

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Paul David Carr v. Cueva, et al.

No. 2:24-cv-1680 DJC AC P (E.D. Cal. Dec. 11, 2025) · No. No. 2:24-cv-1680 DJC AC P · Decided December
11, 2025

OPINION

Cueva

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 PAUL DAVID CARR, No. 2:24-cv-1680 DJC AC P

12 Plaintiff,

13 v. ORDER AND FINDINGS AND

RECOMMENDATIONS

14 CUEVA, et al., 15 Defendants. 16 17 Plaintiff is proceeding without counsel in this civil rights
action. Pending before the court 18 are plaintiff’s motions for a protective order or injunction and
for an extension of time to file a 19 notice of election. ECF Nos. 52, 53. 20 I. Background 21 The
court has previously screened three complaints and ruled on three motions for 22 temporary
restraining orders and/or preliminary injunctions, three requests for rulings, a motion 23 for
reconsideration, two motions to appoint experts, and a motion for a stay. ECF Nos. 11, 12, 24 22,
27, 37, 38, 44, 45, 51. The court has also granted six motions for extensions of time. ECF
25 Nos. 16, 20, 24, 30, 33, 41.

26 A. Screening Order on Third Amended Complaint 27 Upon screening of the TAC, the
undersigned found that plaintiff had sufficiently stated an 28 Eighth Amendment an Eighth
Amendment claim of deliberate indifference to plaintiff’s 1 nutritional needs against defendants
Patterson, Dail, Rodriguez, and Sandoval; ADA and RA 2 claims against defendant CMF and
defendant Patterson in her official capacity; and a First 3 Amendment retaliation claim and Fourth
Amendment unlawful search claim against defendant 4 Silva. ECF No. 44 at 5-6. The allegations
in the TAC, however, were insufficient to state 5 “§ 1983 claims against defendants Patterson,
Dail, Rodriguez, Sandoval or Silva in their official 6 capacities; an Eighth Amendment claim for
deliberate indifference to plaintiff’s nutritional needs 7 against defendant Rodriguez based on
conduct in August 2023; an Eighth Amendment claim for 8 deliberate indifference to plaintiff’s
risk of contracting COVID-19 against defendant Dail; a 9 Fourteenth Amendment conditions of
confinement claim; a Fourteenth Amendment Equal 10 Protection Clause claim against defendant

Silva; conspiracy claims under 42 U.S.C. § 1985(2) 11 and (3) against any defendant; and any state law claims.” Id. at 6. 12 Plaintiff filed objections to the magistrate judge’s screening order objecting to the extent 13 the magistrate judge found he failed to state an Eighth Amendment claim for deliberate 14 indifference to plaintiff’s risk of contracting COVID-19 against defendant Dail and conspiracy 15 claims under 42 U.S.C. § 1985(2) and/or § 1985(3). ECF No. 46 at 1-5. He also objected to the 16 order claiming the court failed to acknowledge his argument on controlling United States 17 Supreme Court and Ninth Circuit Court case law. Id. at 2, 7. 18 The district judge construed plaintiff’s objections to the screening order as request for 19 reconsideration of the magistrate judge’s screening order of the TAC. ECF No. 51 at 3. The 20 district judge affirmed the magistrate judge’s screening order and ordered that the plaintiff may 21 either (1) proceed with the TAC as screened in Section III of the magistrate judge’s screening 22 order, or (2) file a Fourth Amended Complaint for the limited purpose of re-alleging the 23 cognizable claims identified by the magistrate judge and reincorporate his request for injunctive 24 relief, which was no longer stated in the TAC. ECF No. 51 at 3-5. 25 B. Ruling on Plaintiff’s Third Motion for Temporary and/or Preliminary Injunctive Relief 26 27 The undersigned recommended that plaintiff’s third motion for a temporary restraining 28 order and/or preliminary injunction be denied because the court lacks authority to grant 1 preliminary injunctive relief. ECF No. 45 at 5-6. The court explained, “[i]njunctive relief is not 2 ‘of the same character’ as the monetary relief that would be granted finally if plaintiff were to 3 succeed on his claims in the TAC.” Id. at 6. The undersigned further recommended the motion 4 be denied because, even if the court had authority to do so, plaintiff failed to put forth sufficient 5 evidence to establish a likelihood of irreparable harm. Id. at 6-10. 6 Plaintiff filed objections asserting that his original E-Filing complaint included a request 7 for injunctive relief and that he disagreed that he failed to show a likelihood of irreparable harm. 8 ECF No. 46 at 2, 5-7. 9 The district judge adopted the magistrate judge’s findings and recommendations in full, 10 denying plaintiff’s third motion for a temporary restraining order and/or preliminary injunction. 11 ECF No. 51 at 3-4. The court also informed plaintiff that if he wants to seek injunctive relief in 12 this action, he must state so in a Fourth Amended Complaint. Id. at 3 n.1. 13 II. Motion for Injunctive Relief 14 Plaintiff’s present motion for a protective order or injunction asks the court “to issue an 15 order prohibiting CMF from transferring Plaintiff, with the exception of medical emergency, for 16 the duration of litigation on this instant matter.” ECF No. 52 at 2. In support of his request, 17 plaintiff explains that in 2021, after he filed a civil rights claim against a different facility, he was 18 a victim of retaliatory transfers; that in 2022, he was put in harm’s way after a retaliatory transfer; 19 and that inmates at California Medical Facility (“CMF”) have informed him that other CMF 20 inmates have been transferred in retaliation for their litigation. Id. at 1. Plaintiff also argues that 21 a transfer from CMF would “frustrate,” “impede,” and “hamper” his litigation efforts “to a point 22 of futility,” and that the decision on this request will impact his decision on how to proceed with 23 this action. Id. at 2-3. 24 The undersigned construes plaintiff’s motion for a protective order or injunction as a 25 fourth motion

for preliminary injunctive relief. For the reasons stated below, the undersigned 26 recommends that the motion be denied. 27 The court has thrice stated the legal standard for a temporary restraining order and/or 28 preliminary injunctive relief in this case. See ECF No. 11 at 2-3; ECF No. 27 at 3-4; ECF No. 45 1 at 4-5. As such, it will not repeat it here and will instead refer plaintiff to its prior findings and 2 recommendations. Id. 3 Plaintiff's motion should be denied because the court lacks authority to grant injunctive 4 relief in this action. As the court previously explained, courts have authority to grant relief 5 requested in a motion for a preliminary injunction if there is "a sufficient nexus between the 6 claims raised in a motion for injunctive relief and the claims set forth in the underlying complaint 7 itself." *Pac. Radiation Oncology, LLC, v. Queen's Med. Ctr.*, 810 F.3d 631, 636 (9th Cir. 2015). 8 The nexus between the two is "sufficiently strong where the preliminary injunction would grant 9 'relief of the same character as that which may be granted finally.'" Id. (citation omitted) 10 (emphasis added). In denying plaintiff's third motion for temporary or preliminary relief, 11 plaintiff was advised that in order to seek injunctive relief in this action, he must amend the 12 complaint to reincorporate his request for injunctive relief. ECF No. 51 at 3 n.1. He cannot seek 13 monetary relief in the operative complaint and injunctive relief in his motion. See ECF No. 45 at 14 5-6 (collecting cases). Because plaintiff has not filed a Fourth Amended Complaint that seeks 15 injunctive relief, the court lacks authority to grant the relief he seeks by motion. 16 Moreover, even if plaintiff files a Fourth Amended Complaint seeking injunctive relief, 17 the court lacks authority to grant the relief he seeks in his fourth motion for a preliminary 18 injunction. As noted above, the TAC states claims for deliberate indifference to plaintiff's 19 nutritional needs against defendants Patterson, Dail, Rodriguez, and Sandoval, violations of the 20 Americans with Disability Act and Rehabilitation Act against defendants CMF and Patterson, and 21 retaliatory and unlawful search claims against defendant Silva. The TAC does not allege any 22 claims of retaliatory transfer by any of the named defendants, nor has plaintiff been granted leave 23 to amend his claims. ECF No. 51 at 3-5. "[T]he mere fact that Plaintiff's believes that any 24 transfer would be retaliatory in nature, does not create a sufficient connection to the claims at 25 issue in this action." See *Mundy v. Sacramento*, No. 1:23-cv-0401 ADA SAB PC, 2023 WL 26 4105246, at *1, 2023 U.S. Dist. LEXIS 106381, at*3-4 (E.D. Cal. June 20, 2023) (the operative 27 complaint alleged claims for inadequate nutrition and inadequate medical care). 28 Because there is not a sufficient nexus between the claims raised in the motion (retaliatory 1 transfer) and the cognizable claims that the court has stated may proceed in this action, the court 2 cannot grant the relief he seeks. See *Sykes v. Galindo*, No. 1:23-cv-1770 KES EPG P, 2025 WL 3 2639851, at *2, 2025 U.S. Dist. LEXIS 180495, at *4 (E.D. Cal. Sept. 15, 2025) (plaintiff's 4 contention in the motion for injunctive relief "that the transfer was retaliatory is insufficiently 5 substantiated and untethered to the retaliation claim in this case—which concerns specific actions 6 taken by defendants after plaintiff filed grievances"); *Dalke v. Clark*, No. 1:20-cv-0534 AWI 7 SAB P, 2022 WL 538966, at *2, 2022 U.S. Dist. LEXIS 32189, at *5-6 (E.D. Cal. Feb. 23, 2022) 8 ("the Court lacks jurisdiction to issue an

