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3 **UNITED STATES DISTRICT COURT**

4 EASTERN DISTRICT OF CALIFORNIA

5  
6 MAXIMO BERREONDO,

7 Plaintiff,

8 v.

9 JONATHAN AKANNO, et al.,

10 Defendants.

CASE NO. 1:11-cv-00432-LJO-DLB PC

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

(ECF No. 12)

OBJECTIONS DUE WITHIN FOURTEEN  
DAYS

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15 **I. Background**

16 Plaintiff Maximo Berreondo (“Plaintiff”) is a prisoner in the custody of the California  
17 Department of Corrections and Rehabilitation (“CDCR”). Plaintiff is proceeding pro se and in  
18 forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding  
19 against Defendant Jonathan Akanno for deliberate indifference to a serious medical need in  
20 violation of the Eighth Amendment. On September 9, 2011, Plaintiff filed a motion requesting  
21 that the Court order Defendant to provide Plaintiff with a specific medical treatment. ECF No.  
22 12. The Court construes the motion as one for preliminary injunction. On June 19, 2012,  
23 Defendant filed an opposition to the motion. ECF No. 42. The matter is submitted pursuant to  
24 Local Rule 230(1).

25 **II. Preliminary Injunction**

26 **A. Legal Standard**

27 “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on  
28 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the

1 balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v.*  
2 *Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008) (citations omitted). The purpose  
3 of preliminary injunctive relief is to preserve the status quo or to prevent irreparable injury  
4 pending the resolution of the underlying claim. *Sierra On-line, Inc. v. Phoenix Software, Inc.*,  
5 739 F.2d 1415, 1422 (9th Cir. 1984).

6 **B. Lack Of Irreparable Harm**

7 Plaintiff requests that Defendant follow Dr. Dev’s, the wound specialist, recommendation  
8 for treatment of Plaintiff’s wounds by using a KCI wound vacuum machine to treat Plaintiff’s  
9 decubitus ulcers.<sup>1</sup> Pl.’s Mot., ECF No. 12. Plaintiff contends that the prison medical staff’s use  
10 of a Prospera machine, a different machine with different dressing supplies, is below treatment  
11 standards and fails in the healing process. *Id.* Plaintiff contends that his wounds have become  
12 infected on two different occasions and required antibiotics. *Id.*

13 Defendant contends that one of Plaintiff’s decubitus ulcers has healed with use of the  
14 Prospera machine, and that negative wound pressure therapy (“NWPT”) was not ordered for the  
15 other. Def.’s Opp’n 7:13-15, ECF. No. 42; Ranson Decl. ¶ 38. Thus, Defendant contends that  
16 Plaintiff’s motion is moot because no relief can be awarded. Def.’s Opp’n 7:13-15.

17 Plaintiff has failed to demonstrate irreparable harm. Based on the declaration submitted  
18 by Ms. Ranson, Plaintiff has received treatment for his decubitus ulcers, with one ulcer having  
19 been healed and the other ulcer not requiring such treatment. Plaintiff’s harm appears to have  
20 been remedied.

21 **C. Lack of Likelihood of Success on the Merits**

22 The Prospera system used was effective in closing Plaintiff’s right-trochanter pressure  
23 wound, and improving Plaintiff’s left-trochanter wound to the point that the specialist did not  
24 order NPWT at this time. Def.’s Opp’n 9:2-8; Ranson Decl. ¶¶ 33, 38. There is no evidence that  
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26 <sup>1</sup> Paula Ranson, the Chief Nurse Executive for the California Health Care Services Corporation at Kern  
27 Valley State Prison, provided a declaration in support of Defendant’s opposition. Am. Decl., ECF No.  
28 44. Decubitus ulcers are ulcers caused by pressure sores. Plaintiff is a paraplegic as a result of a gunshot  
wound, and is confined to a wheelchair. Ranson Decl. ¶ 5. Plaintiff is five foot, eight inches tall, and is  
morbidly obese. *Id.* ¶ 4.

1 the KCI system was more effective in treatment. Def.'s Opp'n 9:2-8.

