

1 II. The Parties' Arguments

2 In his motion, plaintiff claims that he is in excruciating pain from the hernia and the aortic
3 aneurysm, and that the 600 mg. of Ibuprofen no longer controls such pain. Plaintiff states that the
4 October 3, 2014 c-scan revealed a "serious anomaly" with the stented aneurysm that will most
5 likely require immediate surgery. (ECF No. 86 at 3.) Despite his alleged constant pain
6 complaints, plaintiff avers that his primary care physician refused plaintiff's request for additional
7 pain relief, stating that the doctor was going to allow the hernia specialist to deal with plaintiff's
8 hernia pain prior to surgery, and the primary care physician would address plaintiff's post-
9 surgical pain issues, if any. (ECF No. 86 at 1.) However, the hernia specialist referral is still
10 pending approval, so it is unclear at this time when plaintiff might be examined by the specialist.
11 Plaintiff provided a copy of his October 1, 2014 health care services request form in which he
12 states that he is still having excruciating hernia pain. (ECF No. 86 at 5.) Plaintiff reminds the
13 court that his initial request for hernia repair was made on February 8, 2011.

14 In opposition, defendants provide evidence that there is no anatomical or physiological
15 basis for the iliac aneurysm to cause plaintiff unremitting pain. (ECF No. 88 at 10.) Dr. Casian
16 declares that plaintiff's medical records do not show that plaintiff suffers "substantial pain or
17 limitations from his hernias." (ECF No. 88 at 11, 12.) Dr. Casian addressed plaintiff's concern
18 regarding pain medications as follows:

19 11. Mr. Cecil currently has been prescribed 600 mg. Ibuprofen,
20 taking one tablet, twice a day, for pain, along with aspirin. A higher
21 dose of Ibuprofen cause gastritis, ulcers, kidney failure, liver
22 failure, fluid retention, gastrointestinal bleeding and death. I do not
23 believe that a higher dose of Ibuprofen can be safely prescribed.

24 12. Narcotic pain medication is disfavored by pain management
25 experts for pain not resulting from cancer, and it is my
26 understanding that the California Medical Board is initiating
27 medical license revocation proceedings against physicians who
28 unnecessarily prescribe narcotic pain medication, and has issued a
"one pill can kill" warning as part of a campaign to reduce the
prescription of narcotic pain medication. The use of narcotics can
cause respiratory depression, fluid retention, severe constipation,
itching, sedation and loss of balance, addiction and death. In my
experience, inmates have a high addiction rate. Inmates who are
prescribed narcotics face pressure from addicts in the prison to
share or sell their drugs. There are deaths each year in the prison
associated with overdose or drug dealing.

1 (ECF No. 88 at 12.)

2 Dr. Casian states that plaintiff suffers from myriad health issues: history of coronary
3 artery disease, ischemic cardiomyopathy, peripheral vascular disease, with stenting of an iliac
4 arterial aneurysm, cataract, macular degeneration, umbilical hernia, and left inguinal hernia.
5 During prior physical examinations, plaintiff complained of “continued lower extremity pain;”
6 however, Dr. Casian noted that plaintiff has been “independent in all activities of daily living, and
7 ambulates using a cane or walker.” (ECF No. 88 at 10.) Dr. Casian did not record “any
8 complaints about [plaintiff’s] abdomen or hernia.” (Id.)

9 On October 3, 2014, a follow-up CT angiogram was performed, which showed a
10 “thrombosed (clotted) 3.4 cm aneurysm.” (ECF No. 88 at 10, 15.) The medical plan for this
11 aneurysm is for plaintiff to continue aspirin, and to follow up with the vascular surgeon, which
12 Dr. Casian anticipated would take place within the next three weeks. (ECF No. 88 at 10.)
13 Plaintiff is followed by cardiology for chest pain, and takes five or six drugs to treat his
14 cardiovascular disease. (ECF No. 88 at 11.) Plaintiff is being followed by vascular surgery
15 specialists for his abnormal circulation. Dr. Casian avers that plaintiff’s circulation is adequate
16 and does not impair his daily activities, and that hernia surgery or surgery to improve his
17 circulation is risky. (ECF No. 88 at 10.) Indeed, as a “high risk” patient, plaintiff “could die on
18 the operating table.” (ECF No. 88 at 12.)

