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

DANIEL LEE THORNBERRY,

No. 2:17-CV-0953-TLN-CMK-P

Plaintiff,

vs.

FINDINGS AND RECOMMENDATIONS

J. BAL, et al.,

Defendants.

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Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s motion for injunctive relief (Doc. 10).

**I. PLAINTIFF’S ALLEGATIONS**

This action proceeds on plaintiff’s first amended complaint. Plaintiff names the following as defendants: (1) James Chau; (2) C. Smith; (3) M. Bobbala; (4) Michael Felder; and (5) J. Bal. Defendants Chau and Smith are alleged to be current or former prison medical professionals at Mule Creek State Prison. Defendants Bobbala and Felder are alleged to be current or former supervising prison medical professionals at California State Prison - Sacramento. Defendant Bal is alleged to be the current or former Deputy Medical Executive for

1 the California Department of Corrections and Rehabilitation.

2           Plaintiff claims that, prior to any examination, defendant Chau discontinued  
3 plaintiff's prescribed pain medication and instead prescribed a "replacement" which plaintiff says  
4 is not as effective in controlling his pain. Plaintiff further alleges that, nearly a month later and  
5 only after he had filed a medical grievance, he was actually examined by defendant Chau, who  
6 continued the replacement prescription. According to plaintiff, defendant Chau informed  
7 plaintiff that he could not prescribe plaintiff's prior medication "due to a new 'state-wide push'  
8 to discontinue certain non-formulary medications." Plaintiff states that, when asked whether  
9 another medication similar to his prior medication was available, defendant Chau "became  
10 hostile and verbally abusive," and told plaintiff: "I don't have to make you comfortable; I only  
11 have to make you functional. I give you constitutional care. If you can walk, that's all I'm  
12 concerned with." According to plaintiff, when he asked whether defendant Chau could review  
13 his medical records in order to determine whether other treatment options for pain are available,  
14 defendant Chau told plaintiff: "I've already read your file. You need to go now."

15           Plaintiff filed an inmate grievance concerning his pain medication and the matter  
16 was reviewed by a different prison doctor, defendant Smith, who continued the course of  
17 treatment prescribed by defendant Chau. According to plaintiff, defendant Smith told him that  
18 the continuation of defendant Chau's treatment plan was "centered around a so-called state-wide  
19 policy both actual and implied that seeks to 'take as many inmates off certain medications as  
20 possible and to stop prescribing them.'" Plaintiff states that, after describing his ongoing pain,  
21 defendant Smith replied: "My hands are tied." According to plaintiff, regarding the approved  
22 medications defendant Smith also said: "You know, it's tough, many of these medications  
23 interact negatively with the lithium you take." When plaintiff rejected various other options for  
24 pain medications, many of which were medications primarily intended to treat psychological  
25 symptoms, because he had been told by his treating psychiatrist to avoid such medications,  
26 defendant Smith allegedly replied: "Those are your options, take them or leave them."

1 Ultimately, plaintiff agreed to take Effexor for his pain even though the medication was primarily  
2 intended for treatment of depression. Plaintiff states that Effexor caused side effects which made  
3 him feel as if he had taken “pharmaceutical cocaine.”

4 Plaintiff states that he was then transferred to California State Prison - Sacramento  
5 where he was examined by Dr. Wadell. Plaintiff’s primary complaint was chronic pain. Dr.  
6 Wadell prescribed Tylenol with codeine twice per day, a back brace, and a cane. Plaintiff asked  
7 if he could be given either gabapentin or lyrica because those had been more effective in the past.  
8 According to plaintiff, Dr. Wadell stated that he would prefer treating plaintiff with gabapentin  
9 but that defendant Bobbala “denied NFRs for both gabapentin and lyrica and most all narcotics –  
10 all medications used to treat chronic pain.” Plaintiff claims that Dr. Wadell also told him that  
11 this policy to deny narcotic pain medication had been promulgated by defendant Bal.

12 According to plaintiff, he asked defendant Felder why “CME Bobbala consistently  
13 denied all NFRs related to pain medications.” Plaintiff states that Felder said “it was his  
14 understanding the head office had changed the policy related to pain medication and the criteria  
15 used in approving its use.”

## 17 II. DISCUSSION

18 Plaintiff seeks an order requiring defendants to provide him with his originally  
19 prescribed pain medication.

20 The proper test applicable to a request for injunctive relief requires a party to  
21 demonstrate all of the following: (1) he is likely to succeed on the merits; (2) he is likely to suffer  
22 irreparable harm in the absence of an injunction; (3) the balance of hardships tips in his favor;  
23 and (4) an injunction is in the public interest. See Winter v. Natural Res. Def. Council, Inc., 129  
24 S.Ct. 365 (2008); Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009). To the extent  
25 prior Ninth Circuit cases suggest a lesser standard by focusing solely on the possibility of  
26 irreparable harm, such cases are “no longer controlling, or even viable.” Am. Trucking Ass’ns,

1 Inc. v. City of Los Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009).

2           The court finds that plaintiff has shown that he is likely to suffer irreparable harm  
3 in the absence of injunctive relief. Specifically, to the extent plaintiff's chronic pain cannot be  
4 adequately treated with non-narcotic medications, and to the extent plaintiff cannot obtain  
5 individualized medical review of his symptoms and all possible treatment options due to the  
6 implementation of a state-wide policy precluding narcotic pain medications, plaintiff's continued  
7 and inadequately treated pain constitutes irreparable harm.

8           The court also finds, however, that plaintiff cannot at this time establish that he is  
9 likely to succeed on the merits of his claim. While the court has determined that the amended  
10 complaint is appropriate for service on defendants, no defendant has yet responded to the  
11 complaint. Nor has any discovery been conducted or evidence presented to the court regarding  
12 the alleged state-wide anti-narcotic medication policy or defendants' implementation of such a  
13 policy. Plaintiff certainly has a possibility of succeeding on the merits of his claims, but that is  
14 not to say that he is likely to succeed.

15           Because plaintiff cannot at this time make each of the showings required under  
16 Winter, injunctive relief is not appropriate.

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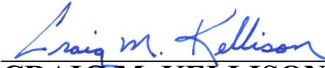
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1 **III. CONCLUSION**

2 Based on the foregoing, the undersigned recommends that plaintiff's motion for  
3 injunctive relief (Doc. 10) be denied.

4 These findings and recommendations are submitted to the United States District  
5 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days  
6 after being served with these findings and recommendations, any party may file written  
7 objections with the court. Responses to objections shall be filed within 14 days after service of  
8 objections. Failure to file objections within the specified time may waive the right to appeal.  
9 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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11 DATED: March 8, 2018

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13 **CRAIG M. KELLISON**  
14 UNITED STATES MAGISTRATE JUDGE  
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