order directing prison official to stop a transfer of 9 Plaintiff to a different location based on alleged retaliation because it does not involve the same 10 case or controversy before the Court which involves claims of deliberate indifferent [sic] against 11 Defendants Cardona, Ramos, Alcantar, Vera, and Fugate.”). 12 Finally, even if the court did have jurisdiction to enter an order, plaintiff has no 13 substantive right to be incarcerated at a particular correctional facility or to be or not be 14 transferred from one facility to another one. See *Meachum v. Fano*, 427 U.S. 215, 224-25 (1976). 15 Accordingly, plaintiff’s fourth motion for preliminary injunctive relief should be denied. 16

III. Motion for Extension of Time and Clarification 17 Plaintiff motion for extension of time seeks a second extension of time to inform the court 18 whether he would like to proceed on the TAC as screen or amend. ECF No. 53 at 1. Plaintiff 19 explains he seeks this extension to allow the court to rule on his motion for protective order, 20 which will inform how he chooses to proceed, and to allow him time to make this critical 21 decision. *Id.* at 1-2. 22 Good cause appearing, the court will grant plaintiff’s second motion for an extension of 23 time. Plaintiff will be given thirty days from the day of the district judge’s ruling on the findings 24 and recommendations regarding his fourth motion for preliminary injunctive relief (ECF No. 52), 25 to inform the court whether he would like to proceed on the TAC as screened, or file a Fourth 26 Amended Complaint for the limited purpose of re-alleging the cognizable claims identified in the 27

28 1 TAC and adding back in his request for injunctive relief.¹ Because this case has been prolonged 2 by plaintiff’s numerous motions, including motions for extensions of time, absent extraordinary 3 circumstances, the court will not grant further extensions of time. 4 Plaintiff’s motion for an extension of time also seeks clarification on the issue of the 5 court’s failure to address the controlling Supreme Court and Ninth Circuit case law on the issue 6 of a prisoner’s right “to receive food over Title 15’s verbage [sic] to ‘provide’ food.” ECF No. 7 53. It appears plaintiff is referring to the Supreme Court decision in *Farmer v. Brennan*, 511 U.S. 8 825 (1994), and the Ninth Circuit Court of Appeals decision *Foster v. Runnels*, 554 F.3d 807 (9th 9 Cir. 2009), which he cited in Attachment A of his complaint and raised in his objections to the 10 court’s screening order. See ECF No. 42 at 9; ECF No. 46 at 7. 11 Plaintiff is informed that (1) the court does not need to take judicial notice of relevant case 12 law, and (2) the court did consider *Farmer* and *Foster* in screening in his Eighth Amendment 13 claims against defendants Patterson, Dail, Rodriguez, and Sandoval. See ECF No. 44 at 5, 19. 14 Accordingly, no further consideration is necessary. 15 Plaintiff is also informed that although the court referred to meals being “provided in the 16 dining hall” when summarizing plaintiff’s allegations, it did not “adopt” the verbiage of Title 15 17 or CDCR HC-DOM, or otherwise suggest that it was applying the standard provided in California 18 regulations or CDCR’s operational manual instead of the Eighth Amendment deliberate 19 indifference standard. Indeed, the court screened out any claims based on state law regulations 20 and or the CDCR DOM. See *Id.* at 10. If plaintiff proceeds with the TAC as screened or 21 realleges his inadequate nutrition claims in the Fourth Amended Complaint, those claims are 22 properly analyzed under the Eighth Amendment case law, which

includes Farmer and Foster. 23 //// 24 //// 25 //// 26 //// 27 1 Plaintiff has not been given leave
amend any of the claims in the TAC, nor to add new claims. 28 See ECF No. 51 at 3-5. 1 IV.
Conclusion 2 For the foregoing reasons, IT IS HEREBY ORDERED that: 3 1. Plaintiff's motion
for extension of time (ECF No. 53) is GRANTED. 4 2. Within thirty days from the day of the
district judge's ruling on the motion for 5 preliminary injunctive relief (ECF No. 52), plaintiff
shall inform the court whether he 6 would like to proceed with the TAC as screened or file a
Fourth Amended Complaint 7 to re-allege the cognizable claims identified by the court in the TAC
and reincorporate 8 his request for injunctive relief. 9 3. If plaintiff does not inform the court of
his decision within the time provided, the court 10 will assume that he is choosing to proceed on
the TAC as screened and will 11 recommend dismissal without prejudice of plaintiff's § 1983
claims against defendants 12 Patterson, Dail, Rodriguez, Sandoval or Silva in their official
capacities; Eighth 13 Amendment claim for deliberate indifference to adequate nutrition against
defendant 14 Rodriguez based on his conduct in August 2023; Eighth Amendment claim for 15
deliberate indifference to plaintiff's risk of contracting COVID-19 against defendant 16 Dail;
Fourteenth Amendment conditions of confinement claim; Fourteenth 17 Amendment Equal
Protection Clause claim against defendant Silva; conspiracy claims 18 under 42 U.S.C. § 1985(2)
and (3) and state law claims against all defendants. 19 Plaintiff will also be unable to pursue
temporary, preliminary, or permanent injunctive 20 relief in this action. 21 IT IS FURTHER
RECOMMENDED that plaintiff's motion for a preliminary injunction 22 (ECF No. 52) be
construed as a motion for temporary and/or preliminary injunctive relief and be 23 denied. 24
These findings and recommendations are submitted to the United States District Judge 25
assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
26 after being served with these findings and recommendations, any party may file written 27
objections with the court and serve a copy on all parties. Such a document should be captioned 28
"Objections to Magistrate Judge's Findings and Recommendations." Any response to the 1 |
objections shall be served and filed within fourteen days after service of the objections. The 2 ||
parties are advised that failure to file objections within the specified time may waive the right to 3
|| appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991). 4 | DATED:
December 11, 2025
ALLISON CLAIRE
6 UNITED STATES MAGISTRATE JUDGE
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28