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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

LARRY SMITH,  
Plaintiff,  
v.  
RALPH DIEZ, et al.,  
Defendants.

No. 2:20-CV-0071-JAM-DMC-P

FINDINGS AND RECOMMENDATIONS

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is Plaintiff’s motion, ECF No. 15, for injunctive relief.

The legal principles applicable to requests for injunctive relief, such as a temporary restraining order or preliminary injunction, are well established. To prevail, the moving party must show that irreparable injury is likely in the absence of an injunction. See Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009) (citing Winter v. Natural Res. Def. Council, Inc., 129 S.Ct. 365 (2008)). To the extent prior Ninth Circuit cases suggest a lesser standard by focusing solely on the possibility of irreparable harm, such cases are “no longer controlling, or even viable.” Am. Trucking Ass’ns, Inc. v. City of Los Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009). Under Winter, the proper test requires a party to demonstrate: (1) he is likely to succeed on the merits; (2) he is likely to suffer irreparable harm in the absence of an

1 injunction; (3) the balance of hardships tips in his favor; and (4) an injunction is in the public  
2 interest. See Stormans, 586 F.3d at 1127 (citing Winter, 129 S.Ct. at 374). The court cannot,  
3 however, issue an order against individuals who are not parties to the action. See Zenith Radio  
4 Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 112 (1969). Moreover, if an inmate is seeking  
5 injunctive relief with respect to conditions of confinement, the prisoner's transfer to another  
6 prison renders the request for injunctive relief moot, unless there is some evidence of an  
7 expectation of being transferred back. See Prieser v. Newkirk, 422 U.S. 395, 402-03 (1975);  
8 Johnson v. Moore, 948 F.3d 517, 519 (9th Cir. 1991) (per curiam).

9 In this case, Plaintiff seeks an order directing the Warden of the California Health  
10 Care Facility, Robert Burton, to transfer Plaintiff to another prison. See ECF No. 15, pg. 1.  
11 Injunctive relief is not warranted because Robert Burton is not a named defendant to this action  
12 and the Court may not order injunctive relief against non-parties. See Zenith Radio Corp., 395  
13 U.S. at 112.

14 Based on the foregoing, the undersigned recommends that Plaintiff's motion for  
15 injunctive relief, ECF No. 15, be denied.

16 These findings and recommendations are submitted to the United States District  
17 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days  
18 after being served with these findings and recommendations, any party may file written objections  
19 with the Court. Responses to objections shall be filed within 14 days after service of objections.  
20 Failure to file objections within the specified time may waive the right to appeal. See Martinez v.  
21 Ylst, 951 F.2d 1153 (9th Cir. 1991).

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23 Dated: October 16, 2020



24 DENNIS M. COTA  
25 UNITED STATES MAGISTRATE JUDGE  
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