

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 ROBIN BLAKE COMBS, SR.,

9 Plaintiff,

10 v.

11 JOSEPH D. LEHMAN, et al.,

12 Defendants.

No. C08-5063 RJB/KLS

**REPORT AND RECOMMENDATION
NOTED FOR: JULY 10, 2009**

13 Before the Court is Plaintiff Robin Blake Combs' motion for a preliminary injunction.
14 Dkt. 105. Mr. Combs complains that after his transfer to the Coyote Ridge Corrections Center
15 (CRCC) in March 2009, he was denied the use of an extra mattress and medication which he was
16 previously prescribed to alleviate pain in his neck, shoulders, back and hips. *Id.*, p. 3. Mr.
17 Combs states that he is left in significant pain, which in all likelihood will worsen his condition.
18 *Id.* Plaintiff supports his motion with his affidavit (Dkt. 105-2), and the affidavits of Dale M.
19 Jensen (Dkt. 105-3) and Thomas J. Brown (Dkt. 105-4). Defendants have filed their response in
20 opposition. Dkt. 110.

21
22 After careful review of the motion, the affidavits, response, and balance of the record, the
23 undersigned recommends that the motion be denied because Mr. Combs requests relief for
24 unexhausted claims arising outside of the claims raised in his Amended Complaint.
25
26

REPORT AND RECOMMENDATION- 1

1 **I. CLAIMS AND RELIEF REQUESTED**

2 Mr. Combs is currently incarcerated at CRCC. Dkt. 105, p. 3. In his Amended
3 Complaint, Mr. Combs alleges that Defendants violated his Eighth Amendment rights regarding
4 medical care he received at Stafford Corrections Center (SCCC) in 2004. *See* Dkt. 85. The
5 Court allowed Mr. Combs to amend his complaint to include factual allegations, claims and
6 defendants relating to Grievance Log Nos. 0408978 and 0412044 only because these grievances
7 were exhausted and were not barred by the statute of limitations. Dkt. 73.
8

9 In this motion for preliminary relief, Mr. Combs complains that employees at CRCC,
10 including ARNP Jean Ryan and Grievance Coordinator Mike McCourtie, denied his request for
11 a second mattress and to renew his prescription for Baclofen based on the policies and practices
12 of CRCC. Dkt. 105-2, p. 9. Mr. Combs states that the mattress and prescription for Baclofen
13 were previously given to him when he was housed in Minnesota¹ and were used in combination
14 with his physical therapy treatments to help alleviate his pain. Dkt. 105-2, p. 9. Instead of
15 Baclofen, which is considered a Level 2 drug at CRCC, Nurse Ryan prescribed Robaxin
16 (Methocarbamol). *Id.*, p. 9. Mr. Combs was also authorized two additional pillows, an extra
17 blanket and a cervical pillow for one year. *Id.*, p. 10.
18

19 Mr. Combs filed a grievance (Log No. 0905223) and is presently awaiting a response to
20 his appeal of that grievance on this issue. *Id.*, pp. 9-10. Mr. Combs believes that even if his
21 appeal of his issue should prove favorable, “in the interim, [he] will be left in significant pain
22 and in all likelihood, providing an opportunity for my affliction to once again become acute and
23 the pain to become intolerable.” *Id.*, p. 10.
24

25
26 ¹ From July 2, 2004 until March 2, 2009, Mr. Combs was housed in out of state facilities, at Crowley County
Correctional Facility (CCCF) in Colorado, North Fork Correctional Facility (NFCF) in Oklahoma, and Prairie
Correctional Facility (PCF) in Minnesota. Dkt. 105-2, pp. 5-6.

1 Mr. Combs requests that the Court order the Defendants to immediately (1) provide him
2 with all medications, supplies and products which he was previously given, (2) immediately
3 place him in a facility appropriate to his custody level where he can be provided with such
4 medications, supplies and products and where he can see a physical therapist at least twice per
5 week, (3) expediently arrange for Plaintiff to be evaluated by a health care practitioner with
6 expertise in the diagnosis and treatment of muscular or neurological disorders and/or pain
7 disorders or pathologies, (4) to immediately schedule and conduct all tests, techniques,
8 procedures, and/or ancillary appointments deemed necessary by such practitioners determined
9 necessary to correctly diagnose and treat his condition; and (5) to immediately purchase all
10 medications, supplies and products recommended by such practitioners necessary to alleviate
11 and/or cure his pain. *Id.*, p. 4.

12 **II. STANDARD OF REVIEW**

13
14
15 Under the Prison Litigation Reform Act, 18 U.S.C. § 3626 (PLRA), a plaintiff is not
16 entitled to prospective relief unless the court enters the necessary findings required by the Act:

17 The court shall not grant or approve any prospective relief unless the court finds
18 that such relief is narrowly drawn, extends no further than necessary to correct the
19 violation of a Federal right, and is the least intrusive means necessary to correct
20 the violation of the Federal right. The court shall give substantial weight to any
adverse impact on public safety or the operation of a criminal justice system
caused by the relief.

21 18 U.S.C. § 3626(a)(1)(A) (emphasis added).

22 In civil rights cases, injunctions must be granted sparingly and only in clear and plain
23 cases. *Rizzo v. Goode*, 423 U.S. 362, 378 (1976). This holding applies even more strongly in
24 cases involving the administration of state prisons. *Turner v. Safley*, 482 U.S. 78, 85, 107 S. Ct.
25 2254 (1987). “Prison administration is, moreover, a task that has been committed to the
26 responsibility of those [executive and legislative] branches and separation of powers concerns

1 counsels a policy of judicial restraint. Where a state penal system is involved, federal courts
2 have . . . additional reason to accord deference to the appropriate prison authorities.” *Id.*

3 The purpose of preliminary injunctive relief is to preserve the status quo or to prevent
4 irreparable injury pending the resolution of the underlying claim. *Sierra On-line, Inc. v. Phoenix*
5 *Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). When seeking injunctive relief, the moving
6 party must show either (1) a likelihood of success on the merits and the possibility of irreparable
7 injury or (2) the existence of serious questions going to the merits and the balance of hardships
8 tipping in [the movant’s] favor.” See *Nike, Inc. v. McCarthy*, 379 F.3d 576, 580 (9th Cir.
9 2004)(quoting *Gilder v. PGA Tour, Inc.*, 936 F.2d 417, 422 (9th Cir. 1991)) (internal quotations
10 omitted). “These two alternatives represent extremes of a single continuum, rather than two
11 separate tests. Thus, the greater the relative hardship to [the movant], the less probability of
12 success must be shown.” See *Walczak v. EPL Prolong, Inc.*, 198 F.3d 725, 731 (9th Cir. 1999)
13 (internal quotations omitted). Under either test, the movant bears the burden of persuasion.
14 *Mattel, Inc. v. Greiner & Hausser GmbH*, 354 F.3d 857, 869 (9th Cir. 2003).

17 III. DISCUSSION

18 Mr. Combs was granted leave to amend his complaint to include allegations relating to
19 Log Nos. 0408978 and 0412044 only because these grievances had been exhausted and were not
20 barred by the statute of limitations. Dkt. 73. Mr. Combs now attempts to raise new unexhausted
21 claims that are not raised in his Amended Complaint against unnamed parties over whom this
22 Court has no jurisdiction. See 42 U.S.C. § 1997e(a); *Booth v. Churner*, 532 U.S. 731, 738-40
23 (2001) (Before a plaintiff can pursue a civil action with respect to prison conditions, he must
24 exhaust the administrative remedies that are available.).
25
26

1 Mr. Combs does not allege that any **of the named Defendants** are in any way failing to
2 provide him with adequate medical care or refusing to provide him with medical care. Rather,
3 his complaints are with personnel of CRCC. This Court does not have jurisdiction over any staff
4 at CRCC as they are not parties to this lawsuit. See, e.g., *Jackson v. Hayakawa*, 682 F.2d 1344,
5 1347 (9th Cir. 1982) (defendant must be served in accordance with Fed. R. Civ. P. 4 or court has
6 no personal jurisdiction over that defendant).
7

8 The Court notes for Mr. Combs' information, that it has no authority to order that state
9 officials transfer prisoners to other facilities. Inmates have no right to placement in a particular
10 correctional institution. See, *Meachum v. Fano*, 427 U.S. 215, 225 (1976).

11 CONCLUSION

12 For the foregoing reasons, the undersigned recommends that the Court **DENY** Mr.
13 Combs' motion for preliminary injunction. Dkt. 105.

14 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil
15 Procedure, the parties shall have ten (10) days from service of this Report to file written
16 objections. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those
17 objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the
18 time limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on **July**
19 **10, 2009**, as noted in the caption.
20

21 DATED this 17th day of June, 2009.
22

23
24 
25 Karen L. Strombom
26 United States Magistrate Judge