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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

TREMAINE HUNTER,

Plaintiff,

v.

JAMES YATES, et al.,

Defendants.

CASE NO. 1:07-cv-00151-AWI-SMS-PC

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL OF CLAIM

(Doc. 21)

OBJECTIONS DUE WITHIN THIRTY DAYS

Findings and Recommendations Following Screening of Second Amended Complaint

I. Procedural History

Plaintiff Tremain Hunter (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action in Fresno County Superior Court on November 29, 2006. On January 29, 2007, Defendants removed the action to the United States District Court for the Eastern District of California.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534 U.S. 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must

1 contain “a short and plain statement of the claim showing that the pleader is entitled to relief . . .
2 .” Fed. R. Civ. P. 8(a). “Such a statement must simply give the defendant fair notice of what the
3 plaintiff’s claim is and the grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512.
4 However, “the liberal pleading standard . . . applies only to a plaintiff’s factual allegations.”
5 Neitze v. Williams, 490 U.S. 319, 330 n.9 (1989). “[A] liberal interpretation of a civil rights
6 complaint may not supply essential elements of the claim that were not initially pled.” Bruns v.
7 Nat’l Credit Union Admin., 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents,
8 673 F.2d 266, 268 (9th Cir. 1982)).

9 After screening the complaint pursuant to 28 U.S.C. § 1915A, the Court dismissed
10 Plaintiff’s complaint with leave to amend on February 1, 2007, for failure to state a claim. On
11 February 26, 2007, Plaintiff filed a first amended complaint. The Court screened and dismissed
12 Plaintiff’s first amended complaint for failure to state a claim on December 1, 2008. Currently
13 before the Court is Plaintiff’s second amended complaint (“the complaint”), filed on January 5,
14 2009.

15 **II. Plaintiff’s Claims**

16 **A. Summary of the Complaint**

17 Plaintiff is state prisoner housed at Pleasant Valley State Prison in Coalinga, California
18 (PVSP). Plaintiff alleges he contracted a disease commonly known as valley fever while
19 incarcerated at PVSP. The complaint names PVSP’s Warden, James Yates, and Chief Doctor, F.
20 Igbinsosa, as Defendants. Plaintiff alleges that Defendant Yates and Defendant Igbinsosa
21 (“Defendants”) were aware of an excessively high risk of contracting valley fever within PVSP
22 and that Defendants were also aware that valley fever is potentially fatal. According to the
23 complaint, Defendants ignored a memorandum from the California Department of Corrections
24 and Rehabilitation (CDCR) which requires the transfer of valley fever-prone prisoners, such as
25 Plaintiff, from institutions where valley fever is common. Plaintiff alleges that Defendants were
26 aware that Plaintiff was highly susceptible to contracting valley fever but ignored Plaintiff’s
27 administrative grievances and refused to transfer Plaintiff out of PVSP. Plaintiff contends that
28 the Defendants’ conduct violates Plaintiff’s Eighth Amendment rights to humane conditions of

1 confinement and adequate medical care. Plaintiff also seeks to raise a novel claim not previously
2 raised in Plaintiff's earlier complaints. Plaintiff alleges that PVSP exposes Plaintiff to beverages
3 containing the substance aspartame, which allegedly can cause a range of "serious medical
4 conditions." Second Amended Complaint, p.11: 4-5.

5 **B. Requests for Relief**

6 **1. Injunctive Relief**

7 Plaintiff asks the Court to grant injunctive relief in the form of an order requiring the
8 CDCR to "shutdown" PVSP. Second Amended Complaint, p.12: 26-28. Plaintiff also asks the
9 Court to issue an order requiring the CDCR to place Plaintiff on single cell status for the
10 remainder of his prison term. Second Amended Complaint, p.13: 1-2.

11 Injunctive relief is "to be used sparingly, and only in a clear and plain case," see Rizzo v.
12 Goode, 423 U.S. 362, 378,(1976) (internal quotation omitted), and any injunctive relief awarded
13 must avoid unnecessary disruption to the state agency's "normal course of proceeding," O'Shea v.
14 Littleton, 414 U.S. 488, 501 (1974). Under the Prison Litigation Reform Act, the Court must
15 find that the prospective relief is "narrowly drawn, extends no further than necessary to correct
16 the violation of the Federal right, and is the least intrusive means necessary to correct the
17 violation of the Federal right," before granting injunctive relief. 18 U.S.C. § 3626(a)(1)(2008).
18 Plaintiff's requests for relief are not narrowly drawn. Further, Plaintiff fails to submit sufficient
19 evidence to warrant either a finding of probable success on the merits, or, at a minimum, a
20 serious question of liability. See Kootenai Tribe of Idaho v. Veneman, 313 F.3d 1094, 1124 (9th
21 Cir. 2002) (at a minimum, moving party must establish a serious question of liability).
22 Accordingly, Plaintiff is not entitled to the injunctive relief requested.

23 **2. Appointment of Counsel**

24 Plaintiff asks the Court to appoint counsel to represent Plaintiff. The Court may request
25 an attorney to represent any person unable to afford counsel, 28 U.S.C. § 1915 (e)(1)(2008), but
26 only under "exceptional circumstances," Terrel v. Brewer, 935 F.2d 1015,1017 (1991).

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1 "A finding of exceptional circumstances requires an evaluation of both 'the likelihood of success
2 on the merits and the ability of the petitioner to articulate his claims pro se in light of the
3 complexity of the legal issues involved.'" Id. (citing Wilborn v. Escalderon, 789 F.2d 1328, 1331
4 (9th Cir. 1986)).

