

1
2
3
4
5
6
7
8
9

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

HUGO C. ISRAEL also known as HUGO)
ISRAEL CAHUEC,)
)
Plaintiff,)
)
v.)
)
DWIGHT NEVEN et al.,)
)
Defendants.)
_____)

2:14-cv-1384-GMN-VCF
ORDER

I. DISCUSSION

On August 29, 2014, this Court issued a screening order permitting Counts I, II, and III, alleging deliberate indifference to serious medical needs, to proceed against Defendant Nevens and stayed the case for 90 days to give the parties an opportunity to settle their dispute. (ECF No. 6 at 4-5, 7-8). This Court also ordered Defendants to file a response to Plaintiff’s motion for preliminary injunction. (*Id.* at 8). Defendants have filed a response and a motion to seal confidential medical records.¹ (ECF No. 10, 11).

In the preliminary injunction motion, Plaintiff asserts that he has suffered from a serious colon, stomach, and chest problem and has lost his vision for more than two years. (ECF No. 4 at 1). Plaintiff argues that the warden and the doctors have failed to order the proper medical examinations including an MRI and blood tests, which may only be procured by outside hospitals, like the University Medical Center. (*Id.* at 2). Plaintiff asserts that, over the past two years, the doctors have mis-diagnosed him several times including the latest diagnoses which stated, “maybe you have prostate cancer.” (*Id.* at 3). Plaintiff contends that he will suffer irreparable injury because his health is deteriorating. (*Id.* at 4). Plaintiff seeks an injunction ordering Defendants to have him examined by physicians who specialize in treatment of the

¹ The Court grants Defendants’ motion to seal (ECF No. 10) exhibits B, C, D, E, F, and G in its opposition to the motion for preliminary injunction because those exhibits contain Plaintiff’s confidential medical records. Defendants state that they have sent a copy of the exhibits to the High Desert State Prison’s warden’s office where Plaintiff will be able to view the documents at his request via kite. (ECF No. 10 at 2). Defendants state that Plaintiff’s kite must reference this litigation by name and case number in order to view those exhibits. (*Id.* at 2 n.1).

1 colon and its diseases. (*Id.* at 5).

2 In response, Defendants provide exhibits that demonstrate that between May 29, 2012
3 through June 17, 2014, the prison medical staff have conducted nine physical examinations on
4 Plaintiff and have ordered or performed three x-rays, an anoscopy exam, a digital rectal exam,
5 a complete blood panel, and a prostate-specific blood test on Plaintiff. (ECF No. 11 at 5-7).
6 These exams revealed that Plaintiff has internal hemorrhoids which the prison medical staff have
7 been treating with hydrocortisone suppositories, fiber tablets, Tylenol, and Ibuprofen. (*Id.* at 5-
8 6). The prison medical staff continue to run different tests on Plaintiff when he complains of
9 colon pain. (*Id.* at 6-7). These tests continue to show that Plaintiff has internal hemorrhoids.
10 (*Id.* at 7). With respect to Plaintiff's vision, prison officials have filled the eye glass
11 prescriptions ordered by the prison eye doctor. (*Id.*). The prison eye doctor has never noted any
12 medical need requiring further attention. (*Id.*). With respect to chest pain, Plaintiff's doctor
13 prior to incarceration had conducted a full cardiac work up of Plaintiff and had concluded that
14 Plaintiff's chest symptoms were caused by anxiety. (*Id.* at 8). Prison medical staff have
15 conducted x-rays, EKGs, an exercise stress test, and an echocardiogram on Plaintiff and have
16 also concluded that Plaintiff's chest pain is caused by anxiety. (*Id.*).

17 Injunctive relief, whether temporary or permanent, is an "extraordinary remedy, never
18 awarded as of right." *Winter v. Natural Res. Defense Council*, 555 U.S. 7, 24 (2008). "A
19 plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits,
20 that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance
21 of equities tips in his favor, and that an injunction is in the public interest." *Am. Trucking*
22 *Ass'ns, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009) (quoting *Winter*, 555
23 U.S. at 20). Furthermore, under the Prison Litigation Reform Act ("PLRA"), preliminary
24 injunctive relief must be "narrowly drawn," must "extend no further than necessary to correct
25 the harm," and must be "the least intrusive means necessary to correct the harm." 18 U.S.C. §
26 3626(a)(2).

27 The Eighth Amendment prohibits the imposition of cruel and unusual punishment and
28 "embodies 'broad and idealistic concepts of dignity, civilized standards, humanity, and

1 decency.” *Estelle v. Gamble*, 429 U.S. 97, 102 (1976). A prison official violates the Eighth
2 Amendment when he acts with “deliberate indifference” to the serious medical needs of an
3 inmate. *Farmer v. Brennan*, 511 U.S. 825, 828 (1994). “To establish an Eighth Amendment
4 violation, a plaintiff must satisfy both an objective standard—that the deprivation was serious
5 enough to constitute cruel and unusual punishment—and a subjective standard—deliberate
6 indifference.” *Snow v. McDaniel*, 681 F.3d 978, 985 (9th Cir. 2012).

7 To establish the first prong, “the plaintiff must show a serious medical need by
8 demonstrating that failure to treat a prisoner’s condition could result in further significant injury
9 or the unnecessary and wanton infliction of pain.” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir.
10 2006) (internal quotations omitted). To satisfy the deliberate indifference prong, a plaintiff must
11 show “(a) a purposeful act or failure to respond to a prisoner’s pain or possible medical need and
12 (b) harm caused by the indifference.” *Id.* “Indifference may appear when prison officials deny,
13 delay or intentionally interfere with medical treatment, or it may be shown by the way in which
14 prison physicians provide medical care.” *Id.* (internal quotations omitted). When a prisoner
15 alleges that delay of medical treatment evinces deliberate indifference, the prisoner must show
16 that the delay led to further injury. *See Shapley v. Nevada Bd. of State Prison Comm’rs*, 766
17 F.2d 404, 407 (9th Cir. 1985) (holding that “mere delay of surgery, without more, is insufficient
18 to state a claim of deliberate medical indifference”).

19 The Court denies Plaintiff’s motion for preliminary injunction. The exhibits demonstrate
20 that the prison medical staff have been consistently treating and examining Plaintiff for years in
21 an attempt to determine whether his colon problems are more than internal hemorrhoids and
22 whether his chest pain is more than anxiety. Additionally, prison officials have been examining
23 Plaintiff’s vision and have been providing Plaintiff with the necessary corrective lenses. The
24 Court finds that, at this stage, Plaintiff has not demonstrated that prison officials are failing to
25 respond to his pain or possible medical needs. As such, Plaintiff cannot demonstrate that he is
26 likely to succeed on the merits and the Court denies the motion for preliminary injunction.

27 **II. CONCLUSION**

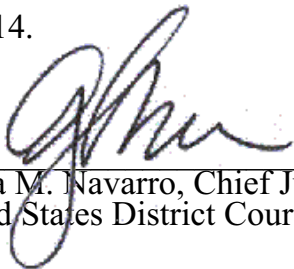
28 For the foregoing reasons, **IT IS ORDERED** that the motion for preliminary injunction

1 (ECF No. 4) is **DENIED**.

2 **IT IS FURTHER ORDERED** that the motion to seal (ECF No. 10) exhibits B, C, D, E,
3 F, and G of Defendant's opposition to the motion for preliminary injunction is **GRANTED**.

4 **IT IS FURTHER ORDERED** that this case is currently in a 90-day stay to give the
5 parties an opportunity to settle their dispute before an answer is filed or the discovery process
6 begins. During this stay, no other pleadings or papers shall be filed in this case, and the parties
7 shall not engage in any discovery.

8 **DATED** this 18th day of September, 2014.

9
10 
11 _____
12 Gloria M. Navarro, Chief Judge
13 United States District Court
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28