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## IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA ALBANY DIVISION

FRANK SOLOMON FEDD, SR.,

Plaintiff,

1:09-CV-52 (WLS)

v.

BRIAN OWENS, et al.,

Defendants.

## **ORDER**

Before the Court is a Recommendation from United States Magistrate Judge Claude W. Hicks, Jr. (Doc. #34), filed December 28, 2009. It is recommended that Plaintiff's Motion for Preliminary Injunction (Doc. #4) wherein Plaintiff requests that the Court order the Georgia Department of Corrections to arrange a liver transplant evaluation for Plaintiff be denied. Plaintiff has filed his written objection (Doc. #37) and Defendants have filed their response and request that this Court adopt the Recommendation.

Plaintiff argues that the magistrate judge has improperly made a medical judgment in the face of medical evidence Plaintiff contends supports his motion. Plaintiff makes the same objection with respect to the magistrate judge's finding regarding the issue of irreparable injury. Plaintiff further asserts that he has exhausted all available remedies and that the magistrate judge's failure to require Defendants to respond is prejudicial and an improper declination to properly adjudicate Plaintiff's motion. (Doc. 37, pp. 1-2).

Defendants in their response assert that Plaintiff cannot carry his burden in meeting the standards for the issuance of a preliminary injunction. Specifically, Defendants state that Plaintiff's request to be placed on a transplant list has been mooted and that his motion is barred by the Eleventh Amendment. Lastly, Defendants

contend that Plaintiff's request is not authorized by the PLRA. (Doc. 39, P. 3). Hence, Defendants contend that Plaintiff cannot prevail on the merits.

Upon full review upon the record, the Court finds that said Recommendation should be, and hereby is, ACCEPTED, ADOPTED and made the ORDER of this Court for reason of the findings and reasons stated therein. Plaintiff's objections are therefore OVERRULED. Accordingly, Plaintiff's motion for preliminary injunction is DENIED.

**SO ORDERED**, this  $30^{th}$  day of March, 2010.

/s/ W. Louis Sands

W. LOUIS SANDS, JUDGE UNITED STATES DISTRICT COURT