19 III. Legal Standards

20 Plaintiff seeks a temporary restraining order. A temporary restraining order is an
21 extraordinary and temporary “fix” that the court may issue without notice to the adverse party if,
22 in an affidavit or verified complaint, the movant “clearly show[s] that immediate and irreparable
23 injury, loss, or damage will result to the movant before the adverse party can be heard in
24 opposition.” Fed. R. Civ. P. 65(b)(1)(A). The purpose of a temporary restraining order is to
25 preserve the status quo pending a fuller hearing. See Fed. R. Civ. P. 65. It is the practice of this
26 district to construe a motion for temporary restraining order as a motion for preliminary
27 injunction. Local Rule 231(a); see also Aiello v. OneWest Bank, No. 2:10-cv-0227 GEB EFB,
28 2010 WL 406092 at *1 (E.D. Cal. Jan. 29, 2010) (“Temporary restraining orders are governed by

1 the same standard applicable to preliminary injunctions.”) (internal quotation and citations
2 omitted).

3 The party requesting preliminary injunctive relief must show that “he is likely to succeed
4 on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that
5 the balance of equities tips in his favor, and that an injunction is in the public interest.” Winter v.
6 Natural Res. Def. Council, 555 U.S. 7, 20 (2008). The propriety of a request for injunctive relief
7 hinges on a significant threat of irreparable injury that must be imminent in nature. Caribbean
8 Marine Serv. Co. v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988).

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

16 The principal purpose of preliminary injunctive relief is to preserve the court’s power to
17 render a meaningful decision after a trial on the merits. See 11A Charles Alan Wright & Arthur
18 R. Miller, Federal Practice and Procedure § 2947 (3d ed. 2014). Implicit in this required showing
19 is that the relief awarded is only temporary and there will be a full hearing on the merits of the
20 claims raised in the injunction when the action is brought to trial.

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

25 IV. Discussion

26 A defendant acts with deliberate indifference when he knowingly fails to respond to a
27 serious medical need and, thereby, inflicting harm on the plaintiff. See Farmer v. Brennan, 511

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1 U.S. 825, 837-42 (1994); Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) (defendant is
2 deliberately indifferent when he purposefully fails to respond to a prisoner’s pain).

3 In his request, plaintiff claims he has been complaining of excruciating pain “for literally
4 years,” yet provided only one health care services request form, dated October 1, 2014, in which
5 he claims he was suffering from excruciating hernia pain. (ECF No. 86 at 2, 5.) Plaintiff failed to
6 file a reply to defendants’ opposition to his motion. Thus, plaintiff has failed to rebut defendants’
7 evidence that medical records do not reflect that plaintiff has complained of unremitting pain
8 from the hernia or the aneurysm, or that prison officials at RJD are inappropriately treating
9 plaintiff for his myriad health conditions. Rather, the evidence demonstrates that plaintiff, 68
10 years old, is being conservatively and cautiously treated based on his status as a “high risk”
11 patient suffering from very serious heart conditions and vascular disease. Given the medical
12 evidence provided by defendants, plaintiff fails to demonstrate the likelihood of irreparable harm
13 or that the balance of hardships tips sharply in plaintiff’s favor.

14 Moreover, in the underlying complaint, in addition to monetary damages, plaintiff sought
15 an order for plaintiff’s “high risk medical transfer” to a prison near a hospital, claiming that High
16 Desert State Prison (“HDSP”) was not appropriate housing for a high risk medical patient such as
17 plaintiff, and named defendants employed at HDSP. (ECF No. 10 at 3.) Plaintiff alleged that
18 defendants were deliberately indifferent to plaintiff’s serious medical needs by failing to transfer
19 plaintiff or to provide hernia repair surgery. Plaintiff also alleged that he had “repeatedly
20 complained about hernia pain with nothing being done.” (ECF No. 10 at 5.)

21 A plaintiff cannot, as a general matter, seek injunctive relief in a case against parties who
22 are not named as defendants in that case. Zenith Radio Corp. v. Hazeltine Research, Inc., 395
23 U.S. 100, 89 S. Ct.1562 (1969) (stating that the court cannot issue an order against individuals
24 who are not parties to a suit pending before it); George v. Smith, 507 F.3d 605, 607 (7th Cir.
25 2007) (“Unrelated claims against different defendants belong in different suits[.]”).

26 In the instant complaint, plaintiff did not allege inappropriate treatment for his myriad
27 other medical conditions, and did not allege that he was experiencing pain from his aneurysm
28 located near the hernia. In early April of 2014, plaintiff was transferred to RJD, which is located

1 in San Diego, a major metropolitan city that is closer to hospitals and specialists than plaintiff was
2 when housed at HDSP in Susanville. In addition, Dr. Casian provided evidence that plaintiff is
3 receiving appropriate medical care at RJD, which includes prescriptions for pain medication, and
4 that Dr. Casian is in the process of determining whether different pain medications can be
5 administered safely, including discussions with plaintiff's surgery consultant. (ECF No. 88 at 12-
6 13.) Thus, plaintiff's treatment for his hernias, including the prescription for pain relief
7 associated therewith, is complicated by plaintiff's serious and unrelated health conditions.

8 "[A] difference of opinion between a prisoner-patient and prison medical authorities
9 regarding treatment does not give rise to a [§]1983 claim." Franklin v. Oregon, 662 F.2d 1337,
10 1344 (9th Cir. 1981). To establish that such a difference of opinion amounted to deliberate
11 indifference, the prisoner "must show that the course of treatment the doctors chose was
12 medically unacceptable under the circumstances" and "that they chose this course in conscious
13 disregard of an excessive risk to [the prisoner's] health." See Jackson v. McIntosh, 90 F.3d 330,
14 332 (9th Cir. 1996); see also Wilhelm v. Rotman, 680 F.3d 1113, 1123 (9th Cir. 2012) (doctor's
15 awareness of need for treatment followed by his unnecessary delay in implementing the
16 prescribed treatment sufficient to plead deliberate indifference); see also Snow, 681 F.3d at 988
17 (decision of non-treating, non-specialist physicians to repeatedly deny recommended surgical
18 treatment may be medically unacceptable under all the circumstances.)

19 Plaintiff has failed to adduce evidence demonstrating that the course of treatment
20 prescribed at RJD is medically unacceptable under the circumstances. Rather, at most, plaintiff's
21 motion reflects a difference of opinion as to the administration of pain medications. In addition,
22 contrary to plaintiff's allegation that the "serious anomaly" discovered in the October 3, 2014 CT
23 scan would "most likely" require "immediate surgery" (ECF No. 86 at 3), Dr. Casian explains
24 that plaintiff does not require emergency surgery for this condition because his circulation is
25 adequate and does not impair his daily activities, and because of the surgical risks involved in a
26 surgical procedure to address the aneurysm. (ECF No. 88 at 10.) Given plaintiff's complex
27 medical history, high risk medical patient status and very serious medical conditions, the court is
28 not inclined to entertain further motions for injunctive relief concerning his medical care at RJD

1 absent compelling evidence that plaintiff is subject to irreparable injury specifically related to his
2 need for hernia repair surgery.

3 Thus, for all of the above reasons, plaintiff's motion for temporary restraining order
4 should be denied.¹


5 V. Conclusion

6 IT IS HEREBY RECOMMENDED that plaintiff's motion for temporary restraining order
7 (ECF No. 86) be denied.

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 served and filed 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: November 13, 2014

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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¹ In plaintiff's motion, he also alleges that he was prescribed the wrong type of walker and that medical has allegedly been removing the type of walker prescribed by Dr. Casian. Plaintiff must pursue his administrative remedies against appropriate parties at RJD in connection with such claims. Hazeltine, 395 U.S. at 100.