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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LARRY GIRALDES, JR.,
Plaintiff,
v.
M. BOBBALA, et al.,
Defendants.

No. 2:17-cv-2602-KJM-EFB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff, a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983, has filed a motion for preliminary injunction and a motion for the appointment of counsel. ECF No. 22. For the reasons stated hereafter, plaintiff’s motions must be denied.

I. Background

This action proceeds on plaintiff’s claims that defendants were deliberately indifferent to his medical needs by denying him adequate pain medication and diet accommodations. ECF No. 1; ECF No. 7 at 2.

In his motion for a preliminary injunction, plaintiff alleges that defendant Bobbala, the Chief Medical Officer at California State Prison, Sacramento, is not adequately managing plaintiff’s pain in accordance with recommendations made by various pain management experts, which were incorporated into a 2010 settlement agreement. See ECF No. 22 at 2, 4, 7-9, 11 (referring to *Giraldes v. Hicimbothom*, 1:09-cv-154-SKO (E.D. Cal.)). Plaintiff claims that the

1 inadequate care prevents him from eating, and caused a sudden and dramatic weight loss from
2 165 pounds down to approximately 119 pounds in a matter of months. ECF No. 22 at 4, 33-35.
3 According to plaintiff, the pain management expert currently managing his care is not aware of
4 his weight loss, his medical history, or the prior recommendations of other pain management
5 experts. *Id.* at 4.

6 Plaintiff requests that the court enter a preliminary injunction requiring defendants to
7 “follow the specialists/experts orders that were in place when plaintiff was a safe and healthy 165
8 lbs., without pain and able to eat, or explain why they stopped doing so, and why plaintiff is 124
9 lbs.” *Id.* at 5.

10 **II. Legal Standards**

11 Injunctive relief – either temporary or permanent – is an “extraordinary remedy, never
12 awarded as of right.” *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 22 (2008). The Supreme
13 Court has held that:

14 A plaintiff seeking a preliminary injunction must establish that he is
15 likely to succeed on the merits, that he is likely to suffer irreparable
16 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.

17 *Id.* at 20. “When a mandatory preliminary injunction is requested, the district court should deny
18 such relief ‘unless the facts and law clearly favor the moving party.’” *Stanley v. Univ. of S. Cal.*,
19 13 F.3d 1313, 1320 (9th Cir. 1994) (citation omitted).

20 **III. Analysis**

21 As an initial matter, plaintiff was denied a similar request for injunctive relief in another
22 case he is litigating, *Giraldes v. Nicolai*, 2:16-cv-0497-KJM-AC (E.D. Cal.). *See Nicolai*, ECF
23 No. 59 (finding that all the *Winters* factors weighed against granting plaintiff’s motion). As in
24 that case, plaintiff here has failed to establish that he is likely to succeed on the merits or that he
25 will suffer irreparable harm if his requested injunctive relief is not granted.

26 The instant motion rests on plaintiff’s own opinion that inadequate pain management
27 prevents him from eating, thereby causing him to rapidly lose weight. However, speculation of
28 this type is not enough to sustain a deliberate indifference claim. Mere disagreements over the

1 course of treatment do not establish deliberate indifference and, consequently, do not militate in
2 favor of injunctive relief. *See Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996) (holding that
3 “a plaintiff’s showing of nothing more than ‘a difference of medical opinion’ as to the need to
4 pursue one course of treatment over another was insufficient, as a matter of law, to establish
5 deliberate indifference.”).

6 Moreover, the Supreme Court has cautioned that courts should be wary of “day to day
7 management of prisons.” *See Sandin v. Conner*, 515 U.S. 472, 482-83 (1995). The type of relief
8 plaintiff requests runs counter to that admonition and would set an unwelcome precedent.
9 Doubtless many, if not all, prisoners would prefer to “shop” medical providers until they found
10 one which they were comfortable with. Being able to do so might, in some cases, improve health
11 outcomes. But it is not the place of the courts to provide them that ability by running roughshod
12 over the recommendations of their current providers. Although plaintiff includes photographs of
13 himself demonstrating an obvious change in his weight, *see* ECF No. 22 at 33, the pictures are not
14 dated, and are of limited evidentiary value. Similarly, current medical records referencing
15 plaintiff as “underweight” are not enough to demonstrate a need for injunctive relief. *See* ECF
16 No. 29 at 37. Absent some evidence of a specific, imminent, and irreparable harm to his health,
17 the court must recommend that plaintiff’s motion be denied. *See, e.g., Hawaii v. U.S. Dep’t of*
18 *Educ.*, CIVIL 17-00430 LEK-KSC, 2017 U.S. Dist. LEXIS 174076, at *8 (Oct. 20, 2017, D.
19 Hawai’i) (“Because a plaintiff seeking a TRO must establish all of the *Winter* factors to be
20 entitled to relief, the failure to establish irreparable harm is fatal to the TRO Motion, and it is not
21 necessary for this Court to address whether [plaintiff] has established the other *Winter* factors.”).

22 **IV. Motion for Appointment of Counsel**

23 District courts lack authority to require counsel to represent indigent prisoners in section
24 1983 cases. *Mallard v. United States Dist. Court*, 490 U.S. 296, 298 (1989). In exceptional
25 circumstances, the court may request an attorney to voluntarily to represent such a plaintiff. *See*
26 28 U.S.C. § 1915(e)(1); *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991); *Wood v.*
27 *Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990). When determining whether “exceptional
28 circumstances” exist, the court must consider the likelihood of success on the merits as well as the

1 ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues
2 involved. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009). Having considered those factors,
3 the court finds there are no exceptional circumstances in this case. Thus, the court declines to
4 appoint counsel at this time.

5 **V. Conclusion**

6 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion for the appointment of
7 counsel (ECF No. 22) is DENIED.

8 Further, it is RECOMMENDED that plaintiff's motion for preliminary injunction (ECF
9 No. 22) be DENIED.

10 These findings and recommendations are submitted to the United States District Judge
11 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
12 after being served with these findings and recommendations, any party may file written
13 objections with the court and serve a copy on all parties. Such a document should be captioned
14 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
15 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
16 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

17 DATED: August 7, 2018.

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19 EDMUND F. BRENNAN
20 UNITED STATES MAGISTRATE JUDGE
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