed in September 2010)  
14 and, moreover, return him to one of the two pain specialists to  
15 receive the epidural pain relieving injections to his spine. Such  
16 Order would expire 90 days after the filing date unless a permanent  
injunction order is made. As a permanent measure the Court, in  
addition to the medication called for by outside specialists  
(described above) should consider ordering defendants to ensure  
Plaintiff receives the thoracic and cervical surgeries called for by  
the aforementioned neurosurgeons.

17 Plaintiff informs this court that he intends “to file an interlocutory order from the Ninth Circuit  
18 Court of Appeals to the extent the District Court improperly denies him the relief request made  
19 herein.” Id.

20           A.    Legal Standards

21           Preliminary injunctive relief pursuant to Federal Rule of Civil Procedure 65 is appropriate  
22 when the movant demonstrates that “he is likely to succeed on the merits [of the underlying  
23 action], that he is likely to suffer irreparable harm in the absence of preliminary relief, that the  
24 balance of equities tips in his favor, and that an injunction is in the public interest.” Winter v.  
25 Natural Resources Defense Council, 555 U.S. 7, 20 (2008); see also Stormans, Inc. v. Selecky,

---

27 <sup>5</sup> Plaintiff’s prior motions for preliminary injunctive relief are reflected on the docket at ECF  
28 Nos. 6 (addressed by the court at ECF No. 22); and ECF No. 39 (addressed by the court at ECF  
Nos. 53 & 59).

1 586 F.3d 1109, 1127 (9th Cir. 2009) (quoting Winter). Injunctive relief “is an extraordinary  
2 remedy, never awarded as of right.” Winter, 555 U.S. at 24. The principal purpose of  
3 preliminary injunctive relief is to preserve the court’s power to render a meaningful decision on  
4 the merits of the case, see 11A Charles Alan Wright & Arthur R. Miller, Federal Practice and  
5 Procedure, § 2947 (2d ed. 2010), that is, to preserve the status quo pending a determination on the  
6 merits, Sierra Forest Legacy v. Rey, 577 F.3d 1015, 1023 (9th Cir. 2009). The standards  
7 governing the issuance of temporary restraining orders are “substantially identical” to those  
8 governing the issuance of preliminary injunctions. Stuhlbarg Intern. Sales Co., Inc. v. John D.  
9 Brushy and Co., Inc., 240 F.3d 832, 839 n.7 (9th Cir. 2001); Am. Trucking Ass’n, Inc. v. City of  
10 Los Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009).

11 The propriety of a request for injunctive relief hinges on a significant threat of irreparable  
12 injury that must be imminent in nature. Caribbean Marine Serv. Co. v. Baldrige, 844 F.2d 668,  
13 674 (9th Cir. 1988). Speculative injury does not constitute irreparable harm. See id.; Goldie’s  
14 Bookstore, Inc. v. Superior Court, 739 F.2d 466, 472 (9th Cir. 1984). A presently existing actual  
15 threat must be shown, although the injury need not be certain to occur. Zenith Radio Corp. v.  
16 Hazeltine Research, Inc., 395 U.S. 100, 130-31 (1969); FDIC v. Garner, 125 F.3d 1272, 1279-80  
17 (9th Cir. 1997), cert. denied, 523 U.S. 1020 (1998). An injunction against individuals not parties  
18 to the action is strongly disfavored. Zenith Radio, 395 U.S. at 112.

19 In cases brought by prisoners involving conditions of confinement, any preliminary  
20 injunction “must be narrowly drawn, extend no further than necessary to correct the harm the  
21 court finds requires preliminary relief, and be the least intrusive means necessary to correct the  
22 harm.” 18 U.S.C. § 3626(a)(2). “[I]n the prison context, a request for injunctive relief must  
23 always be viewed with great caution because judicial restraint is especially called for in dealing  
24 with the complex and intractable problems of prison administration.” Goff v. Harper, 60 F.3d  
25 518, 520 (8th Cir. 1995) (citation and internal quotation marks omitted).

