

FILED

OCT 2 1991

CLERK, U. S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RALPH COLEMAN, et al.,

Plaintiffs,

No. CIV S-90-0520 LKK JFM P

vs.

PETE WILSON, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

This matter is before the court on plaintiffs' motion for a preliminary injunction.^{1/} Plaintiffs seek an injunction requiring defendants to (1) implement at all state prisons except California Medical Facility - Main ("CMF"), the Northern Reception Center ("NRC") and San Quentin^{2/} a temporary hot weather emergency plan similar to that now in use at the California Medical Facility ("CMF"); (2) provide this court and plaintiffs' counsel with a

^{1/}This court has separately recommended that this action proceed as a class action.

^{2/}Inmates at these institutions are not included within the proposed class.

102

1 declaration certifying that such temporary plans are in effect at
2 all covered prisons; and (3) adopt a final comprehensive emergency
3 hot weather plan. Plaintiffs also ask the court to appoint a
4 special master to monitor compliance with the temporary and final
5 hot weather emergency plans.

6 BACKGROUND

7 This motion was originally filed on August 1, 1991 and set
8 for hearing on August 29, 1991. At the time set for hearing,
9 defendants filed a memorandum dated August 27, 1991, from the
10 Deputy Director of the Institutions Division of the California
11 Department of Corrections ("CDC") and the Assistant Deputy Director
12 of Health Care Services for CDC addressed to wardens, chief medical
13 officers and chief psychiatrists at institutions within CDC. The
14 subject of the memorandum was "Prevention of Heat-Related
15 Pathologies Plan." The memorandum directed all the addressees to
16 "intitiate the subject plan at your institution and to incorporate
17 the following policies into your plan."

18 Due to the filing of the memorandum and the evidence of
19 defendants' apparent efforts to implement at least a temporary
20 emergency hot weather plan, the court continued the hearing on
21 plaintiffs' motion for preliminary injunction for two weeks. On
22 September 12, 1991, the date set for hearing, plaintiffs filed two
23 declarations. The declarations provided strong evidence that the
24 temporary plan had not been implemented at least at Folsom Prison
25 between August 29, 1991 and September 12, 1991.

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1 At the hearing on September 12, the court gave defendants
2 five days to respond to the declarations filed by plaintiffs at the
3 hearing. Defendants filed a response on September 17, 1991.
4 Thereafter, the matter was submitted.

5 STANDARDS FOR PRELIMINARY INJUNCTION

6 The legal principles applicable to a request for preliminary
7 injunctive relief are well established. To prevail, the moving
8 party must show either "(1) a likelihood of success on the merits
9 and the possibility of irreparable injury, or (2) the existence of
10 serious questions going to the merits and the balance of hardships
11 tipping in [the moving party's] favor." Oakland Tribune, Inc. v.
12 Chronicle Publishing Company, Inc., 762 F.2d 1374, 1376 (9th Cir.
13 1985), quoting Apple Computer, Inc. v. Formula International, Inc.,
14 725 F.2d 521, 523 (9th Cir. 1984); see also Hartikka v. United
15 States, 754 F.2d 1516, 1518 (9th Cir. 1985). The two formulations
16 represent two points on a sliding scale with the focal point being
17 the degree of irreparable injury shown. Oakland Tribune, 762 F.2d
18 at 1376. "Under either formulation of the test, plaintiff must
19 demonstrate that there exists a significant threat of irreparable
20 injury." Id.

21 ANALYSIS

22 Plaintiffs' legal claim on this motion for preliminary
23 injunction is grounded in the Eighth Amendment, which provides the
24 basic standard against which prison conditions are measured. To
25 prevail on an Eighth Amendment claim, plaintiffs must establish
26 that defendants are acting with deliberate indifference to certain

1 fundamental needs. See Wilson v. Seiter, ____ U.S. ____, 111 S.Ct.
2 2321 (1991). On this motion, the needs at issue are needs for
3 adequate cooling and ventilation during periods of extreme heat,
4 and adequate medical attention for prisoners who are particularly
5 susceptible to heat-related conditions due to medications they are
6 receiving.

7 The instant motion was brought following the deaths of three
8 inmates at CMF in July of this year during a period of extreme
9 heat.^{3/} Declaration of Terry Kupers, M.D., at para. 5. All three
10 inmates were on neuroleptic and anticholinergic medications at the
11 time of their deaths. Id. It is well-established among physicians
12 that these medications increase the risk of heatstroke, or
13 hyperthermia, because they interfere with the body's ability to
14 regulate its own temperature. Declaration of Paul Lowinger, M.D.,
15 at para. 2. All three inmates died of hyperthermia. Id.; Exhibit
16 1 to Declaration of Bruce Slavin.

17 Plaintiffs have presented significant evidence that there
18 are many inmates throughout the California prison system who are
19 both on psychotropic medications and in prisons which are subject
20 to extreme heat conditions. There is also evidence that defendants
21 have not, in the past, been adequately attentive to either the need
22 for adequate cooling in the face of extreme heat, or to the special
23 needs of inmates on psychotropic medication.

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26 ^{3/}Apparently, five inmates died during one twelve-hour period at CMF.
However, only three of the five were on psychotropic medication.

