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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TYRONE R. JONES,

1:01-cv-05287-AWI-SMS-PC

Plaintiff,

ORDER FOLLOWING REMAND

v.

ORDER FOR DEFENDANTS LOO,
HUANG, NEUBARTH, ORTIZ, AND
McVICAR TO FILE ANSWER TO
COMPLAINT WITHIN THIRTY DAYS

PLEASANT VALLEY STATE
PRISON, et al.,

Defendants.

_____ /

I. RELEVANT PROCEDURAL HISTORY

Tyrone R. Jones (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the complaint commencing this action on March 12, 2001. (Doc. 1.) The court screened the complaint pursuant to 28 U.S.C. § 1915A and issued an order on October 9, 2001, directing the United States Marshal to serve process on defendants G. Lewis, Ducray, L.B. McVicar, W. Buehler, J.C. Smith, V.M. McKnight, W.R. Williams, L. Loo, J. Neubarth, R. Ortiz, H. Huang, C.J. Sanchez, C. Murtaugh, Davis, Cantu, Tress, and Stephens.¹ (Doc. 9.)

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¹All of these seventeen defendants have since appeared in this action, via motions to dismiss.

1 On November 29, 2001, defendants filed a motion to dismiss the complaint based on
2 Plaintiff's failure to exhaust administrative remedies, and on March 6, 2002, defendants filed an
3 amended motion to dismiss. (Docs. 33, 48.) On March 10, 2003, the court denied the motion, with
4 leave to renew it in light of the Ninth Circuit's recent decision in Wyatt v. Terhune.² (Docs. 81, 91.)

5 On March 31, 2003, defendants renewed the motion to dismiss the complaint based on
6 Plaintiff's failure to exhaust administrative remedies. (Doc. 97.) On March 11, 2004, the renewed
7 motion was granted in part and denied in part, leaving the case to proceed only against defendants
8 Cantu and Davis on Plaintiff's excessive force claims, and dismissing all other claims and
9 defendants. (Docs. 107, 109.)

10 On March 25, 2004, defendants Cantu and Davis filed an answer to the complaint. (Doc.
11 110.) On April 15, 2004, the court issued a Discovery/Scheduling Order setting pretrial deadlines.
12 (Doc. 111.) On May 11, 2004, defendants Cantu and Davis filed a motion to dismiss the complaint
13 based on Plaintiff's failure to exhaust administrative remedies on the excessive force claim. (Doc.
14 114.) On January 19, 2005, the motion was granted, and the case was dismissed in its entirety
15 without prejudice. (Docs. 121, 122.) Judgment was entered on January 19, 2005. (Doc. 123.)

16 On January 31, 2005, Plaintiff filed a notice of appeal to the Court of Appeals for the Ninth
17 Circuit. (Doc. 124.) On May 26, 2009, the Ninth Circuit affirmed in part and vacated in part the
18 district court's judgment, remanding the action. (Doc. 133.) The judgment was affirmed as to the
19 dismissal of Plaintiff's Eighth Amendment claim against defendant Murtaugh regarding sleep
20 deprivation, Plaintiff's excessive force claim against defendants Davis and Cantu, Plaintiff's
21 deliberate indifference claim regarding access to prescription medication, and Plaintiff's retaliation
22 claim concerning Plaintiff's placement in administrative segregation. The judgment was vacated as
23 to the dismissal of Plaintiff's deliberate indifference claims regarding treatment of his bunions,
24 hemorrhoids and skin condition, in light of the Ninth Circuit's recent decision in Griffin v Arpaio.³
25 The district court reopened the case on June 2, 2009. This case now proceeds only against
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27 ²Wyatt v. Terhune, 315 F.3d 1108 (9th Cir. 2003).

28 ³Griffin v. Arpaio, 557 F.3d 1117 (9th Cir. 2009).

1 defendants Dr. Larry Loo, Dr. Neuberth, Dr. Huang, Dr. Ortiz, and McVicar, on Plaintiff's Eighth
2 Amendment claims for inadequate medical care related to his bunions, hemorrhoids, and skin
3 condition.

