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

RUMALDO BARBOZA,
Plaintiff,
vs.
BERRY GREEN,
Defendant.

Case No. 1:12-cv-01914 JLT (PC)
**FINDINGS AND RECOMMENDATIONS
DENYING PLAINTIFF’S MOTION FOR
PRELIMINARY INJUNCTION**
(Doc. 3)

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed his initial complaint on November 26, 2012. (Doc. 1) Now pending before the Court is Plaintiff’s motion for a preliminary injunction also filed November 26, 2012. (Doc. 3) Plaintiff seeks an injunction requiring prison officials to provide him with pain medication, referral to a pain management specialist, and physical therapy to treat an elbow injury sustained December 12, 2009. (*Id.* at 2, 7)

“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 the equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008) (citations omitted). “A preliminary injunction is an extraordinary remedy never awarded as of right.” *Id.* at 24 (citation

1 omitted). It may be awarded only upon a clear showing that the movant is entitled to relief. Id.
2 A stronger showing of one element may offset a weaker showing of another. Alliance for the
3 Wild Rockies v. Cottrell, 632 F.3d 1127, 1131-35 (9th Cir. 2011) (the sliding scale approach to
4 balancing the elements for a preliminary injunction survives Winters). However, while the
5 elements may be balanced, all four factors must be present in order to warrant injunctive relief.
6 Id. at 1052-53.

7 Plaintiff has named Pleasant Valley State Prison (“PSVP”) physician assistant Barry J.
8 Green as the defendant in this case. (See Doc. 1 at 2) However, at this stage of the proceedings,
9 the Court has not yet determined whether Plaintiff has stated any cognizable claim for relief under
10 federal law.¹ As a result, the Court lacks personal jurisdiction over the named defendant. “A
11 federal court may [only] issue an injunction if it has personal jurisdiction over the parties and
12 subject matter jurisdiction over the claim; *it may not attempt to determine the rights of persons*
13 *not before the court.*” Zepeda v. United States Immigration Service, 753 F.3d 719, 727 (9th Cir.
14 1985) (emphasis added).

15 Furthermore, Plaintiff has failed to make the necessary showing of irreparable injury. He
16 states that his injury was sustained December 12, 2009, and that he has been denied adequate pain
17 medication—Tramadol hydrochloride administered thrice-daily in 50 milligram tablets—since
18 August 8, 2010. (Doc. 3 at 6) Plaintiff filed his initial complaint over two years later. (Doc. 1)
19 Plaintiff offers no argument as to why the denial of physical therapy and the medication regimen
20 he seeks would now pose such an immediate and lasting threat to his health and well-being
21 despite that he delayed for two years to bring this matter to the Court’s attention such that
22 immediate action is now required. Indeed, at this early stage, it appears only that Plaintiff merely
23 disagrees with PSVP medical staff over the appropriate course and duration of treatment.

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26 ¹ The Court has not yet screened Plaintiff’s Complaint. (See 28 U.S.C. § 1915(A) requiring the Court to
27 review complaints brought by prisoners seeking relief against a governmental entity or an officer or employee of a
28 governmental entity for cognizable claims before the Court orders the defendant(s) to be served). The Court will
direct the United States Marshal to serve the complaint only after the Court has screened the complaint and
determined that it contains cognizable claims for relief against the named defendants.

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Accordingly, for the reasons set forth above, **IT IS HEREBY RECOMMENDED** that Plaintiff's November 26, 2012 motion for a preliminary injunction (Doc. 3) be **DENIED**.

These findings and recommendations are submitted to the United States District Judge assigned to the case pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B). Within fourteen days after being served with these findings and recommendations, Plaintiff may file written objections with the Court. Any document containing written objections should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: December 7, 2012

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE