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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

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

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

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with this civil rights action filed pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1). Currently pending before the court is plaintiff’s motion for a temporary restraining order filed on June 2, 2014. ECF No. 39.

I. First Amended Complaint

In his first amended complaint, plaintiff alleged that various medical staff at High Desert State Prison (“HDSP”) were deliberately indifferent to his serious medical needs while he was housed there between September 22, 2010 and March 27, 2013. ECF No. 23 at 2. Plaintiff required ongoing medical treatment for a spinal condition, a Baker’s cyst on his right knee, as well as an additional surgery to repair a total knee replacement that had previously been done without success. ECF No. 23 at 3-4.

This court also found that the first amended complaint stated a colorable claim for a

1 violation of the Americans with Disabilities Act against defendant Swingle in his official
2 capacity. See ECF Nos. 24 (Findings and Recommendations), 32 (Order adopting Findings and
3 Recommendations). In this claim, plaintiff alleged that Swingle violated the ADA when he
4 refused and/or failed to secure proper accommodations for his disabilities.

5 Defendants Lankford, Lee, Mayes, Miranda, Pomazal, Rofling, Schmidt and Swingle filed
6 their answer to the complaint on June 5, 2014, after plaintiff filed the pending motion for a
7 temporary restraining order. See ECF No. 40 (Answer).

8 II. Motion for a Temporary Restraining Order

9 In his motion, plaintiff requests an order to force High Desert State Prison officials to
10 schedule the total knee revision surgery called for by the last orthopedic surgeon within 15 days
11 of his transfer to that facility. ECF No. 39 at 4. Based on his allegations of prior medical
12 mistreatment at HDSP, plaintiff further requests that the court order HDSP officials to afford him
13 with proper post-operative care and pain management for his knee and that they not take away his
14 wheelchair or other ADA accommodations identified in existing CDCR 7410 forms. Id. at 16-17.
15 Plaintiff has identified specific doctors who he wants to see within a very specific time frame
16 following his transfer to HDSP. Id. Not related to his medical treatment, plaintiff also requests
17 that HDSP staff not take away, withhold or destroy his legal papers or “assault, murder, or maim
18 him in anyway... or otherwise harass, intimidate or retaliate against him... during the rest of his
19 confinement.” Id. at 17. Absent such an order, plaintiff contends that he will suffer irreparable
20 harm. Id.

21 All of plaintiff’s requests are based on “the demonstrated probability” that CDCR officials
22 are planning on returning plaintiff to HDSP to finish out the last 36 months of his prison sentence.
23 ECF No. 39 at 2. This “probability” is based on a March 13, 2014 Unit Classification Committee
24 decision to transfer plaintiff to Salinas Valley State Prison’s sensitive needs yard with an alternate
25 placement of HDSP’s sensitive needs yard, because these are the only institutions that can
26 accommodate all of his medical needs. See ECF No. 39 at 92-93. The transfer was deemed non-
27 adverse since it was due to a battery on plaintiff that occurred on March 5, 2013 while housed at
28 the Substance Abuse Treatment Facility. Id. at 92.

1 Attached to plaintiff's motion are over 50 pages of medical records that date from 2006 to
2 2014. See ECF No. 39 at 29-95. These records, which the court has reviewed, concern plaintiff's
3 ongoing medical needs as well as numerous evaluations and their results over the years. Plaintiff
4 has also attached numerous patient-inmate health care appeals that he filed at various prisons
5 concerning his need for a total knee replacement revision surgery.

6 II. Legal Standard for Injunctive Relief

7 Plaintiff seeks a temporary restraining order.¹ A temporary restraining order is an
8 extraordinary and temporary "fix" that the court may issue without notice to the adverse party if,
9 in an affidavit or verified complaint, the movant "clearly show[s] that immediate and irreparable
10 injury, loss, or damage will result to the movant before the adverse party can be heard in
11 opposition." See Fed. R. Civ. P. 65(b)(1)(A). The purpose of a temporary restraining order is to
12 preserve the status quo pending a fuller hearing. See generally, Fed. R. Civ. P. 65; see also, L.R.
13 231(a). It is the practice of this district to construe a motion for temporary restraining order as a
14 motion for preliminary injunction. Local Rule 231(a); see also, Aiello v. OneWest Bank, 2010
15 WL 406092, *1 (E.D.Cal.2010) (providing that "[t]emporary restraining orders are governed by
16 the same standard applicable to preliminary injunctions") (citations omitted).

17 The party requesting preliminary injunctive relief must show that "he is likely to succeed
18 on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that
19 the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v.
20 Natural Resources Defense Council, 555 U.S. 7, 20 (2008); Stormans, Inc. v. Selecky, 586 F.3d
21 1109, 1127 (9th Cir. 2009) (quoting Winter). The propriety of a request for injunctive relief
22 hinges on a significant threat of irreparable injury that must be imminent in nature. Caribbean
23 Marine Serv. Co. v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988).

24
25 ¹ To the extent that this is an ex parte motion for a TRO without notice, the undersigned notes that
26 there are stringent requirements to be imposed under Fed. R. Civ. P. 65 for issuance of such an
27 order, which plaintiff clearly has not met. Reno Air Racing Ass'n, Inc. v. McCord, 452 F.3d
28 1126, 1131 (9th Cir. 2006). Rule 65(b)(1) permits issuance of a TRO without "notice to the
adverse party or its attorney, only if: (A) specific facts in an affidavit or a verified complaint
clearly show that immediate and irreparable injury ... will result to the movant before the adverse
party can be heard in opposition; and (B) the movant's attorney certifies in writing any efforts
made to give notice and the reasons why it should not be required."