26 B. Analysis

27 Plaintiff has not demonstrated that he is likely to suffer irreparable harm in the absence of  
28 preliminary injunctive relief. Significantly, the FAC seeks only compensatory and punitive

1 damages. While it also generally seeks “[s]uch other relief as it may appear Plaintiff is entitled,”  
2 the FAC does not expressly seek injunctive relief. See FAC, ECF No. 23 at 16. Therefore,  
3 injunctive relief is not necessary to preserve the status quo pending a determination on the merits  
4 of this action.

5 Nor has plaintiff demonstrated a likelihood of success on the merits of this action. The  
6 repeated delays plaintiff has achieved in this action have rendered defendants’ alleged conduct  
7 more remote in time and memory, making this a more difficult case to prove. More importantly,  
8 the matters sought by the instant motion reflect the ultimate issues in this case, that is, whether  
9 defendants’ alleged conduct constituted deliberate indifference to plaintiff’s serious medical  
10 needs. Plaintiff must show that the challenged course of treatment was medically unacceptable  
11 under the circumstances and chosen in conscious disregard of an excessive risk to plaintiff’s  
12 health. Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1986). The difference of opinion  
13 between a prisoner and physician regarding treatment does not establish deliberate indifference.  
14 Id. Moreover, “[m]ere difference of medical opinion, Sanchez v. Vild, 891 F.2d 240, 242 (9th  
15 Cir.1989), or mere delay in surgery without more, Shapley v. Nevada Bd. of State Prison  
16 Comm’rs, 766 F.2d 404, 407 (9th Cir.1985), does not rise to the level of deliberate indifference.”  
17 Irvin v. Khaury, 26 F.3d 130 (9th Cir. 1994).

18 Comparing plaintiff’s instant requests with the allegations of his FAC,<sup>6</sup> and newly

19 \_\_\_\_\_  
20 <sup>6</sup> Plaintiff’s motion for injunctive relief is grounded in his ongoing disagreements with HDSP  
21 medical staff, as reflected in the following allegations of the FAC, ECF No. 23:

21 ¶ 20. “Upon arrival at HDSP [in September 2010], plaintiff had  
22 active prescriptions for pain-relieving therapy,” including  
23 gabapentin (1200 mg, 3 times daily, with an “expiration date” of  
24 Sept. 29, 2010), ibuprofen (800 mg. up to 3 times daily, expiration  
25 date Nov. 6, 2010), and morphine sulphate (30 mg, 3 times daily,  
26 expiration date Nov. 6, 2010).

25 ¶ 21. “Upon arrival at HDSP plaintiff was prescribed the following  
26 pain-relieving and mobility assistive devices: a cane for short  
27 distances; a specialized pain-relieving back brace; chronos  
28 reflecting such devices, along with usage of an extra mattress and  
pillow. . . . “

¶¶ 22-36. HDSP medical personnel allegedly refused to continue  
plaintiff’s prescriptions for medication and assistive devices.

1 submitted evidence,<sup>7</sup> demonstrates that plaintiff's requests reflect his ongoing disagreements with

---

3 ¶¶ 28-29, 55. Plaintiff provided to HDSP medical staff copies of  
4 his September 2008 and January 2009 neurosurgeon reports;  
5 October 2008 MRI report; April 30 and July 9, 2009 reports of pain  
6 management specialists; July 2009 x-ray report; and "previous in-  
7 prison MD's orders of the same medications" and assistive devices.

8 ¶¶ 32, 41, 53. In approximately October 2010, defendant Miranda  
9 prescribed Indomethacin as a pain reliever, but plaintiff found it  
10 ineffective. In December 2010, defendant Miranda "continued to  
11 prescribe ineffective pain-relieving medications[.]" In June 2012,  
12 defendant Mayes "failed and refused to prescribe an adequate pain-  
13 relieving medication therapy[.]"

14 ¶ 37. In November 2010, plaintiff underwent a nerve conduction  
15 study of his lower extremities arranged by HDSP medical staff.

16 ¶¶ 40, 50, 57. In December 2010, April 2012, and October 2015,  
17 plaintiff was examined by HDSP's "contracted orthopedic  
18 surgeon," who recommended, inter alia, removal of plaintiff's  
19 Baker's cyst, a "liner exchange" of his knee implant, and a bone  
20 scan.