4 **II. SUMMARY OF PLAINTIFF'S ALLEGATIONS REGARDING TREATMENT OF**
5 **HIS BUNIONS, HEMORRHOIDS, AND SKIN CONDITION**

6 Plaintiff was in custody at Pleasant Valley State Prison ("PVSP") in Coalinga, California, at
7 the time the events at issue occurred. Plaintiff alleges as follows in the complaint in support of his
8 claims against defendants Loo, Neubarth, Huang, Ortiz, and McVicar, regarding treatment of his
9 bunions, hemorrhoids, and skin condition.

10 Before being transferred from CTF Soledad to PVSP, Plaintiff was under doctor's care for
11 several medical problems, including very severe hemorrhoids causing bleeding from the anus, severe
12 painful bunions on both feet, and chronic back pain. At CTF Soledad, his feet were measured for
13 orthopedic shoes, but he did not receive them.

14 When he arrived at PVSP on February 11, 2000, Plaintiff made his medical problems known
15 to the Chief Medical Officer, Dr. Larry Loo ("Dr. Loo") via an inmate request, and requested to see
16 Dr. Loo. Dr. Loo informed Plaintiff that he could not see him immediately, due to the doctor's busy
17 schedule.

18 Plaintiff repeatedly made requests for medical care and saw other doctors, including Drs.
19 Neubarth, Ortiz, and Huang. These doctors only prescribed medication for the bleeding, which
20 made it worse. Dr. Neubarth examined Plaintiff with a "Computator" and prescribed medication,
21 but he did not order surgery for the hemorrhoids. Plaintiff told all of the doctors that the medications
22 were not doing any good and that he was in severe pain and continually bleeding.

23 In January 2001, Plaintiff was finally seen by Dr. Loo, who examined him for rectal bleeding
24 and bunions and concluded that Plaintiff needed surgery for both the hemorrhoids and the bunions.
25 Dr. Loo told Plaintiff his problems were not an emergency, and he wrote a chrono for Plaintiff to be
26 provided state-issued boots, even though other doctors have recommended soft shoes due to the
27 bunion deformity.

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1 Plaintiff maintains that his medical problems were well-documented in his records, but
2 neither Dr. Loo nor Dr. Neubarth checked his medical files. Dr. Huang only made an examination
3 of Plaintiff's anus with gloved fingers, which made him worse. Dr. Huang did not recommend
4 surgery, even though Plaintiff showed him bloody tissues several times and told him the medication
5 was not doing any good. Despite Plaintiff's requests, none of the doctors took x-rays or sent him to
6 a medical facility or outside doctor for the hemorrhoids or bunions. Dr. Ortiz recommended
7 orthopedic shoes, but Plaintiff had not received them by February 2001. Plaintiff was prescribed
8 chronic pain medication by Dr. Haffner, but Dr. Loo stopped Plaintiff from taking it until Dr. Loo
9 could approve it, causing Plaintiff to suffer more pain.

10 When Plaintiff was placed in Administrative Segregation ("Ad-Seg"), he wrote to defendant
11 McVicar about his medical problems, complaining about the bleeding, pain in his feet, bunion
12 deformity, and ongoing back and neck pain. Plaintiff also spoke to McVicar and other staff members
13 about his improper medical care, but McVicar did not respond until after Plaintiff was released from
14 Ad-Seg.

15 Plaintiff also has a skin problem and cannot shave with a razor, or he develops bumps on his
16 skin, itching, and burning. In September 2000, Plaintiff saw Dr. Ortiz who refused to continue
17 Plaintiff's medical shaving chrono and told Plaintiff to shave anyway, cause symptoms, and then he
18 could treat him for the condition. The Chief Medical Officer said Dr. Ortiz was following procedure,
19 but he failed to review Plaintiff's medical files with history of the skin condition. Even after reading
20 other doctors' chronos, Dr. Ortiz still refused to renew Plaintiff's chrono, so Plaintiff filed a
21 complaint to the Medical Board, without results. Dr. Neubarth told Plaintiff he should stop shaving
22 and grow a beard. Dr. Neubarth said he would write Plaintiff a chrono for a year, to avoid Rules
23 Violations Reports for wearing a beard.

24 Plaintiff still suffers from bleeding, pain, and foot problems, due to the unprofessional
25 judgment of Drs. Loo, Neubarth, Ortiz, and Huang. None of these doctors ever checked Plaintiff's
26 outside medical records, which contain records of his medical problems before coming to PVSP.
27 Although the doctors agree that Plaintiff needs surgery and special shoes, they have not ordered
28 them.