1 However, the record before the court demonstrates that
2 defendants are presently taking steps to address both of these
3 problems. The August 27, 1991 memorandum directed prison officials
4 at all prisons to implement the following procedures to prevent
5 heat-related illness: (1) close monitoring of inmates; (2)
6 provision of adequate cooling agents; (3) insurance of good
7 ventilation; and (4) protection from direct sunlight. Officials
8 were directed to identify inmates "with any of a number of
9 debilitating medical conditions" and those on any of the following
10 medications: (1) antipsychotic medication; (2) antidepressant
11 medication; (3) antimanic medication; (4) antiparkinson medication;
12 (5) diuretic medication; and (6) any medication having significant
13 anticholinergic properties.

14 The memorandum describes several symptoms of heat-related
15 illness, provides that all staff "must" be able to notice such
16 signs, and that "inmates subject to such pathology" should also be
17 informed about the signs. Five steps are included for promoting
18 adequate cooling and two for promotion of adequate ventilation.
19 In addition, the memorandum includes additional precautions to
20 "consider" and "recommended" responses to escalating temperatures.^{4/}
21 Appended to the memorandum is a two page document titled "Inmate
22 Guide to Heat Related Problems."

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25 4/It was not clear to this court from either the memorandum or defense
26 counsel's argument whether the "recommended responses" are in fact
required of all prisons, or whether they are, in fact, just
recommendations.

1 The memorandum contains some of the same steps as the Hot
2 Weather Emergency Plan revised on August 1, 1991 and implemented at
3 CMF, although it is not nearly as detailed as the CMF Plan.
4 Exhibit 5 to Declaration of Bruce Slavin. However, it does provide
5 for identification of high risk inmates, identification of heat-
6 related symptoms, steps to be taken to assist in cooling inmates
7 and ventilating cells, as well as specific steps to be taken when
8 the temperature reaches 90 degrees and again when the temperature
9 reaches 95 degrees.^{5/}

10 On September 12, 1991, plaintiffs filed two declarations
11 from inmates incarcerated at Folsom Prison. Those declarations
12 provide evidence that as of that date, the August 27, 1991
13 memorandum had not been adequately implemented at Folsom. On
14 September 17, 1991, defendants filed a response to the two
15 declarations. In their response, defendants have submitted
16 evidence that the temporary heat plan has been received at all
17 institutions, that the high risk group has been identified at all
18 institutions, that all but two institutions have alerted the high
19 risk group to necessary precautions and that the remaining two
20 institutions are in the process of formulating policy in that
21 regard. In addition, defendants have provided evidence that the
22 temperatures in the facilities where declarants Coe and Heroux were

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25 ^{5/}Once again, the court notes that it is not clear whether these steps
26 are mandatory, merely suggested, or offered as guidelines which must
be specifically tailored to each institution and implemented
thereafter.

1 housed were consistently in a range between 78 and 82 degrees
2 during the operative time period.

3 On the record before this court, it cannot be said that
4 defendants are acting with deliberate indifference to the heat
5 problems faced by inmates in the California prison system. They
6 have promulgated a temporary plan, and are gathering information
7 for the preparation and promulgation of a systemwide permanent
8 plan. See Exhibit B to Memorandum of Points and Authorities in
9 Opposition to Motion for Preliminary Injunction filed August 15,
10 1991. With regard to the sufficiency and timing of a permanent
11 plan, the parties are taking steps to prepare this case for trial
12 on June 1, 1992 of next year. At the time of trial setting the
13 parties were directed to conduct their discovery so that the
14 parties would be ready to hear this issue, if necessary, on or
15 before April 16, 1992, before the extreme hot weather hits most
16 areas of California again.

17 It does appear to the court that, absent good faith
18 implementation of the August 27, 1991 memorandum and efforts toward
19 a permanent plan, the balance of hardships would tip decidedly in
20 favor of plaintiffs. However, the August 27, 1991 memorandum
21 appears to be an adequate effort to address the problem on a
22 temporary and expedited basis, and defendants are moving toward a
23 permanent plan. Under the circumstances, injunctive relief does
24 not appear warranted at this time.

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1 For the foregoing reasons, IT IS HEREBY RECOMMENDED that
2 plaintiffs' motion for preliminary injunction filed August 1, 1991
3 be denied.

4 These findings and recommendations are submitted to the
5 United States District Judge assigned to the case pursuant to the
6 provisions of Title 28 U.S.C. § 636(b)(1). Within ten (10) days
7 after being served with these findings and recommendations, any
8 party may file written objections with the court and serve a copy
9 on all parties. Such a document should be captioned "Objections to
10 Findings and Recommendations." Any reply to the objections shall
11 be served and filed within ten days after service of the
12 objections. The parties are advised that failure to file
13 objections within the specified time may waive the right to appeal
14 the District Court's order. Greenhow v. Secretary of Health and
15 Human Services, 863 F.2d 633 (9th Cir. 1988).

16 DATED: October 21, 1991.

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18
19 JFM:hg:ji


UNITED STATES MAGISTRATE JUDGE

United States District Court
for the
Eastern District of California
October 22, 1991

* * CERTIFICATE OF SERVICE * *

2:90-cv-00520

Coleman

v.

Reagan

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on October 22, 1991, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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Case 2:90-cv-00520-KJM-DB Document 102 Filed 10/22/91 Page 10 of 10

Jack L. Wagner, Clerk

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