

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Faunce v. Bick

No. 1:25-cv-00006-KES-EPG (PC) (E.D. Cal. July 17, 2025) · No. 1:25-cv-00006-KES-EPG (PC) · Decided
July 17, 2025

SUMMARY

The document contains findings and recommendations recommending denial of David Faunce’s motion for a preliminary injunction in a 42 U.S.C. § 1983 action concerning alleged denial of medical treatment and orthotic devices. The court concluded that Plaintiff had not shown a likelihood of success on the merits or likely irreparable harm, and had not adequately supported the remaining preliminary-injunction factors. Objections were due within thirty days.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	July 17, 2025
DOCKET	1:25-cv-00006-KES-EPG (PC)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff, proceeding pro se and in forma pauperis under 42 U.S.C. § 1983, moved for a preliminary injunction. A magistrate judge issued findings and recommendations recommending denial of the motion, subject to objections and review by the assigned district judge.
STANDARD OF REVIEW	A preliminary injunction requires the movant to establish likelihood of success on the merits, likely irreparable harm absent relief, that the balance of equities tips in the movant's favor, and that an injunction is in the public interest. Under the Prison Litigation Reform Act, prospective relief in a prison case must be narrowly drawn, extend no further than necessary to correct the federal-rights violation, and be the least intrusive means necessary.
PRECEDENTIAL VALUE	Nonprecedential findings and recommendations; subject to review and adoption, modification, or rejection by the assigned district judge.
PARTIES	David W. Faunce v. Joseph Bick, R. Recary, H. Longia, J. Mevi, James Chau

TOPICS

injunctions

prisoners rights

section 1983

health law

civil procedure

PRACTICE AREAS

civil rights

prisoner civil rights

preliminary injunctions

medical deliberate indifference

QUESTIONS PRESENTED

1. Whether Faunce established the requirements for a preliminary injunction based on his claims of deliberate indifference to serious medical needs.
2. Whether the requested injunction could issue when the court had screened the complaint and found no cognizable deliberate-indifference claim and when the requested relief was not supported by evidence of likely irreparable harm.
3. Whether the requested prospective prison relief complied with the Prison Litigation Reform Act's narrow-tailoring and least-intrusive-means requirements.

HOLDINGS

1. Plaintiff did not establish a likelihood of success on the merits, likely irreparable harm, or the remaining preliminary-injunction factors; therefore, his motion for a preliminary injunction should be denied.
2. A federal court may not issue injunctive relief concerning claims not pleaded in the complaint or persons not before the court through personal and subject-matter jurisdiction.

KEY QUOTATIONS

“A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” (at 3)

“Under Winter, plaintiffs must establish that irreparable harm is likely, not just possible, in order to obtain a preliminary injunction.” (at 3)

“When a plaintiff seeks injunctive relief based on claims not pled in the complaint, the court does not have the authority to issue an injunction.” (at 3)

“relief [sought] is narrowly drawn, extends no further than necessary to correct the violation of the Federal Right, and is the least intrusive means necessary to correct the violation of the Federal Right.” (at 3)

FACTUAL BACKGROUND

Faunce alleged that California Department of Corrections and Rehabilitation employees denied him orthotic shoes, nasal sprays, and inhalers under a purported cost-reduction policy and were deliberately indifferent to his serious medical needs. He sought an order preventing defendants from cancelling, changing, delaying, or denying currently prescribed medications or devices for nonmedical or prison-policy reasons. His declaration

described congestion and mucosal drip after denial of certain nasal sprays, but also stated that he had received Azelastine and Singulair and a substitute for Nasacort.

PROCEDURAL HISTORY

Faunce filed his § 1983 complaint on January 3, 2025, alleging deliberate indifference to serious medical needs based on denial or alteration of orthotic shoes and respiratory medications. He moved for a preliminary injunction on January 22, 2025. The court later screened the complaint, found no cognizable claims, granted leave to amend, and granted extensions of time; no amended complaint had been filed as of the findings and recommendations. The magistrate judge recommended denying the preliminary-injunction motion.

DISPOSITION

other

REMAND INSTRUCTIONS

The findings and recommendations were submitted to the assigned United States District Judge for review. Any objections were due within thirty days; the magistrate judge recommended that the motion for preliminary injunction be denied.

CASES CITED

- Glossip v. Gross, 576 U.S. 863, 876 (2015)
- Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 20 (2008)
- Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131 (9th Cir. 2011)
- Zepeda v. U.S. I.N.S., 753 F.2d 719, 727 (9th Cir. 1985)
- Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 350 (1999)
- Pacific Radiation Oncology, LLC v. Queen's Medical Center, 810 F.3d 631, 633 (9th Cir. 2016)
- Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)
- Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)

OPINION

1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 EASTERN DISTRICT OF CALIFORNIA
9 10 DAVID W. FAUNCE, Case No. 1:25-cv-00006-KES-EPG (PC) 11 Plaintiff, FINDINGS
AND RECOMMENDATIONS 12 RECOMMENDING THAT PLAINTIFF’S v. MOTION FOR
PRELIMINARY INJUNCTION 13 BE DENIED BICK, et al., 14 (ECF No. 7) Defendants. 15
OBJECTIONS, IF ANY, DUE WITHIN THIRTY (30) DAYS 16 17 Plaintiff David Faunce
(Plaintiff) is proceeding pro se and in forma pauperis in this 18 civil rights action filed pursuant to
42 U.S.C. § 1983.

Plaintiff alleges that California 19 Department of Corrections and Rehabilitation (“CDCR”) employees were deliberately 20 indifferent to his serious medical needs by denying him orthotic

shoes, nasal sprays, and 21 inhalers under a cost reduction policy. 22 Before the Court is Plaintiff's motion for a preliminary injunction where Plaintiff seeks 23 an order preventing Defendants from denying him any currently prescribed medication.

24 Upon review, the Court recommends that Plaintiff's motion for preliminary injunction 25 be denied. 26 I. BACKGROUND 27 Plaintiff filed a complaint on January 3, 2025, and named Joseph Bick, R. Recary, H. 28 Longia, J. Mevi, and James Chau as defendants. (ECF No. 1). Plaintiff claims he was denied 1 orthotics and breathing medication in the form of nasal sprays and inhalers based on "a 2 purported cost-reduction policy." (Id at p. 1).

Plaintiff also alleges that Defendant Dr. Chau 3 negligently prescribed two "contra-indicated" medication for his prostate. (Id. at p. 10). 4 Plaintiff alleges that Defendants enacted an unconstitutional policy and were deliberately 5 indifferent to his serious medical needs. 6 On January 22, 2025, Plaintiff filed a motion for preliminary injunction. (ECF No. 7).

7 Plaintiff seeks an order prohibiting Defendants "from cancelling out, changing, delaying 8 dispensing of any currently prescribed medication or device related to Plaintiff's diagnosed 9 orthopedic, respiratory or cardiac diseases for any non-medical reason and/or prison policy 10 without prior notice to Plaintiff (sic)." (Id. at p. 1). Plaintiff specifically seeks an order 11 preventing Defendants from "cutting off" Plaintiff's access to orthopedic shoes and respiratory 12 medication.

(Id. at p. 4). In support of his motion for preliminary injunction, Plaintiff submits 13 his own declaration. (ECF No. 7, Faunce Declaration). Plaintiff states he has a constant flow 14 of mucosal drip and chest congestion after being denied Azelastine, Nasacort nasal sprays, and 15 Singulair. (Id. ¶¶ 4-5). 16 II. SCREENING ORDER 17 On April 4, 2025, this Court screened Plaintiff's complaint and found that Plaintiff 18 failed to state any cognizable claims and granted Plaintiff leave to amend.

(ECF No. 9). The 19 Court reviewed each of Plaintiff's claims and found that Plaintiff had failed to allege factual 20 allegations sufficient to state a claim against Defendants for deliberate indifference to serious 21 medical need. 22 First, this Court found that Plaintiff's claims against Dr. Chau for denying his 23 prescriptions for nasal sprays and inhalers failed to state a claim.

In the screening order, this 24 Court explained: "According to Plaintiff, Dr. Chau initially treated his COPD with a 25 prescription for Azelastine. Although he initially did not prescribe Singulair, he provided a 26 medical reason for failing to do so, and eventually prescribed Singulair as well following the 27 hospital's instructions.

As for Nasacort, Dr. Chau eventually provided a medical reason—that 28 the Pharmacist didn't recommend using Azelastine with Nasacort—and later provided an 1 effective alternative. While Plaintiff also alleges that for some time Dr. Chau told Plaintiff to 2 use saline nasal spray at the

canteen due to ‘something about the state budget crisis,’ this alone is not sufficient to indicate deliberate indifference to serious medical needs.” (ECF No 7 at p. 4 10).

5 This Court also found Plaintiff failed to state a claim against Defendants Recary, 6 Longia, or Mevi because Plaintiff’s allegations were conclusory and lacked factual allegations. 7 The Court found Plaintiff “does not allege that he saw any document or heard any statement 8 indicating that these individuals told Dr. Chau to cancel these prescriptions. He does not allege 9 that Dr. Chau told Plaintiff this.

On the contrary, his first specific allegation regarding Dr. Chau 10 is that ‘On or about 3/14/24, Defendant Chau issued a prescription for Azelastine only,’ which 11 is inconsistent with Plaintiff’s allegation that Dr. Chau was told by three supervisors to cancel 12 that prescription.

Moreover, as described above, Dr. Chau told Plaintiff that he was not 13 prescribing Singulair because it was ‘contra-indicated for use with the “Asamax” Inhaler,’ and 14 not because he had been told to cancel the prescription by Recary, Longia or Mevi.

Thus, this 15 statement appears to be Plaintiff’s speculation regarding Recary, Longia and Mevi’s role and 16 not a factual allegation based on Plaintiff’s knowledge and observation.” (ECF No. 7 at p. 11). 17 This Court also found “Plaintiff does not allege any facts indicating that Defendant Bick 18 had any role in denying Plaintiff any medication” nor did Plaintiff “allege any facts indicating 19 that Dr. Bick was aware of Plaintiff’s complaints or had any role in addressing those 20 complaints.” (ECF No. 7 at p. 12).

21 Additionally, this Court found Plaintiff did not state a cognizable claim based on his 22 allegation he was denied orthotics. This Court found that “Plaintiff does not name any 23 individual defendant who purposefully failed to treat this medical need. His only allegation of a 24 specific interaction with a medical professional is with Dr. Showalter.

However, Dr. Showalter 25 is not named as a defendant in Plaintiff’s complaint.” (ECF No. 7 at p. 14). Additionally, the 26 Court found Plaintiff failed to allege facts to support his contention that therapeutic shoes were 27 medically necessary. (Id. at p. 15). 28 1 This Court also found Plaintiff did not state a claim against Dr. Chau for providing 2 contra-indicated medication for Plaintiff’s prostate.

The Court found that the urologist who is 3 alleged to have prescribed the medication is not a named defendant. (ECF No 7 at p. 15). 4 Further, “Plaintiff’s allegations as to Dr. Chau indicate that Dr. Chau addressed Plaintiff’s 5 concerns. Indeed, they show that Dr. Chau responded to a concern about Plaintiff’s PSA score 6 and independently sought out Plaintiff to address the issue.” (Id. at p. 16).

7 On April 22, 2025, Plaintiff requested a 60-day extension to amend his complaint, 8 which this Court granted. (ECF Nos. 10 and 11). Plaintiff filed a second request for extension 9 of time to amend his complaint, which this Court granted with a warning that no further 10 extensions would be granted for this deadline. (ECF Nos. 12 and 14). 11 III. LEGAL STANDARD 12 Under Federal Rule of Civil Procedure 65(a)(1), a Court “may issue a preliminary 13 injunction only on notice to the adverse party.” Fed.