5 Plaintiff fails to demonstrate a strong likelihood of success on the merits. Plaintiff also
6 fails to allege that the case presents complex issues that will make it difficult for Plaintiff to
7 litigate his claims, at least at this early stage in the litigation process. Plaintiff has properly plead
8 his cognizable claims and has not articulated any facts that demonstrate a need for counsel. The
9 Court recommends that Plaintiff's request for appointment of counsel be denied, without
10 prejudice.

11 **C. Eighth Amendment Claims**

12 **1. Medical Treatment**

13 In order "to maintain an Eighth Amendment claim based on prison medical treatment, an
14 inmate must show 'deliberate indifference to serious medical needs.'" Jett v. Penner, 439 F.3d
15 1091, 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 106,(1976)). The two part
16 test for deliberate indifference requires the plaintiff to show (1) "'a serious medical need' by
17 demonstrating that 'failure to treat a prisoner's condition could result in further significant injury
18 or the unnecessary and wanton infliction of pain,'" and (2) "the defendant's response to the need
19 was deliberately indifferent." Jett, 439 F.3d at 1096 (quoting McGuckin v. Smith, 974 F.2d
20 1050, 1059 (9th Cir. 1992), overruled on other grounds, WMX Techs., Inc. v. Miller, 104 F.3d
21 1133, 1136 (9th Cir. 1997) (en banc) (internal quotations omitted)). Deliberate indifference is
22 shown by "a purposeful act or failure to respond to a prisoner's pain or possible medical need,
23 and harm caused by the indifference." Id. (citing McGuckin, 974 F.2d at 1060). Deliberate
24 indifference may be manifested "when prison officials deny, delay or intentionally interfere with
25 medical treatment, or it may be shown by the way in which prison physicians provide medical
26 care." Id.

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1 Plaintiff alleges that Defendants Yates and Igbinsosa had knowledge of Plaintiff's serious
2 medical need to be transferred out of PVSP, but that Defendants repeatedly denied Plaintiff's
3 requests for transfer. Plaintiff further alleges that Defendants ignored the instructions of experts
4 in denying Plaintiff's requests for transfer. Under minimal federal notice pleading standards, the
5 Court finds Plaintiff's allegations are sufficient to allow him to proceed against Defendants Yates
6 and Igbinsosa for deliberate indifference to Plaintiff's serious medical needs. Fed. R. Civ. P. 8(a);
7 Erickson v. Pardus, 127 S.Ct. 2197, 2200 (2007); Alvarez v. Hill, 518 F.3d 1152, 1157-58 (9th
8 Cir. 2008).

9 **2. Conditions of Confinement**

10 In order for a prison official to be liable for violating a prisoner's Eighth Amendment
11 right to safe conditions of confinement, the prisoner must first show that he is incarcerated under
12 conditions posing a substantial risk of serious harm. Farmer v. Brennan, 511 U.S. 825, 834-35
13 (1994). Once the prisoner has demonstrated substantial risk of serious harm, he must then show
14 that prison officials acted with deliberate indifference to his health or safety. Id. A prison
15 official cannot be found liable under the Eighth Amendment for denying a prisoner humane
16 conditions of confinement unless the official knows of and disregards an excessive risk to inmate
17 health or safety. Id. at 836.

18 **a. Exposure to Valley Fever**

19 The complaint alleges that Defendants Yates and Igbinsosa had knowledge that Plaintiff
20 was exposed to a high risk of contracting valley fever while incarcerated at PVSP, and that
21 Defendants repeatedly denied Plaintiff's requests for transfer. Under minimal federal notice
22 pleading standards, Plaintiff's allegations are sufficient to give rise to a claim for relief under
23 section 1983 against the Defendants for violation of the Plaintiff's Eighth Amendment right to
24 humane conditions of confinement. Fed. R. Civ. P. 8(a); Erickson, 127 S.Ct. at 2200.

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1 **b. Artificial Sweetener Claim**

2 Plaintiff alleges that beverages provided at PVSP contain the substance aspartame.
3 Plaintiff's allegations fail to establish that Plaintiff is required to consume beverages containing
4 aspartame or that Defendants had knowledge of aspartame's alleged health risks. Accordingly,
5 Plaintiff's allegations concerning aspartame fail to state a cognizable claim.

6 Further, the Court takes judicial notice that the United States Food and Drug
7 Administration has approved aspartame, which is sold under trade names such as NutraSweet
8 and Equal, for human consumption. Extreme deprivations are required to make out a conditions
9 of confinement claim, and only those deprivations denying the minimal civilized measure of
10 life's necessities are sufficiently grave to form the basis of an Eighth Amendment violation.
11 Hudson v. McMillian, 503 U.S. 1, 9, (1992). Plaintiff's allegation that beverages served at PVSP
12 contain artificial sweeteners does not come close to stating an Eighth Amendment violation.
13 Accordingly, the Court recommends dismissal of Plaintiff's claim, with prejudice.

14 **IV. Conclusion and Order**

15 The complaint states claims against Defendants Yates and Igbinsosa for violating
16 Plaintiff's Eighth Amendment right to humane conditions of confinement to adequate medical
17 care. The complaint does not state any other claims. Accordingly, the Court recommends that
18 further leave to amend not be granted, and that this action be ordered to proceed only on those
19 claims identified herein as cognizable. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987).
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21 For the reasons set forth herein, the Court HEREBY RECOMMENDS that:

- 22 1. This action proceed as one for money damages on Plaintiff's second amended
23 complaint, filed January 5, 2009, against Defendants Yates and Igbinsosa for
24 violation of Plaintiff's rights under the Eighth Amendment of the United States
25 Constitution arising from Plaintiff's valley fever claims;
- 26 2. Plaintiff's Eighth Amendment aspartame claim be dismissed, with prejudice, for
27 failure to state a claim upon which relief may be granted under section 1983;
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