21 ¶¶ 34, 46-9, 53. Plaintiff was prescribed a walker in lieu of a  
22 wheelchair, but denied a cane and back brace.

23 ¶ 56. In August 2012, plaintiff received a bone scan on his right  
24 knee.

25 ¶¶ 59-60. In December 2012, plaintiff was taken to an outside  
26 hospital for revision surgery on his right knee by the "HDSP  
27 contracted orthopedic surgeon." In response to plaintiff's religious  
28 objections to the possibility of receiving a blood transfusion if  
necessary, the surgeon declined to conduct the surgery and  
recommended another orthopedic surgeon.

<sup>7</sup> As described by plaintiff and confirmed by the court's review of these exhibits, plaintiff has submitted the following medical reports in support of his pending motion for preliminary injunctive relief, see ECF No. 181 at 19-65: Ex. 1 (Sept. 1, 2006 MRI of plaintiff's cervical spine); Ex. 2 (incomplete memo or letter); Ex. 3 (Jan. 28, 2008 MRI of plaintiff's lumbar spine); Ex. 4 (Apr. 21, 2008 MRI of plaintiff's thoracic spine); Ex. 5 (Oct. 22, 2008 x-rays of plaintiff's thoracic and lumbar spine); Ex. 6 (Oct. 25, 2008 MRI of plaintiff's thoracic and lumbar spine); Ex. 7 (Aug. 25, 2010 x-ray of plaintiff's chest and mid-thoracic spine); Ex. 8 (Nov. 16, 2010 nerve conduction study of plaintiff's lower extremities); Ex. 9 (Sept. 18, 2013 x-ray of plaintiff's thoracic spine); Ex. 10 (June 14, 2006 neurosurgery consult); Ex. 11 (Sept. 8, 2008 neurosurgery consult); Ex. 12 (Jan. 27, 2009 neurosurgery consult); Ex. 13 (Apr. 30, 2009 pain management consult); Ex. 14 (July 23, 2009 pain management consult); Ex. 15 (Jan. 23, 2015 physician note reflecting call from neurosurgeon who expressed possibility that plaintiff may need surgery by concern about plaintiff's litigiousness); Ex. 16 (Oct. 3, 2008 notice to plaintiff from the State Compensation Insurance Fund concerning his prison-job related injuries and temporary disability



1 his treating physicians. Significantly, the FAC fails to provide sufficient information to identify  
2 plaintiff's challenged medication protocol. See n.6, supra (FAC ¶¶ 32, 41, 53, indicating that  
3 from 2010 to 2012 plaintiff was prescribed Indomethacin and other "ineffective pain-relieving  
4 medications," but without further details). The newly submitted medical evidence establishes that  
5 plaintiff was previously prescribed Morphine but does not affirmatively establish that no other  
6 medication protocol is appropriate. See n.7, supra. This evidence indicates that plaintiff was  
7 prescribed Norco in 2006; Morphine and Neurontin in 2008; Morphine and Ibuprofen in 2009;  
8 and Morphine, Neurontin and Motrin in 2009. A lumbar epidural injection was recommended in  
9 2009. However, in 2009 the pain management consultant opined that plaintiff's pain symptoms  
10 may be attributable in part to psychological stressors and anger issues, and recommended  
11 psychological counseling, yoga and physical therapy. This evidence fails to demonstrate  
12 irreparable harm to plaintiff in the absence of immediate prescriptions for morphine and epidural  
13 injections. Similarly, plaintiff's evidence fails to demonstrate an immediate need for thoracic or  
14 cervical surgery. See n.7 (Exs. 10 & 15).

