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

VENCIL GREEN,

Plaintiff,

vs.

DR. LARRY N. FERGUSON, et al.,

Defendants.

Case No. 1:10-cv-01768 AWI JLT (PC)

FINDINGS AND RECOMMENDATIONS
RECOMMENDING THAT PLAINTIFF’S
MOTION FOR A PRELIMINARY
INJUNCTION BE DENIED

(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. Now pending before the Court is Plaintiff’s motion for a preliminary injunction filed September 27, 2010. (Doc. 3.) Plaintiff seeks an injunction requiring prison officials to provide Plaintiff group treatment for his exhibitionism. (Id.)

A preliminary injunction is an “extraordinary remedy.” Winters v. Natural Resources Defense Council, Inc., 555 U.S. 7, ___, 129 S. Ct. 365, 376 (2008) (citation omitted). “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.” Id. at 374 (citations omitted). A stronger showing of one element, however, may offset a weaker showing of another. Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131-35 (9th Cir. 2011) (the sliding scale approach to balancing the elements for a preliminary injunction survives Winters).

1 Here, Plaintiff has not met his burden of proving that preliminary relief is warranted. Notably,
2 Plaintiff has not provided the Court with any evidence, or even an argument, in connection with his
3 motion for a preliminary injunction. Plaintiff simply states that he would like a court order requiring
4 prison officials to provide Plaintiff group treatment for his exhibitionism. This is insufficient to support
5 a motion for preliminary relief. See Environmental Council of Sacramento v. Slater, 184 F. Supp. 1016,
6 1027 (E.D. Cal. 2000) (party moving for a preliminary injunction carries the burden of proof on each
7 element of the test).

8 More importantly, it appears that Plaintiff is a class member in Coleman v. Schwarzenegger,
9 Case No. 2:90-cv-0520 LKK JFM (PC), which is comprised of all mentally ill inmates incarcerated in
10 California's prisons. Because Plaintiff is a member of this class, he must bring his "claims for equitable
11 relief . . . through the class representative until the class action is over or the consent decree is modified."
12 McNeil v. Guthrie, 945 F.2d 1163, 1165 (10th Cir. 1991). Plaintiff may not seek injunctive relief by
13 initiating a separate, individual suit. See Crawford v. Bell, 599 F.2d 890, 892-93 (9th Cir. 1979). Any
14 request for injunctive relief in this case, including the instant motion for a preliminary injunction, must
15 therefore be denied.

16 Accordingly, for all the reasons set forth above, **IT IS HEREBY RECOMMENDED** that
17 Plaintiff's September 27, 2010 motion for a preliminary injunction (Doc. 3) be **DENIED**.

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

25
26 IT IS SO ORDERED.

27 Dated: August 6, 2011

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE