

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GEORGE MARTIN,
Plaintiff,

v.

W. MUNIZ, et al.,
Defendants.

Case No. 17-01690 BLF (PR)

**ORDER DENYING MOTION
FOR PRELIMINARY
INJUNCTION AND
CONTEMPT CITATION**

(Docket No. 143)

Plaintiff, a California inmate, filed the instant *pro se* civil rights action pursuant to 42 U.S.C. § 1983, against prison officials at Salinas Valley State Prison (“SVSP”). The operative complaint is the second amended complaint, Dkt. No. 129, and the only claim in this matter is the Eighth Amendment claim concerning Plaintiff’s pain management, including the denial of corrective surgery to address the chronic pain, against Defendants Dr. Kim R. Kumar, Dr. Darrin M. Bright, Tuan Anh Tran, Dr. Edward Miles Birdsong, and Dr. Jennifer Villa. Dkt. No. 137 at 7. Before Defendants filed their motion for summary judgment, Dkt. No. 149, Plaintiff filed a motion for a preliminary injunction and temporary

1 restraining order. Dkt. No. 143. Defendants filed opposition. Dkt. No.
2 146.

3 4 DISCUSSION

5 **A. Standard of Review**

6 The Prisoner Litigation Reform Act of 1995 (“PLRA”) restricts the
7 power of the court to grant prospective relief in any action involving
8 prison conditions. *See* 18 U.S.C. § 3626(a); *Oluwa v. Gomez*, 133 F.3d
9 1237, 1239 (9th Cir. 1998). Section 3626(a)(2) applies specifically to
10 preliminary injunctive relief. *See* 18 U.S.C. § 3626(a)(2). In civil actions
11 with respect to prison conditions it permits the court to enter a temporary
12 restraining order or preliminary injunction “to the extent otherwise
13 authorized by law” but also requires that such an order “must be narrowly
14 drawn, extend no further than necessary to correct the harm the court
15 finds requires preliminary relief, and be the least intrusive means
16 necessary to correct that harm.” *Id.* The court must give “substantial
17 weight to any adverse impact on public safety or the operation of a
18 criminal justice system caused by the preliminary relief.” *Id.*

19 “A plaintiff seeking a preliminary injunction must establish that he
20 is likely to succeed on the merits, that he is likely to suffer irreparable
21 harm in the absence of preliminary relief, that the balance of equities tips
22 in his favor, and that an injunction is in the public interest.” *Winter v.*
23 *Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008). Where
24 the court concludes the movant has failed to show a likelihood of success
25 on the merits, the court, in its discretion, need not consider whether the
26 movant would suffer irreparable injury. *Guzman v. Shewry*, 552 F.3d
27 941, 948 (9th Cir. 2009).

1 “A preliminary injunction is ‘an extraordinary and drastic remedy,
2 one that should not be granted unless the movant, *by a clear showing*,
3 carries the burden of persuasion.’” *Lopez v. Brewer, et al.*, 680 F.3d
4 1068, 1072 (9th Cir. 2012) (citation omitted) (emphasis in original). The
5 standard for issuing a TRO is similar to that required for a preliminary
6 injunction. *See Los Angeles Unified Sch. Dist. v. United States Dist.*
7 *Court*, 650 F.2d 1004, 1008 (9th Cir. 1981) (Ferguson, J., dissenting).

8 **B. Analysis**

9 Plaintiff seeks a preliminary injunction against not only the
10 Defendants in this action, but against non-parties, including the CDCR
11 Secretary Ralph Diaz, Warden W. Muniz, and numerous medical staff, to
12 prohibit them from: (1) forcing him to take medication in crush and float
13 form, Dkt. No. 143 at 3-4; (2) withholding certain pain medications, *id.* at
14 4; (3) depriving him of a “safe secure ADA vehicle,” *id.* at 5; (4)
15 cancelling his transfer to a different medical facility, *id.* at 6; (5) using an
16 allegedly fraudulent document to change his medical status from high risk
17 to medium, *id.* at 7; and (6) interfering with transfers to a facility “for a
18 higher level of medical stabilize care,” *id.* at 8. Lastly, Plaintiff seeks the
19 Court to “refrain” Defendants and counsel from submitting any
20 documents to the Court without holding an evidentiary hearing. *Id.* at 8-
21 9. Plaintiff also seeks “criminal contempt citations” against Defendants
22 for “acts of obstruction of justice by way of perjury and falsifying
23 documents.” *Id.* at 10.