2 Plaintiff has failed to demonstrate likelihood of success on the merits. Based on the  
3 declaration submitted by Ms. Ranson, Plaintiff has received adequate medical treatment.  
4 Plaintiff's complaint that Defendant Akanno did not provide the medical care recommended by  
5 Dr. Dev, the wound specialist, amounts at most to a difference of opinion between medical  
6 professionals, which fails to demonstrate a claim for deliberate indifference to a serious medical  
7 need in violation of the Eighth Amendment. *See Toguchi v. Chung*, 391 F.3d 1051, 1059-60 (9th  
8 Cir. 2004).

9 **D. Lack Of Equities In Plaintiff's Favor And Relief Serving The Public Interest**

10 Defendant contends that because Plaintiff has received medical care that was effective in  
11 treating his pressure sores, Plaintiff cannot show that the equities tip in his favor, nor  
12 demonstrate that the public interest favors injunction. Def.'s Opp'n 9:11-15. The Court agrees  
13 with Defendant. As previously shown by Ms. Ranson's declaration, Plaintiff's medical  
14 treatment for his decubitus ulcers has been effective. Thus, the equities do not tip in Plaintiff's  
15 favor, nor has Plaintiff demonstrated that the public interest favors a preliminary injunction.

16 **E. Lack Of Jurisdiction For Injunctive Relief**

17 Defendant further contends that because Plaintiff is a member of the Plata class action,  
18 Plaintiff's request for injunctive relief for serious medical needs can only be obtained through the  
19 Plata class action. Def.'s Opp'n 8:3-28. A federal receiver was appointed in the Plata action,  
20 who has duties to provide all medical care for state prisoners at most CDCR prisons. *Id.* Thus,

21 [i]ndividual suits for injunctive and equitable relief from alleged unconstitutional  
22 prison conditions cannot be brought where there is an existing class action  
23 because allowing them would allow interference with the ongoing class action.  
24 *Crawford v. Bell*, 599 F.2d 890, 892-93 (9th Cir. 1979); *McNeil v. Guthrie*, 945  
25 F.2d 1163, 1165-66 (10th Cir. 1991); *Gillespie v. Crawford*, 858 F.2d 1101, 1103  
(5th Cir. 1988) (en banc); *Jackson v. Schwarzenegger*, 357 F. Supp. 2d 1198  
(C.D. Cal. 2004). Claims for equitable relief, therefore, must be made through the  
26 class representative in Plata.

27 *Id.* at 8:22-28. Accordingly, Plaintiff cannot receive equitable relief for his serious medical  
28 needs except through the Plata class representative.

1 Defendant also contends that Defendant Akanno lacks the authority to authorize the  
2 purchase or acquisition of a KCI wound vacuum. Def.'s Opp'n 7:24-28. Defendant contends  
3 that only chief medical officer Lopez, with approval by California Health Care Services staff can  
4 obtain the device. *Id.*; Ranson Decl. ¶ 24. Thus, "[a] federal court may issue an injunction  
5 [only] if it has personal jurisdiction over the parties and subject matter jurisdiction over the  
6 claim; it may not attempt to determine the rights of persons not before the court." *Zepeda v.*  
7 *United States Immigration Serv.*, 753 F.2d 719, 727 (9th Cir. 1983); *see* Fed. R. Civ. P. 65(d)  
8 (listing persons bound by injunction). Based on Defendant's representation to the Court,  
9 Defendant Akanno lacks the authority to provide the relief requested by Plaintiff, namely a KCI  
10 wound vacuum. Thus, Plaintiff's motion for preliminary injunction against Defendant Akanno  
11 would also appear to be moot.

12 **III. Conclusion and Recommendation**

13 Based on the foregoing, it is HEREBY RECOMMENDED that Plaintiff's motion, filed  
14 September 9, 2011 and construed as a motion for preliminary injunction, be denied.

15 These Findings and Recommendations will be submitted to the United States District  
16 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen**  
17 **(14) days** after being served with these Findings and Recommendations, the parties may file  
18 written objections with the Court. The document should be captioned "Objections to Magistrate  
19 Judge's Findings and Recommendations." A party may respond to another party's objections by  
20 filing a response within fourteen (14) days from the date of service of a party's objections. The  
21 parties are advised that failure to file objections within the specified time may waive the right to  
22 appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991).

23  
24 IT IS SO ORDERED.

25 Dated: July 18, 2012

26 /s/ Dennis L. Beck  
27 UNITED STATES MAGISTRATE JUDGE  
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