



1 restraining order, and defendants were directed to respond to the substantive allegations set forth above  
2 only.

3           Defendants filed their response on August 4, 2010 (docket #9). With respect to the  
4 substantive allegations, defendants provide the affidavits of four SDCC nurses who attest the following:  
5 that on the dates in question, they each issued brand-new, single-use syringes from blister packs of ten  
6 syringes to the insulin-dependent, diabetic inmates; that the syringes were and are then collected and  
7 disposed of properly; and that they were unaware at the time that some syringes issued were beyond their  
8 use date. Defendants include the affidavit of SDCC Director of Nursing Services Cheryl Dressler, which  
9 states that she purchased syringes from a supplier in late June; that she was unaware that some syringes  
10 were beyond their use date; that she was informed on or about July 1, 2010 that some syringes were  
11 beyond the use date; that she immediately instructed SDCC staff to cease distributing such syringes and  
12 that presently no syringes that are beyond their use date are being issued or used at SDCC. Finally,  
13 defendants include the affidavit of NDOC Medical Director R. Bruce Bannister, in which he states that  
14 in his professional medical opinion, there is no chance that a serious blood-borne illness would be  
15 transmitted by an unopened, expired syringe.

16           The court may issue temporary restraining orders and other injunctive relief pursuant to  
17 Rule 65 of the Federal Rules of Civil Procedure. A party seeking a preliminary injunction must fulfill  
18 one of two standards, described in the Ninth Circuit as “traditional” and “alternative.” *Cassim v. Bowen*,  
19 824 F.2d 791, 795 (9<sup>th</sup> Cir. 1987). Under the traditional standard, a court may issue preliminary relief  
20 if it finds that (1) the moving party will suffer irreparable injury if the relief is denied; (2) the moving  
21 party will probably prevail on the merits; (3) the balance of hardships favors the moving party; and (4)  
22 the public interest favors granting relief. Under the alternative standard, the moving party may meet its  
23 burden by demonstrating either (1) a combination of probable success on the merits and the possibility  
24 of irreparable injury or (2) that serious questions exist and the balance of hardships tips sharply in its  
25 favor. *Cassim*, 824 F.2d at 795.

26           Defendants have provided the affidavits of SDCC medical personnel that demonstrate

1 that only new syringes are issued to the insulin-dependent diabetic inmates, that the syringes are  
2 collected and properly disposed of and that no syringes have or are being re-used at SDCC. Accordingly,  
3 the court finds that there is no risk of irreparable harm to inmates from exposure to re-used syringes, and  
4 no basis exists for granting preliminary injunctive relief.

5 This action has been consolidated with three other actions that set forth similar  
6 allegations: *Frixione v. Skolnik, et al.*, 2:10-cv-01235-PMP-LRL; *Jones v. Skolnik, et al.*, 2:10-cv-  
7 01214-PMP-LRL; *Rea v. Skolnik, et al.*, 2:10-cv-01217-PMP-LRL. For good cause shown, normal  
8 procedures pursuant to 28 U.S.C. § 1915(e)(2) will resume in all four consolidated actions.

9 **IT IS THEREFORE ORDERED** that the telephonic hearing on this matter set for  
10 Friday, August 6, 2010 at 8:30 a.m. is **VACATED**.

11 **IT IS FURTHER ORDERED** that the Clerk of Court **shall file** a copy of this order in  
12 each of these actions:

13 FRIXIONE V. SKOLNIK, ET AL., 2:10-cv-01235-PMP-RJJ;

14 JONES V. SKOLNIK, ET AL., 2:10-cv-01214-RLH-LRL;

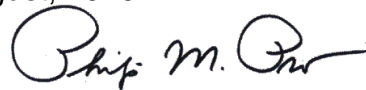
15 REA V. SKOLNIK, ET AL., 2:10-cv-01217-PMP-PAL.

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18 DATED this \_\_ 5th day of August, 2010.

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UNITED STATES DISTRICT JUDGE

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