24 Defendants first object to Plaintiff’s request for an injunction
25 regarding crush and float medications because he cannot demonstrate a
26 likelihood of success on the merits. Dkt. No. 146 at 3. Defendants point
27 out that in a previous order in this matter, the Court found Plaintiff had
28

1 failed to establish a likelihood of success on nearly an identically
2 presented issue because it was unlikely that he had managed to
3 successfully exhaust administrative remedies and therefore would not be
4 able to proceed on the merits. *Id.*; Dkt. No. 74. Those circumstances
5 have not changed. Furthermore, Plaintiff also fails to establish that he is
6 likely to suffer irreparable harm in the absence of preliminary relief
7 where, as Defendants point out, he has provided no persuasive evidence
8 that the “crush and float” manner of ingesting his pain medication is in
9 any way harmful. Accordingly, the Court finds that Plaintiff has failed to
10 carry his burden of persuasion by a clear showing that a preliminary
11 injunction with respect to crush and float medication is warranted. *See*
12 *Lopez*, 680 F.3d at 1072.

13 Secondly with respect to the withholding of pain medication,
14 Defendants also argue that the Court previously denied injunctive relief
15 on a similar motion because it was “too general and vague” and as such,
16 the parameters of the requested relief were unclear. Dkt. No. 146 at 4.
17 Defendants argue that the current motion suffers from similar
18 deficiencies. *Id.* Plaintiff mentions that on October 9, 2015, some sort of
19 pain medication was recommended but fails to provide any further details
20 or explain what specific action he seeks. Dkt. No. 143 at 4. The Court
21 agrees that it is again unclear as to what relief Plaintiff is requesting, and
22 therefore no basis for issuing any “narrowly drawn” order to correct
23 uncertain harm. Accordingly, a preliminary injunction is not warranted
24 on this basis.

25 Defendants assert that the remainder of Plaintiff’s requests must
26 also be denied because Plaintiff has failed to demonstrate a likelihood of
27 success on the merits in connection with the claims and they are unrelated
28

1 to the issues raised in this action. Dkt. No. 146 at 5. Defendants are
2 correct. As stated above, the only claim in this action is the “Eighth
3 Amendment claim for deliberate indifference to serious medical needs,
4 i.e., Plaintiff’s chronic pain related to certain longstanding injuries to his
5 neck and back and failure to provide corrective surgeries to address that
6 pain.” *See supra* at 1; Dkt. No. 137 at 6. A plaintiff is not entitled to an
7 injunction based on claims not pled in the complaint. *Pacific Radiation*
8 *Oncology, LLC v. Queen’s Med. Ctr.*, 810 F.3d 631, 633 (9th Cir. 2015).
9 “[T]here must be a relationship between the injury claimed in the motion
10 for injunctive relief and the conduct asserted in the underlying complaint.
11 This requires a sufficient nexus between the claims raised in a motion for
12 injunctive relief and the claims set forth in the underlying complaint
13 itself.” There is a sufficient nexus if the interim order “would grant
14 ‘relief of the same character as that which may be granted finally.’” *Id.*
15 (citation omitted); *see, e.g., id.* at 636-38 (district court properly denied
16 plaintiff’s request for an injunction to prevent HIPAA violation, where
17 plaintiff had not asserted a claim for a HIPAA violation). Here, even if
18 Plaintiff prevailed in this action, he would not be granted any relief
19 involving an ADA vehicle, transfer to a different medical facility, change
20 in medical status, or the Attorney General’s office. *See supra* at 3.
21 Accordingly, Plaintiff is not entitled to injunctive relief based on these
22 other grounds.

23 Lastly, with respect to Plaintiff’s request for a “contempt citation,”
24 he fails to identify the specific court order that Defendants are allegedly
25 violating. Dkt. No. 143 at 10-19. Contempt is only available when the
26 court finds by clear and convincing evidence that a party violated a
27 specific and definite order of the court. *Parsons v. Ryan*, 949 F.3d 443,

1 452 (9th Cir. 2020) (violation of order to show cause is grounds for
2 contempt, unlike violation of a stipulation that is not also a court order).
3 Plaintiff makes repeated references to a previous case and medical
4 records from several years pertaining to that prior matter, but no specific
5 court order in this matter. Accordingly, he fails to persuade this Court by
6 clear and convincing evidence that Defendants violated a specific and
7 definite order of the court. *Id.* The motion is therefore DENIED.

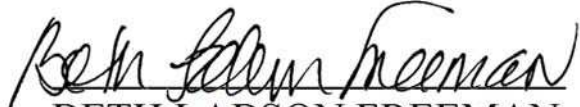
8
9 **CONCLUSION**

10 For the foregoing reasons, Plaintiff's motion for a preliminary
11 injunction and TRO and motion for contempt order are **DENIED**.

12 This order terminates Docket No. 143.

13 **IT IS SO ORDERED.**

14 **Dated:** July 24, 2020


BETH LABSON FREEMAN
United States District Judge