15 The fact that plaintiff's pending motion for injunctive relief reflects the ultimate issues in  
16 this case renders preliminary injunctive relief inappropriate. "Since the ultimate issues in this  
17 lawsuit are inextricably intertwined with the assertions in this motion for injunctive relief, a ruling  
18 on the motion might be perceived as speaking in some way to the ultimate issues in this case. In  
19 such instances, the Court should refrain from prematurely granting such relief." Green v.  
20 Hawkinberry, 2015 WL 507057, at \*3, 2015 U.S. Dist. LEXIS 14597, at \*7 (W.D. Pa. Feb. 6,  
21 2015) (collecting cases), reconsideration denied, 2015 WL 757407, 2015 U.S. Dist. LEXIS 21260  
22 (W.D. Pa. Feb. 23, 2015).<sup>8</sup> See also Wesley v. Sec'y Pennsylvania Dep't of Corr., 569 Fed.

23  
24 benefits); Ex. 17 (May 26, 2009 letter to plaintiff from CSATF Chief Medical Officer addressing  
25 plaintiff's concerns about his medical care); Ex. 18 (Apr. 13, 2014 letter from plaintiff to  
26 defendant Swingle, HDSP Chief Medical Officer, requesting that plaintiff not be transferred back  
27 to HDSP from CSATF).

28 <sup>8</sup> "[I]n a case . . . where the inmate-[p]laintiff's request for immediate relief in his motion for  
preliminary injunction necessarily seeks resolution of one of the ultimate issues presented in [the]  
. . . Complaint, . . . [the] [p]laintiff cannot demonstrate that he will suffer irreparable harm if he is  
not granted a preliminary injunction, because the ultimate issue presented will be decided either  
by this Court or at trial. As a result, [p]laintiff's motion for preliminary injunction should be

1 Appx. 123, 125 (3d Cir. 2014) (plaintiff “sought the same ultimate injunctive relief that he sought  
2 in his complaint,” suggesting “a disagreement about a course of medical treatment provided in a  
3 prison. Accordingly, the likelihood of [plaintiff’s] success on the merits was unclear. . . . [and he]  
4 did not make a clear showing of immediate irreparable harm.”). For these reasons, the court finds  
5 that plaintiff has failed to demonstrate a likelihood of success on the merits of this action, or  
6 irreparable harm in the absence of preliminary injunctive relief.

7 Finally, the balance of equities weighs in favor of defendants to the extent that plaintiff  
8 seeks preliminary relief on ultimate issues in this case, while the public interest weighs in favor of  
9 noninterference in prison administration. “Defendants’ interests and the public interests in  
10 penological order could be adversely [a]ffected if the Court began dictating the treatment for the  
11 Plaintiff, one inmate out of thousands in the state prison system.” Green, supra, 2015 WL  
12 507057, at \*4, 2015 U.S. Dist. LEXIS 14597, at \*9-10 (citation and internal punctuation and  
13 quotation marks omitted).

14 Because all of the factors warranting preliminary injunctive relief weigh against plaintiff,  
15 this court recommends that plaintiff’s motion for such relief, ECF No. 174, be denied.

16 V. Conclusion

17 Accordingly, for the foregoing reasons, IT IS HEREBY ORDERED that:

18 1. Plaintiff’s October 7, 2015 motion to stay this action, ECF No. 172, is DENIED as  
19 moot; and

20 2. Plaintiff’s August 19, 2016 motion to stay this action, ECF No. 187, is DENIED on the  
21 merits.

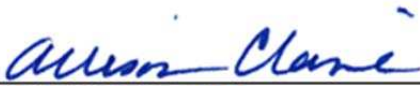
22 Additionally, IT IS HEREBY RECOMMENDED that plaintiff’s motion for preliminary  
23 injunctive relief, ECF No. 174, be DENIED.

24 These findings and recommendations are submitted to the United States District Judge  
25 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
26 after being served with these findings and recommendations, any party may file written  
27

28 denied.” Green, supra, 2015 WL 507057, at \*2, 2015 U.S. Dist. LEXIS 14597, at \*8-9.

1 objections with the court and serve a copy on all parties. Such a document should be captioned  
2 “Objections to Magistrate Judge’s Findings and Recommendations.” The parties are advised that  
3 failure to file objections within the specified time may waive the right to appeal the District  
4 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

5 DATED: August 23, 2016

6   
7 \_\_\_\_\_  
8 ALLISON CLAIRE  
9 UNITED STATES MAGISTRATE JUDGE  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28