R. Civ. P. 65(a)(1). “A plaintiff seeking a 14 preliminary injunction must establish that he is likely to succeed on the merits, that he is likely 15 to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips 16 in his favor, and that an injunction is in the public interest.” *Glossip v. Gross*, 576 U.S. 863, 17 876 (2015) (quoting *Winter v. Natural Res.*

Def. Council, Inc., 555 U.S. 7, 20 (2008)). “Under 18 *Winter*, plaintiffs must establish that irreparable harm is likely, not just possible, in order to 19 obtain a preliminary injunction.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 20 1131 (9th Cir. 2011). 21 “A federal court may issue an injunction if it has personal jurisdiction over the parties 22 and subject matter jurisdiction over the claim; it may not attempt to determine the rights of 23 persons not before the court.” *Zepeda v. U.S. I.N.S.*, 753 F.2d 719, 727 (9th Cir.

1983); see 24 *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999) (noting that one 25 “becomes a party officially, and is required to take action in that capacity, only upon service of 26 summons or other authority-asserting measure stating the time within which the party served 27 must appear to defend”). “When a plaintiff seeks injunctive relief based on claims not pled in 28 1 the complaint, the court does not have the authority to issue an injunction.” *Pac.*

Radiation 2 Oncology, LLC v. Queen’s Med. Ctr., 810 F.3d 631, 633 (9th Cir. 2015). 3 Requests for prospective relief are further limited by 18 U.S.C. § 3626(a)(1)(A) of the 4 Prison Litigation Reform Act, which requires that the Court find that the “relief [sought] is 5 narrowly drawn, extends no further than necessary to correct the violation of the Federal Right, 6 and is the least intrusive means necessary to correct the violation of the Federal Right.” 7 IV.

ANALYSIS 8 The Court recommends that Plaintiff’s motion for preliminary injunction be denied. 9 In his motion for preliminary injunction, Plaintiff relies on allegations from his complaint. 10 Specifically, Plaintiff argues that Defendants enacted a cost-reduction policy that denies 11 Plaintiff orthotics and breathing medication. Plaintiff asserts that he has demonstrated 12 “probable success on the merits” because “he demonstrates both elements of deliberate 13 indifference to serious medical needs.” (ECF No. 7 at p. 5).

14 However, this Court screened Plaintiff’s complaint and found that Plaintiff had failed to 15 state a cognizable claim for deliberate indifference to serious medical needs. (ECF No. 9). As 16 of the date of this order, Plaintiff has not filed an amended complaint.

For the reasons provided 17 in that screening order, as set forth above, Plaintiff has not established a likelihood of success 18 on the merits. 19 Plaintiff also relies on his complaint for his argument that he will suffer irreparable 20 injury. Plaintiff does not provide any other support to establish irreparable harm. Further, in 21 his declaration, Plaintiff states that he has been provided Azelastine and Singulair, two of the 22 medication he alleges is necessary to address his chest congestion, and Plaintiff states he has 23 been provided a substitute for Nasacort.

(ECF No. 7, Faunce Declaration ¶ 8). Plaintiff's 24 statements undermine his contention that he will suffer irreparable harm without injunctive 25 relief. Plaintiff also does not provide any support for his contention that the balance of equities 26 weighs in his favor and that an injunction is in the public interest. 27 The Court thus recommends that Plaintiff's motion for preliminary injunction be denied.

28 \\\ 1 CONCLUSION AND RECOMMENDATION 2 Accordingly, IT IS RECOMMENDED that: 3 1. Plaintiff's motion for preliminary injunction (ECF No. 7) be DENIED. 4 These findings and recommendations are submitted to the United States District Judge 5 [] assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(). Within thirty days 6 || after being served with these findings and recommendations, any party may file written 7 || objections with the court.

Such a document should be captioned "Objections to Magistrate 8 || Judge's Findings and Recommendations." Any objections shall be limited to no more than 9 || fifteen pages, including exhibits. Any reply to the objections shall be served and filed within 10 || fourteen days after service of the objections. 11 The parties are advised that failure to file objections within the specified time may 12 || result in the waiver of rights on appeal.

Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 13 || 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)). 14 15 IT IS SO ORDERED. 16 ll Dated: _ July 17, 2025 [Je hey — 17 UNITED STATES MAGISTRATE JUDGE 18 19 20 21 22 23 24 25 26 27 28