1 Alternatively, under the so-called sliding scale approach, as long as the plaintiff
2 demonstrates the requisite likelihood of irreparable harm and can show that an injunction is in the
3 public interest, a preliminary injunction may issue so long as serious questions going to the merits
4 of the case are raised and the balance of hardships tips sharply in plaintiff's favor. Alliance for
5 Wild Rockies v. Cottrell, 632 F.3d 1127, 1131–36 (9th Cir. 2011) (concluding that the “serious
6 questions” version of the sliding scale test for preliminary injunctions remains viable after
7 Winter).

8 The principal purpose of preliminary injunctive relief is to preserve the court's power to
9 render a meaningful decision after a trial on the merits. See 11A Charles Alan Wright & Arthur
10 R. Miller, Federal Practice and Procedure, § 2947 (2d ed. 2010). As noted above, in addition to
11 demonstrating that he will suffer irreparable harm if the court fails to grant the preliminary
12 injunction, plaintiff must show a “fair chance of success on the merits” of his claim. Sports
13 Form, Inc. v. United Press International, Inc., 686 F.2d 750, 754 (9th Cir. 1982) (internal citation
14 omitted). Implicit in this required showing is that the relief awarded is only temporary and there
15 will be a full hearing on the merits of the claims raised in the injunction when the action is
16 brought to trial. In cases brought by prisoners involving conditions of confinement, any
17 preliminary injunction “must be narrowly drawn, extend no further than necessary to correct the
18 harm the court finds requires preliminary relief, and be the least intrusive means necessary to
19 correct the harm.” 18 U.S.C. § 3626(a)(2).

20 Finally, as a general rule this court is unable to issue an order against individuals who are
21 not parties to a suit pending before it. Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S.
22 100 (1969).

23 III. Analysis

24 A. Likelihood of Success on the Merits

25 The court is unable to determine the likelihood of success on the merits at this early stage
26 of the case. Just prior to plaintiff's filing of the instant motion, defendants filed an answer to the
27 first amended complaint. Furthermore, a discovery and scheduling order has just been issued by
28 the court. ECF No. 44. In this instance, there is an inadequate showing of a likelihood of success

1 on the merits to support the “drastic remedy” of a preliminary injunction. Munaf v. Geren, 553
2 U.S. 674, 689–90 (2008).

3 B. Likelihood of Irreparable Harm

4 Plaintiff's motion fails to establish the likelihood that he will be subject to irreparable
5 harm absent the issuance of an order compelling HDSP prison officials to perform knee revision
6 surgery because it is not even clear that plaintiff will be transferred back to HDSP. While
7 plaintiff's medical conditions are certainly serious, the actual likelihood that plaintiff will be
8 transferred to HDSP is not at all clear in light of the UCC's designation of HDSP as an alternate
9 transfer institution. ECF No. 39 at 92-93. Plaintiff's claim that his transfer to HDSP is a
10 “probability” is both speculative and conclusory since the recommendation was made in March
11 2014 and as of today's date plaintiff has yet to be transferred. See
12 <http://inmatelocator.cdcr.ca.gov/> (searchable by plaintiff's name). The documents attached to
13 plaintiff's motion indicate that the UCC decided to transfer plaintiff to Salinas Valley State
14 Prison, which is located in the Northern District of California and is therefore not subject to an
15 injunction issued by this court. In light of the speculative nature of the prison transfer, plaintiff
16 has failed to establish the likelihood of irreparable harm.

17 C. Balance of the Equities

18 Here there is nothing to tip the balance of equities in plaintiff's favor. Federal courts must
19 remember that the duty to protect inmates' constitutional rights does not confer the power to
20 manage prisons or the capacity to second-guess prison administrators, for which we are ill-
21 equipped.” Bruce v. Ylst, 351 F.3d 1283, 1290 (9th Cir. 2003); see also Turner v. Safley, 482
22 U.S. 78, 84-85 (1987) (“Prison administration is ... a task that has been committed to the
23 responsibility of ... [the legislative and executive] branches, and separation of powers concerns
24 counsel a policy of judicial restraint.”). In the healthcare context, this court is wary of stepping in
25 and substituting its judgment for that of medical professionals within the prison system especially
26 when plaintiff's request requires determining medical urgency. Absent the existence of
27 exceptional circumstances not present here, the court will not intervene in the day-to-day
28 management of prisons. See e.g., Overton v. Bazzetta, 539 U.S. 126, 132 (2003) (prison officials

1 entitled to substantial deference); Sandin v. Conner, 515 U.S. 472, 482-83 (1995) (disapproving
2 the involvement of federal courts in the day-to-day-management of prisons.)

3 D. Public Interest

4 It is unclear what public interest could be served by intervening in a prison's health care
5 decision making. Therefore, this factor does not tip the balance in favor of a temporary
6 restraining order.

7 IV. Conclusion

8 Plaintiff has failed to establish a likelihood of success on the merits, a likelihood that he
9 will suffer irreparable harm in the absence of preliminary injunctive relief, that the balance of
10 equities tips in his favor, or that the injunction is in the public interest.

11 Accordingly, IT IS RECOMMENDED that plaintiff's motion for immediate injunctive
12 relief (ECF No. 39) be denied.

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

21 DATED: June 16, 2014

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23 ALLISON CLAIRE
24 UNITED STATES MAGISTRATE JUDGE
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