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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEREMY JAMISON,
Plaintiff,
v.
SAMBRAJYA PALAGUMMI,
Defendant.

No. 2:13-cv-01705 AC P

ORDER AND FINDINGS AND
RECOMMENDATION

Plaintiff, who is currently a prisoner at Deuel Vocational Institution, is proceeding pro se and in forma pauperis in this action pursuant to 42 U.S.C. § 1983. Pending before the court is petitioner’s motion for an emergency injunction. ECF No. 14. This matter was referred to the undersigned by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1). Plaintiff has consented to jurisdiction by United States Magistrate Judge.

In the motion for an emergency injunction, plaintiff requests “sanctions and [an] order for a monetary fine to be imposed” on defendant Dr. Palagummi based on ongoing “deliberate indifference, discrimination, malice, negligence, and verbal[] threat[s].... ECF No. 14 at 3, 26. Attached to the motion are copies of plaintiff’s medical records documenting his ongoing medical problems.¹

¹ To the extent that plaintiff also references an order that was entered on March 21, 2012 in (continued...)

1 By order of October 18, 2013, the undersigned screened plaintiff's complaint and found
2 that it stated a cognizable claim under the Eighth Amendment against Dr. Palagummi for
3 deliberate indifference to his serious medical needs. ECF No. 8. The complaint was ordered
4 served on defendant Dr. Palagummi on November 5, 2013. ECF No. 12. Because defendant Dr.
5 Palagummi has yet to be served with the complaint, the undersigned finds that the motion is
6 premature. Furthermore, plaintiff's allegations as to the need for injunctive relief are abbreviated,
7 vague and conclusory, not affording the court the opportunity to weigh the allegations. In his
8 declaration attached to the motion, plaintiff states that "Dr. Palagummi and CDC's racial
9 discriminatory, homophobic, and vindictiveness is evident in the documents submitted." These
10 conclusory statements fail to meet the legal standard for the issuance of a preliminary injunction
11 for the reasons outlined below.

12 Standards Governing Issuance of a Preliminary Injunction

13 "A preliminary injunction is an 'extraordinary and drastic remedy' ... never awarded as of
14 right." Munaf v. Geren, 553 U.S. 674, 689 90 (2008) (internal citations omitted). "A plaintiff
15 seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he
16 is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities
17 tips in his favor, and that an injunction is in the public interest." Am. Trucking Assn, Inc. v. City
18 of Los Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009) (quoting Winter v. Natural Res. Def.
19 Council, Inc., 555 U.S. 7, 20 (2008)). The two formulations represent two points on a sliding
20 scale with the focal point being the degree of irreparable injury shown. Oakland Tribune, 762
21 F.2d at 1376. "Under any formulation of the test, plaintiff must demonstrate that there exists a
22 significant threat of irreparable injury." Id. In the absence of a significant showing of possible
23 irreparable harm, the court need not reach the issue of likelihood of success on the merits. Id.

24
25 Jamison v. Davis Enterprise Newspaper, et.al., 2:10-cv-00124 KJM EFB, adopting the parties'
26 stipulation regarding injunctive relief, and attaches correspondence to him concerning the
27 Armstrong v. Brown class action lawsuit against the CDCR and the attendant Armstrong remedial
28 plan, these are separate civil actions that do not have a bearing on resolution of the instant motion.
See Armstrong v. Brown, No. 94-2307-CW (N.D. Cal.).

1 In cases brought by prisoners involving conditions of confinement, any preliminary
2 injunction “must be narrowly drawn, extend no further than necessary to correct the harm the
3 court finds requires preliminary relief, and be the least intrusive means necessary to correct the
4 harm.” 18 U.S.C. § 3626(a)(2).

5 Analysis

6 As noted above, in the absence of a significant showing of possible irreparable harm, the
7 court need not reach the issue of likelihood of success on the merits. Oakland Tribune, supra, at
8 1376. Plaintiff’s motion focuses on the latter without making any showing as to the former. ECF
9 No. 14 at 3. In fact, plaintiff stated in the motion that “since Plaintiff has shown a clear, concise
10 and strong case against the defendant, with indisputable evidence as support... plaintiff[’]s
11 chance of success is high in this action.” Id. The Eighth Amendment claim against Dr.
12 Palagummi alleges that defendant acted with deliberate indifference to plaintiff’s disability by
13 refusing to order knee surgery, provide soft insoles, and provide pain medication. Neither the
14 complaint nor the instant motion contains any facts showing that irreparable harm is likely in the
15 absence of preliminary relief. The undersigned recommends denial of plaintiff’s motion because
16 there is no showing of possible irreparable harm.

17 Request for Appointment of Counsel

18 In the motion for a preliminary injunction plaintiff also seeks the appointment of counsel.
19 ECF No. 14 at 3. The United States Supreme Court has ruled that district courts lack authority to
20 require counsel to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist.
21 Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court may request the
22 voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d
23 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In
24 the present case, the undersigned does not find the required exceptional circumstances. Plaintiff’s
25 request for the appointment of counsel will therefore be denied without prejudice.

26 Accordingly, IT IS ORDERED that:

- 27 1. Plaintiff’s request for the appointment of counsel is denied.
28 2. The clerk of court shall randomly assign this case to a district judge.

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IT IS RECOMMENDED that plaintiff's motion for a preliminary injunction, ECF No. 14, be denied without prejudice.

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

DATED: November 15, 2013



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE