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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALBERTO VILLESCAS,
Plaintiff,
v.
RAFAEL MIRANDA, et al.,
Defendants.

No. 2:15-cv-1861 TLN KJN P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Introduction

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s motion for injunctive relief (ECF No. 11) and plaintiff’s motion to supplement the motion for injunctive relief (ECF No. 17). Plaintiff alleges that he has received inadequate medical care. For the following reasons, these motions should be denied.

Legal Standard for Injunctive Relief

The party requesting preliminary injunctive relief must show that “he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” Winter v. Natural Resources Defense Council, 555 U.S. 7, 20 (2008); Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009) (quoting Winter). The propriety of a request for injunctive relief

1 hinges on a significant threat of irreparable injury that must be imminent in nature. Caribbean
2 Marine Serv. Co. v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988).

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

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

22 Legal Standard for Claim Alleging Inadequate Medical Care

23 To succeed on an Eighth Amendment claim predicated on the denial of medical care, a
24 plaintiff must establish that he had a serious medical need and that the defendant's response to
25 that need was deliberately indifferent. Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006); see
26 also Estelle v. Gamble, 429 U.S. 97, 106 (1976). A serious medical need exists if the failure to
27 treat the condition could result in further significant injury or the unnecessary and wanton
28 infliction of pain. Jett, 439 F.3d at 1096. Deliberate indifference may be shown by the denial,

1 delay, or intentional interference with medical treatment, or by the way in which medical care is
2 provided. Hutchinson v. United States, 838 F.2d 390, 394 (9th Cir. 1988).

3 To act with deliberate indifference, a prison official must both be aware of facts from
4 which the inference could be drawn that a substantial risk of serious harm exists, and he must also
5 draw the inference. Farmer v. Brennan, 511 U.S. 825, 837 (1994). Thus, a defendant is liable if
6 he knows that plaintiff faces “a substantial risk of serious harm and disregards that risk by failing
7 to take reasonable measures to abate it.” Id. at 847. A physician need not fail to treat an inmate
8 altogether in order to violate that inmate’s Eighth Amendment rights. Ortiz v. City of Imperial,
9 884 F.2d 1312, 1314 (9th Cir. 1989) (per curiam). A failure to competently treat a serious
10 medical condition, even if some treatment is prescribed, may constitute deliberate indifference in
11 a particular case. Id.

12 It is important to differentiate common law negligence claims of malpractice from claims
13 predicated on violations of the Eighth Amendment’s prohibition of cruel and unusual punishment.
14 In asserting the latter, “[m]ere ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not
15 support this cause of action.” Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir.
16 1980) (citing Estelle, 429 U.S. at 105–06); see also Toguchi, 391 F.3d at 1057.

17 Analysis

18 On September 2, 2015, plaintiff filed a complaint alleging that he had received inadequate
19 medical care at High Desert State Prison (“HDSP”). (ECF No. 1.) On October 8, 2015, plaintiff
20 filed the pending motion for injunctive relief. (ECF No. 11.) On October 9, 2015, the
21 undersigned ordered service of his complaint on defendants. (ECF No. 12.)

22 Although no defendants had yet appeared in this action, on October 9, 2015, the
23 undersigned also ordered Supervising Deputy Attorney General Monica Anderson to file a
24 response to plaintiff’s motion for injunctive relief. (ECF No. 14.) On October 22, 2015, plaintiff
25 filed further briefing in support of his motion for injunctive relief. (ECF No. 17.) On October 23,
26 2015, the Office of the Attorney General filed an opposition to plaintiff’s motion for injunctive
27 relief. (ECF No. 16.)

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1 The undersigned herein sets forth plaintiff’s allegations in support of his request for
2 injunctive relief.

3 Plaintiff is a T12 paraplegic with chronic decubitus ulcers. (ECF No. 1 at 4; 11 at 23.)
4 The instant action proceeds on plaintiff’s Eighth Amendment claims that defendants have
5 intentionally denied, and interfered with plaintiff’s medical care by, *inter alia*, depriving him of
6 his air mattress, Lumbar Sacral Orthosis (“LSO”), and narcotic pain medications, despite prior
7 medical orders from pain management specialists and neurosurgeons. Prior to his transfer to
8 High Desert State Prison (“HDSP”) on August 29, 2013, plaintiff claims that he was “almost
9 continuously prescribed” pain medication for his chronic and substantial pain, including Fentanyl
10 patches, Vicodin, and Morphine. (ECF No. 1 at 4.) On August 29, 2013, plaintiff alleges that
11 defendant Miranda “falsely documented ‘no medical need’ for Methadone and ‘not medically
12 necessary’ for Lumbar Corset [LSO]” without examining plaintiff or his medical records. (Id. at
13 5-6.)

14 In the motion for injunctive relief, plaintiff claims he continues to suffer severe pain
15 because of the denial of his lumbar orthosis and proper pain medications as well as not having his
16 personal, custom-fitted wheelchair. (ECF No. 11 at 3.) In addition, plaintiff contends that he was
17 recently told that because he “made all CTC custody and medical staff extremely mad [at him] for
18 complaining,” the yogurt and Boost supplements will be rescinded as not medically needed. (Id.
19 at 2.) Plaintiff states he was told his custom wheelchair will not be returned because of “contract
20 issues and replacement parts being too expensive, as a result of plaintiff filing [a request for] an
21 accommodation.” (Id. at 2.) Plaintiff seeks return of his custom wheelchair, a prescription and
22 return of his LOS, examination by a pain management specialist and medications or treatment as
23 recommended, and immediate transfer to a facility in Los Angeles.

24 In his further briefing filed in support of the pending motion, plaintiff requests immediate
25 return of his personal wheelchair and to be transferred to an “OHU or CTC” near Los Angeles or
26 Sacramento. (ECF No. 17.)

27 In the opposition, the Office of the Attorney General provided the declaration of Dr.
28 Greenleaf, plaintiff’s primary treating physician. (ECF No. 16-1.) Dr. Greenleaf states, in

1 relevant part,

2 2. I have been employed by the California Department of
3 Corrections and Rehabilitation (CDCR) since 2008. I currently
4 work as a physician and surgeon at High Desert State Prison
(HDSP).

5 3. I am inmate Alberto Villescas' (P-16275) primary treating
6 physician. This declaration is based on my education and training
7 as a physician, my review of Mr. Villescas' Unit Health Record
(UHR), and my involvement with Mr. Villescas' care and treating
8 during his time at HDSP.

9 4. I generally meet with Mr. Villescas approximately two to three
10 times per week, and more often as his treatment dictates.

11 5. Mr. Villescas arrived at HDSP on August 29, 2013. He was
12 previously housed at Pleasant Valley State Prison.

13 6. Mr. Villescas is currently being treated at HDSP in the
14 Correctional Treatment Center (CTC). He was admitted to the CTC
15 on October 7, 2014, due to recurrent decubitus ulcers (bed sores) in
16 his sacral area, located at the base of his spine.

17 7. The CTC at HDSP is designed to provide for the health care
18 needs of inmates. The CTC can accommodate inmates who qualify
19 as disabled under the Americans with Disabilities Act (ADA). Staff
20 members in the CTC include doctors and registered nurses, as well
21 as other clinical and administrative staff.

22 8. Mr. Villescas is paraplegic and requires a wheelchair, ankle
23 braces, and orthotic boots. Because he has lost sensation in his
24 lower extremities, he also requires frequent monitoring to prevent
25 bed sores.

26 9. While housed in the CTC, Mr. Villescas has access to a
27 treatment team that includes myself, other licensed physicians, and
28 registered nurses. He receives frequent nursing care to monitor and
manage any skin breakdown, and has been prescribed daily
showers.

10 Mr. Villescas' room in the CTC is wheelchair-accessible and
11 has a shower that is outfitted to meet his needs and minimize sores.
12 A trapeze device is attached to his bed. He may use the trapeze to
13 move into and out of his bed using his upper body. Mr. Villescas
14 has been issued an airflow mattress for more than a year.

15 Mr. Villescas has been provided with a Jetstream Pro Back and
16 a transfer board. The Jetstream Pro Back is a contoured support
17 cushion that attaches to Mr. Villescas' wheelchair to reduce
18 pressure on his sacral area, and the transfer board is used to avoid
19 abrasions to the sacral area when he moves into and out of his
20 wheelchair.

21 12. Mr. Villescas informed me that he experiences upper-back pain

1 with some regularity. Accordingly, I have prescribed him
2 medication and implemented a treatment regimen that includes
3 acetaminophen and morphine for pain, which is administered on an
4 as-needed basis. In my medical opinion, Mr. Villescas does not
5 have a current need for methadone, and his pain is being
6 appropriately managed and treated.

7 13. When I examined Mr. Villescas on October 19, 2015, he
8 appeared stable and in good health. He did not request additional
9 pain medication.

10 14. In my medical opinion, Mr. Villescas does not have a current
11 medical need for a lumbar corset. For individuals with Mr.
12 Villescas' condition, such devices expose patients to the risk of
13 additional muscle atrophy.

14 15. Mr. Villescas has been issued one pair of orthotic boots. In the
15 past, he expressed to me that he wanted an extra pair of boots so
16 that his boots did not wear out so quickly, but in my judgment,
17 there is no medical need for a second pair of boots. When I meet
18 with Mr. Villescas, he did not indicate that his current pair was in
19 need of replacement.

20 16. On September 1, 2015, Mr. Villescas was issued a medical
21 order for yogurt and Boost, a nutritional supplement. That order
22 was renewed for thirty days on September 25, 2015.

23 17. Mr. Villescas has been placed on a waitlist for transfer to an
24 Outpatient Housing Unit since approximately October 6, 2014. I do
25 not have the authority to expedite his transfer.

26 18. In my opinion, Mr. Villescas' medical needs are being
27 appropriately addressed in the CTC. His treatment team is actively
28 monitoring his care and responding to his treatment needs.

19 (Id. at 1-3.)

20 With regard to plaintiff's claim that he is being denied access to his wheelchair, the
21 Officer of the Attorney General provided the declaration of HDSP Materials and Stores Specialist
22 II, H. Mueller. (ECF No. 16-2.) H. Mueller states, in relevant part,

23 2. In my capacity as M & SS II, I facilitate the receipt, storage,
24 issuance, and shipping of a variety of medical supplies ordered for
25 inmates at HDSP, as well as repairs of durable medical equipment,
26 such as wheelchairs. This declaration is based on my involvement
27 with the recent repair order for the personal wheelchair of inmate
28 Villescas (P-16275).

3. CDCR has contracted with MultiMedical Systems
(MultiMedical), a service contractor, to provide wheelchair repair.

4. In August of 2015, my office received a repair request form

1 from Mr. Villescas for a T-Lite ZRA wheelchair. This is Mr.
2 Villescas' personal wheelchair, and was not issued by CDCR. The
3 wheelchair was sent to MultiMedical for repairs on September 1,
4 2015. In the interim, while awaiting return of his chair, Mr.
5 Villescas was loaned a standard wheelchair.

6 5. MultiMedical has evaluated the wheelchair and indicated that
7 the chair's axles, tires, and brakes need repair in order to make the
8 chair safe for operation.

9 6. It is estimated that the repaired wheelchair will be returned to
10 Mr. Villescas on or around October 30, 2015.

11 7. My records indicate that Mr. Villescas still has the standard
12 wheelchair that was loaned to him while he awaits the completion
13 of repairs.

14 (Id. at 1-2.)

15 In his declaration, Dr. Greenleaf addresses the claims raised by plaintiff in his pending
16 motion. While plaintiff alleges that he has been denied an air mattress, Dr. Greenleaf states that
17 plaintiff has been issued an air mattress for over one year. While plaintiff alleges that he has been
18 denied narcotic pain medication, Dr. Greenleaf states that plaintiff has been prescribed
19 acetaminophen and morphine for pain. While plaintiff alleges that he has been denied
20 methadone, Dr. Greenleaf states that plaintiff does not have a current need for methadone. While
21 plaintiff alleges that he has been denied a medically necessary lumbar corset, Dr. Greenleaf states
22 that plaintiff does not have a current medical need for this device.¹ While plaintiff alleges that he
23 was denied Boost and yogurt, Dr. Greenleaf states that plaintiff's medical order for Boost and
24 yogurt was renewed for thirty days on September 25, 2015.

25 With regard to plaintiff's request to be transferred to an Outpatient Housing Unit
26 ("OHU"), Dr. Greenleaf acknowledges that plaintiff has been on an OHU waitlist for transfer for
27 one year. Dr. Greenleaf states that in his opinion, plaintiff's medical needs are being addressed
28 appropriately in the CTC.

With regard to plaintiff's request for his personal wheelchair, according to the declaration
of H. Mueller, plaintiff should have possession of his personal wheelchair by the time he receives

¹ Plaintiff also alleges that he has been denied a lumbar orthosis. The undersigned understands a lumbar orthosis and a lumbar corset to be similar devices. They are both back braces.

1 these findings and recommendations.

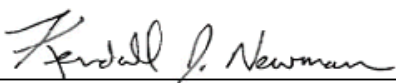
2 Based on the information contained in the declarations of Dr. Greenleaf and H. Mueller,
3 the undersigned finds that plaintiff has not demonstrated that he will likely suffer irreparable
4 harm if injunctive relief is not granted. Plaintiff has not provided expert evidence countering the
5 expert evidence presented by the Office of the Attorney General demonstrating that plaintiff is
6 receiving adequate medical care. However, if plaintiff's wheelchair has not been returned to him
7 by the time he receives these findings and recommendations, he shall notify the court. In
8 addition, Dr. Greenleaf states that plaintiff's medical needs are being appropriately addressed in
9 the CTC. If plaintiff is removed from the CTC, he may refile his motion for injunctive relief
10 alleging inadequate medical care.

11 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court shall serve these
12 findings and recommendations on Deputy Attorney General Martha Ehlenbach; and

13 IT IS HEREBY RECOMMENDED that plaintiff's motion for a temporary restraining
14 order (ECF No. 11), and plaintiff's supplemental briefing in support of this motion (ECF No. 17),
15 be denied without prejudice.

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

24 Dated: October 30, 2015

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27 KENDALL J. NEWMAN
28 UNITED STATES MAGISTRATE JUDGE

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