1 **III. PLAINTIFF’S CLAIMS**

2 Plaintiff brings claims against defendants Loo, Huang, Neubarth, Ortiz, and McVicar for
3 deliberate indifference regarding medical care, in violation of the Eighth Amendment.

4 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate
5 must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d 1091, 1096
6 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 106 (1976)). The two part test for
7 deliberate indifference requires the plaintiff to show (1) “‘a serious medical need’ by demonstrating
8 that ‘failure to treat a prisoner’s condition could result in further significant injury or the unnecessary
9 and wanton infliction of pain,’” and (2) “the defendant’s response to the need was deliberately
10 indifferent.” Jett, 439 F.3d at 1096 (quoting McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir.
11 1992), overruled on other grounds, WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997)
12 (en banc) (internal quotations omitted)). Deliberate indifference is shown by “a purposeful act or
13 failure to respond to a prisoner’s pain or possible medical need, and harm caused by the
14 indifference.” Id. (citing McGuckin, 974 F.2d at 1060). Deliberate indifference may be manifested
15 “when prison officials deny, delay or intentionally interfere with medical treatment, or it may be
16 shown by the way in which prison physicians provide medical care.” Id. (citing McGuckin 974 F.2d
17 at 1060 (internal quotations omitted)). Where a prisoner is alleging a delay in receiving medical
18 treatment, the delay must have led to further harm in order for the prisoner to make a claim of
19 deliberate indifference to serious medical needs. McGuckin 974 F.2d at 1060 (citing Shapely v.
20 Nevada Bd. of State Prison Comm’rs, 766 F.2d 404, 407 (9th Cir. 1985)). The needless suffering
21 of pain may be sufficient to demonstrate further harm. Clement v. Gomez, 298 F.3d 898, 904 (9th
22 Cir. 2002).

23 In applying this standard, the Ninth Circuit has held that before it can be said that a prisoner’s
24 civil rights have been abridged, “the indifference to his medical needs must be substantial. Mere
25 ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not support this cause of action.”
26 Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980), citing Estelle, 429 U.S. at
27 105-06. “[A] complaint that a physician has been negligent in diagnosing or treating a medical
28 condition does not state a valid claim of medical mistreatment under the Eighth Amendment.

1 Medical malpractice does not become a constitutional violation merely because the victim is a
2 prisoner.” Estelle, 429 U.S. at 106; see also Anderson v. County of Kern, 45 F.3d 1310, 1316 (9th
3 Cir. 1995); McGuckin, 974 F.2d at 1050, overruled on other grounds; WMX Techs., Inc., 104 F.3d
4 at 1136. Even gross negligence is insufficient to establish deliberate indifference to serious medical
5 needs. See Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990).

6 A difference of opinion between medical personnel regarding treatment does not amount to
7 deliberate indifference. Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989). A prisoner’s mere
8 disagreement with diagnosis or treatment does not support a claim of deliberate indifference. Id.
9 To prevail, plaintiff “must show that the course of treatment the doctors chose was medically
10 unacceptable under the circumstances . . . and . . . that they chose this course in conscious disregard
11 of an excessive risk to plaintiff’s health.” Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1986)
12 (internal citations omitted).

13 **IV. CONCLUSION**

14 At this stage of the proceedings, defendants shall be required to file an answer to the
15 complaint. Accordingly, IT IS HEREBY ORDERED that:

- 16 1. This action now proceeds only against defendants Dr. Larry Loo, Dr. Neubarth, Dr.
17 Huang, Dr. Ortiz, and McVicar, on Plaintiff’s claims for deliberate indifference
18 regarding medical care for his bunions, hemorrhoids, and skin condition;
- 19 2. Within thirty days from the date of service of this order, defendants Loo, Neubarth,
20 Huang, Ortiz, and McVicar shall file an answer to Plaintiff’s complaint which was
21 filed in this action on March 12, 2001;
- 22 3. After the answer is filed, the court shall issue a further scheduling order; and
- 23 4. The Clerk is directed to reflect on the court’s docket that this action now proceeds
24 only against defendants Loo, Huang, Neubarth, Ortiz, and McVicar.

25 IT IS SO ORDERED.

26 **Dated:** November 10, 2009

27 /s/ Sandra M. Snyder
28 UNITED STATES MAGISTRATE JUDGE