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****E-filed 2/25/11****

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

FORREST M. RICHARDSON,

No. C 11-00459 RS

Plaintiff,

**ORDER DENYING MOTION FOR
PRELIMINARY INJUNCTION**

v.

VINCENT CULLEN, Acting Warden, San
Quentin State Prison, et al.,

Defendants.

I. INTRODUCTION

Plaintiff Forrest Richardson, an inmate at the California State Prison, San Quentin (San Quentin) filed suit against Vincent Cullen, San Quentin Acting Warden; Dr. Reyes, a member of the San Quentin medical staff; and several San Quentin correctional officers. In his suit, Richardson alleges defendants are depriving him of medications for high blood pressure and pain management that had been prescribed by his treating physician. He brings claims for violation of his civil rights under: (1) the Eight Amendment for deprivation constituting deliberate indifference to his medical needs; (2) the First Amendment alleging that acts were taken in retaliation for a previously filed suit; and (3) 42 U.S.C. §§ 1985(2) and 1985(3) proscribing conspiracies to interfere with civil rights.

1 Richardson moved for a temporary restraining order (TRO) and a preliminary injunction to
2 enjoin defendants from withholding his medications and from preventing or discouraging him from
3 seeking medical assistance from the medical staff at San Quentin. At a hearing on the TRO, the
4 Court denied Richardson’s motion and requested additional information from defendants prior to
5 ruling on the motion for preliminary injunction. Pursuant to Civil Local Rule 7-1(b), the motion for
6 preliminary injunction is suitable for disposition without oral argument. For the reasons stated
7 below, the motion is denied.

8 II. DISCUSSION

9 Injunctive relief is an “extraordinary remedy, never awarded as of right.” *Winter v. NRDC,*
10 *Inc.*, 129 S. Ct. 365, 376 (2008). In order to obtain injunctive relief, a plaintiff must demonstrate
11 that: (1) he is likely to succeed on the merits; (2) he is likely to suffer irreparable injury; (3) that the
12 balance of hardships tips in his favor; and (4) that an injunction is in the public interest. *See Winter,*
13 *129 S. Ct. at 374.* In a sliding scale version of these requirements, relief may be granted where the
14 plaintiff establishes that serious questions on the merits exist and the balance of hardships tips
15 sharply in his favor. *See Alliance for the Wild Rockies v. Cottrell*, 613 F.3d 960, 968 (9th Cir.
16 2010). The plaintiff also must demonstrate a likelihood of irreparable harm and that the public
17 interest favors granting the injunction. *Id.*

18 Although grounded in different constitutional or statutory rights, each of Richardson’s
19 claims for civil rights violations essentially relies on his allegation that the withholding of particular
20 medications constitutes an illegitimate medical decision. In order to state an Eighth Amendment
21 challenge, he must demonstrate: (1) that his medical need is objectively serious; and (2) that
22 officials acted with deliberate indifference to his health or safety. *See Farmer v. Brennan*, 511 U.S.
23 825, 834 (1994). A prison official acts with deliberate indifference when the officer “knows of and
24 disregards an excessive risk to inmate health or safety.” *Id.* at 837.

25 At the hearing on the motion for TRO, the parties indicated that Richardson was presently
26 receiving high blood pressure medication. Thus, Richardson’s principal complaint involves the San
27 Quentin staff’s decision to terminate the pain medication he receives, namely morphine sulfate and
28 gabapentin. Richardson claims that the action was motivated by retaliation for a lawsuit he has

1 previously filed against correctional staff at the California State Prison, Solano. Defendants dispute
2 that the medical and correctional staff at San Quentin, when taking the actions at issue, were even
3 aware of Richardson’s prior claims involving the Solano prison. In addition, defendants contend
4 that Richardson was investigated for possession of illegal narcotics and found guilty at a
5 disciplinary hearing in December 2010. They maintain that the discontinuation of morphine is both
6 consistent with his medical needs and warranted by Richardson’s suspected drug abuse.

7 The Court requested that defendants identify a physician, not a party to the present suit, to
8 review Richardson’s medical file and to provide the Court with a report on whether his medical
9 problems are being adequately treated by his current pain medication regimen. Defendants
10 submitted the report of Dr. Lisa Pratt, the chief physician and surgeon at San Quentin. She states
11 that Richardson had been receiving morphine and gabapentin for shoulder and back pain. She found
12 that, after shoulder surgery, there is no longer “objective finding of [that] disease” and his recovery
13 is “normal.” With regard to back pain, she also concludes that objective findings are lacking to
14 support Richardson’s subjective complaints. Thus, Dr. Pratt states that “non-opioid pain
15 management is appropriate treatment.” She also comments that medications for nerve pain
16 (according to Richardson, the gabapentin) were “rejected,” apparently for lack of objective
17 evidence.

18 According to Dr. Pratt’s comments and the copy of Richardson’s medical records introduced
19 by him, the medical file makes several references to the discontinuation of his medications based on
20 the investigation into his illegal possession of morphine. Although Dr. Pratt was not told of the
21 purpose for the request, she was informed that her report was being submitted to a federal judge. As
22 Richardson suggests, Dr. Pratt could infer that Richardson had filed suit over the withholding of his
23 medication. Nonetheless, Dr. Pratt provided her medical opinion that Richardson’s present medical
24 conditions are adequately treated.

25 Based on her conclusion, Richardson has not shown that the withholding of his prior pain
26 medications likely constitutes an “excessive risk” to his health. While his retaliation and conspiracy
27 claims may not require the same showing of risk to his health, defendants have suggested viable
28 reasons for discontinuing morphine. In short, Richardson has not demonstrated the likelihood of

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success on the merits of his suit that is required to obtain the “extraordinary remedy” of injunctive relief.

III. CONCLUSION

Richardson’s motion for preliminary injunction is denied.

IT IS SO ORDERED.

Dated: 2/25/11



RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE