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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 MARIO NOYOLA,

8 Plaintiff,

9 v.

10 KENNETH JENNINGS; JEFFREY A.
11 UTTECHT; STEVEN HAMMOND; DAN
12 PACHOLKE; DICK MORGAN; JOHN REIDY;
and A. DELEON-DURAN,

13 Defendants.

No. 4:16-CV-5041-EFS

**ORDER DENYING PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTION**

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15 Before the Court, without oral argument, is Plaintiff Mario
16 Noyola's Motion for a Preliminary Injunction, ECF No. 24. Plaintiff
17 requests that the Court require Defendants to (1) provide Plaintiff
18 with an eye exam conducted by qualified personnel; (2) provide
19 Plaintiff with a new eyeglass prescription; and (3) change their
20 policies, practices, and procedures regarding the "one-eye policy,"
21 alleged delays in treatment, and alleged inadequate staffing.
22 Defendants respond that Plaintiff has not met the requirements for a
23 preliminary injunction, as new glasses are not "medically necessary
24 for Plaintiff at this time" and the internal operations of a prison
25 are subject to substantial deference. Having reviewed the pleadings
26

1 and the file in this matter, the Court is fully informed and denies
2 the motion.

3 **I. FACTUAL BACKGROUND**

4 Plaintiff is an inmate at Coyote Ridge Corrections Center.
5 According to Plaintiff's Declaration in support of his motion,
6 Plaintiff was previously diagnosed with a compound myopic astigmatism
7 in both eyes. ECF No. 24 at 13. In October 2014, Plaintiff noted
8 blurry vision while wearing his prescription glasses. ECF No. 24 at
9 14. On January 17, 2015, Plaintiff requested medical treatment for
10 headaches, eye strain, blurred vision, and loss of depth perception
11 related to the use of his glasses. ECF No. 24 at 14. After sending
12 another request for treatment in March 2015, a Snellen eye exam was
13 conducted on April 18, 2015. Ex. A, ECF No. 24 at 25. The certified
14 nursing assistant performing the exam, Defendant Adriana Deleon-Duran,
15 determined that Plaintiff's vision was 20/20 in his right eye, 20/25
16 in his left eye, and 20/20 for both eyes. Ex. A, ECF No. 24 at 25.
17 Based on that determination, Plaintiff did not qualify for an
18 optometrist appointment under prison policy. Ex. A, ECF No. 24 at 25;
19 Ex. B, ECF No. 24 at 30; Ex. C, ECF No. 24 at 35. Plaintiff was
20 directed to sign up for sick call to address his symptoms. Ex. B, ECF
21 No. 24 at 30.

22 On June 1, 2015, Plaintiff filed a grievance regarding his
23 inability to see an optometrist. See Ex. F, ECF No. 24 at 42. That
24 grievance was subsequently denied, and Plaintiff appealed that denial.
25 See Ex. F, ECF No. 24 at 42. On August 7, 2015, Plaintiff went to the
26 medical department, and the licensed practical nurse with whom he met

1 recommended that Plaintiff see an optometrist, made a referral to that
2 effect, and ordered various lab tests. Ex. E, ECF No. 24 at 40. On
3 August 21, 2015, prison officials responded to Plaintiff's grievance
4 and directed that the health services manager recheck his vision. Ex.
5 F, ECF No. 24 at 42. Plaintiff went to another medical appointment on
6 September 1, 2015, and that practitioner recommended that Plaintiff
7 meet with an optometrist. Ex. G, ECF No. 24 at 44-45. Despite these
8 recommendations, Plaintiff represents that when he again went to
9 medical on October 5, 2015, he was told by Defendant Kenneth Jennings
10 that he would not qualify for an optometrist exam or new glasses under
11 the prison policy due to the results of his April 2015 eye exam. ECF
12 No. 24 at 18.

13 Plaintiff filed additional medical kites to the optometry
14 department in October 2015. Ex. H, ECF No. 24 at 47; Ex. I, ECF No. 24
15 at 49. The department responded that Plaintiff did not qualify for an
16 exam based on the prior finding that, with his glasses, he had 20/20
17 vision in one eye, 20/25 vision in the other eye, and 20/20 vision
18 overall. Ex. J, ECF No. 24 at 51.

19 Plaintiff then sent a letter to the prison superintendent,
20 Defendant Jeffrey A. Uttecht, who arranged for Plaintiff to meet with
21 an optometrist. Ex. K, ECF No. 24 at 53-54; Ex. L, ECF No. 24 at 56.
22 On January 15, 2016, the optometrist, Defendant John Reidy, conducted
23 an exam and determined that Plaintiff's vision when wearing his
24 glasses was 20/40 in each eye individually and in both eyes when
25 tested together, and concluded that Plaintiff did not qualify for new
26 glasses. Ex. M, ECF No. 24 at 58. Plaintiff again wrote to

1 Superintendent Uttecht, Ex. N, ECF No. 24 at 60-61. Mr. Uttecht
2 responded as follows:

3 The optometrist and provider you have seen most recently in
4 Health Services concur that your current glasses
5 prescription may be contributing to your symptoms.
6 Unfortunately, with your current prescription glasses, you
do not meet the criteria for new glasses. I was reassured
that continuing to wear your current glasses will not cause
eye damage or worsening of your vision.

7 Ex. R, ECF No. 24 at 66. Superintendent Uttecht also advised Plaintiff
8 that he could pursue care outside of the prison system through the
9 Offender-Paid Health Care system. Ex. R, ECF No. 24 at 66.

10 II. ANALYSIS

11 Federal Rule of Civil Procedure 65 allows for entry of a
12 preliminary injunction in certain extraordinary circumstances. Fed.
13 R. Civ. P. 65(a)(1); see *Winter v. Nat. Res. Def. Council, Inc.*, 555
14 U.S. 7 (2008). To justify issuance of a preliminary injunction, a
15 plaintiff must establish "that he is likely to succeed on the merits,
16 that he is likely to suffer irreparable harm in the absence of
17 preliminary relief, that the balance of equities tips in his favor,
18 and that an injunction is in the public interest." *Winter*, 555 U.S. at
19 20. Under this inquiry, "courts must balance the competing claims of
20 injury and must consider the effect on each party of the granting or
21 withholding of the requested relief." *Id.* at 24. Additional
22 considerations are also relevant when the relief requested involves
23 prison conditions: "Preliminary injunctive relief must be narrowly
24 drawn, extend no further than necessary to correct the harm the court
25 finds requires preliminary relief, and be the least intrusive means
26 necessary to correct that harm." 18 U.S.C. § 3626(a)(2).

1 As an initial matter, the Court finds that Plaintiff's third
2 requested relief, regarding revision of prison policy and staffing
3 decisions, would not be the least intrusive means necessary to correct
4 the alleged harm in this case. Plaintiff argues that his vision
5 condition requires preliminary relief. That alleged harm, however,
6 could be corrected through Plaintiff's first and second requested
7 relief – providing him with an eye examination and new glasses – and
8 does not require change on the institutional level. Accordingly, the
9 Court denies the motion as to the third type of requested relief based
10 on § 3626(a)(2). Below, the Court analyzes the first and second types
11 of relief requested based on the *Winter* factors.

12 **A. Success on the Merits**

13 Under 42 U.S.C. § 1983, to state an Eighth Amendment violation
14 based on prison medical treatment, an inmate must show "deliberate
15 indifference to serious medical needs." *Estelle v. Gamble*, 429 U.S.
16 97, 104 (1976). To satisfy this two-part test, the Plaintiff must
17 first show a "serious medical need," by demonstrating that a failure
18 to treat the injury or condition "could result in further significant
19 injury" or cause "the unnecessary and wanton infliction of pain." *Jett*
20 *v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (quoting *McGuckin v.*
21 *Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled in part on other*
22 *grounds by WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997)
23 (en banc)) (internal quotation marks omitted). "Indications that a
24 plaintiff has a serious medical need include 'the existence of an
25 injury that a reasonable doctor or patient would find important and
26 worthy of comment or treatment; the presence of a medical condition

1 that significantly affects an individual's daily activities; or the
2 existence of chronic and substantial pain.'" *Colwell v. Bannister*, 763
3 F.3d 1060, 1066 (9th Cir. 2014) (quoting *McGuckin*, 974 F.2d at 1059-
4 60) (alteration omitted).

5 Second, a Plaintiff must show that the Defendants' response to
6 the need was deliberately indifferent, meaning that an official "knows
7 of and disregards an excessive risk to inmate health and safety."
8 *Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004) (quoting *Gibson*
9 *v. Cty. of Washoe*, 290 F.3d 1175, 1187 (9th Cir. 2002)) (internal
10 quotation marks omitted). "[T]he official must both be aware of facts
11 from which the inference could be drawn that a substantial risk of
12 serious harm exists, and he must also draw the inference." *Farmer v.*
13 *Brennan*, 511 U.S. 825, 837 (1994). Deliberate indifference "may
14 appear when prison officials deny, delay or intentionally interfere
15 with medical treatment, or it may be shown by the way in which prison
16 physicians provide medical care." *Colwell*, 763 F.3d at 1066 (quoting
17 *Hutchinson v. United States*, 838 F.2d 390, 394 (9th Cir. 1988)).

18 In *Colwell v. Bannister*, the Ninth Circuit held that prison
19 officials were deliberately indifferent to a serious medical condition
20 when they declined to correct an inmate's severe cataract, which was
21 causing blindness in one eye, because the inmate could see well out of
22 his other eye. *Id.* In that case, at least three medical providers
23 recommended that the inmate's cataract be treated, but treatment was
24 denied due to an administrative policy that an inmate's vision would
25 not be corrected if he could see well out of one of his eyes. *Id.* at
26 1064. The Court held that blindness in one eye as the result of a

1 cataract is a serious medical condition and that "the blanket,
2 categorical denial of medically indicated surgery solely on the basis
3 of an administrative policy that 'one eye is good enough for prison
4 inmates' is the paradigm of deliberate indifference." *Id.* at 1063.

5 In this case, Plaintiff also challenges the "one-eye" policy,
6 but he fails to demonstrate a likelihood of success on the merits
7 under the *Estelle* test. First, Plaintiff does not present evidence to
8 indicate that he has a serious medical need for new glasses. Plaintiff
9 may be legitimately experiencing some headaches and eye strain due to
10 using an old glasses prescription. The results of Plaintiff's eye
11 exams, however, indicate that his vision is not severely impaired and
12 that his old prescription is still largely effective. While new
13 glasses may be desirable and helpful to the Plaintiff, there has been
14 no evidence presented to indicate that new glasses are medically
15 necessary. *Peralta v. Dillard*, 744 F.3d 1076, 1086 (9th Cir. 2014) (en
16 banc) ("The Eighth Amendment 'requires neither that prisons be
17 comfortable nor that they provide every amenity that one might find
18 desirable.'" (quoting *Hoptowit v. Ray*, 682 F.2d 1237, 1246 (9th Cir.
19 1982))).

20 There is also insufficient evidence of deliberate medical
21 indifference on the part of the Defendants to establish a likelihood
22 of success at this time. Plaintiff had his vision tested within three
23 months of his initial complaint, subsequently made appointments with
24 and was seen by other medical staff, and ultimately saw an
25 optometrist. It also appears that other tests were conducted to rule
26 out any other potential causes of Plaintiff's symptoms. See Ex. E, ECF

1 No. 24 at 40. The delay in seeing the optometrist seems to have been
2 primarily due to the fact that the result of the initial exam
3 indicated that Plaintiff's vision was not impaired, and Plaintiff
4 presents no evidence that an optometrist would not have been available
5 more quickly to address an urgent condition. In addition, while
6 Plaintiff argues that the Defendants have failed to follow
7 recommendations of medical practitioners, Defendants adhered to the
8 recommendations by medical practitioners by giving Defendant a vision
9 examination by an optometrist, and there is no evidence of any medical
10 practitioner recommending that Plaintiff receive new glasses following
11 these examinations.

12 The care given to Plaintiff, including two vision examinations
13 and at least two other examinations by multiple medical practitioners,
14 is not the type of disregard imagined by the *Estelle* Court, and that
15 is particularly true when the Court considers the unique concerns of
16 the prison environment. *See id.* at 1082 ("What is reasonable depends
17 on the circumstances, which normally constrain what actions a state
18 official can take. . . . [The Plaintiff] rests his claim on having to
19 wait for dental care, but prisons are a particularly difficult place
20 to provide such care."). The fact that Plaintiff was ultimately not
21 given new glasses based on the results of the examinations does not
22 establish deliberate indifference.

23 **B. Irreparable Injury**

24 Plaintiff has submitted only his own assertions to support his
25 claim that he will be irreparably harmed if the Court does not grant
26 him a preliminary injunction. The only piece of evidence in the record

1 that speaks to this issue is the letter from Superintendent Uttecht to
2 Plaintiff, which states: "I was reassured that continuing to wear your
3 current glasses will not cause eye damage or worsening of your
4 vision." The results of Plaintiff's eye exams also seem to indicate
5 that there is not a serious risk of irreparable harm. The Snellen Exam
6 conducted by Defendant Deleon-Duran in April 2015 and the eye exam
7 conducted by Defendant Reidy in January 2016 both indicated that
8 Plaintiff's vision, as corrected by glasses, was not significantly
9 impaired. The first exam resulted in a finding that Plaintiff's vision
10 was not impaired at all with glasses, while the exam by the
11 optometrist found minor impairment with 20/40 vision in each eye.
12 There is no evidence at this point to indicate that those exams were
13 flawed or resulted in erroneous findings. In addition, despite
14 Plaintiff's statements to the contrary, there is no evidence in the
15 record of any medical practitioner recommending that Plaintiff be
16 given new glasses based on the results of his vision examinations.
17 Accordingly, the Court finds that there is insufficient evidence of
18 irreparable injury to justify issuance of a preliminary injunction.

19 **C. Balance of Equities and the Public Interest**

20 In considering the balance of equities and the public interest,
21 the Court notes the unique concerns of the prison environment. Prison
22 reform "is a function of state government officials," *Wright v.*
23 *Rushen*, 642 F.2d 1129, 1133 (9th Cir. 1981), and administrators are to
24 be given "wide-ranging deference in the adoption and execution of
25 policies and practices that in their judgment are needed to preserve
26 internal order and discipline and to maintain institutional security."

1 *Bell v. Wolfish*, 441 U.S. 520, 547 (1979). It is clear that "courts
2 may not institute reform programs on their own under the guise of
3 correcting cruel and unusual punishment." *Wright*, 642 F.2d at 1135.
4 These considerations weigh against the Court interfering with the
5 internal operations of a prison absent clear indication of a civil
6 rights violation.

7 In addition, as explained above, there is no evidence that new
8 glasses are medically necessary to the Plaintiff. The Court recognizes
9 that an outdated prescription may be causing Plaintiff some
10 discomfort. In addition, the cost of providing an examination to the
11 Plaintiff and providing him with new glasses may be insignificant in
12 the prison's institutional scheme, but it would likely be cost-
13 prohibitive to provide such an examination and new glasses to all
14 similarly situated inmates. The Court finds that the prison has an
15 interest in maintaining a consistent policy. In addition, due to the
16 resources and cost that would be required to change the prison's
17 glasses policy and to increase medical staffing, the Court finds that
18 the public's interest does not favor granting the requested relief at
19 this juncture.

20 **III. CONCLUSION**

21 Weighing the factors considered above, the Court finds that
22 issuance of a preliminary injunction is not appropriate. Plaintiff has
23 not demonstrated a high likelihood of success at this time. There is
24 also no evidence that an irreparable injury would result from failure
25 to grant an injunction. Based on the institutional concerns involved
26 and the fact that no medical need for new glasses has been

1 demonstrated, the Court also finds that the equities weigh in favor of
2 denying the motion.

3 Accordingly, **IT IS HEREBY ORDERED:** Plaintiff's Motion for a
4 Preliminary Injunction, **ECF No. 24,** is **DENIED.**

5 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
6 Order and provide copies to Plaintiff and all counsel.

7 **DATED** this 22nd day of December 2016.

8 s/Edward F. Shea

9 EDWARD F. SHEA

10 Senior United States District Judge