

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JOHN DOE,

Plaintiff,

v.

JULIO CAMPOS, et al.,

Defendants.

CASE NO. 1:09-CV-00544-DLB PC

ORDER DENYING PLAINTIFF’S MOTION TO STRIKE (DOC. 44)

ORDER GRANTING DEFENDANT TILTON’S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM (DOC. 40)

ORDER DISMISSING DEFENDANTS CHIEF OF PSYCHIATRIC SERVICES, D. TRINH, NAYLA SYED, JAMES TILTON, AND J. ACOSTA FROM ACTION WITH PREJUDICE FOR FAILURE TO STATE A CLAIM

I. Background

Plaintiff John Doe¹ (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). Plaintiff is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on Plaintiff’s amended complaint, filed July 10, 2009, against Defendants John Doe-Chief of Psychiatric Services, Julio Campos, J. Acosta, D. Trinh, Nayla Syed, and James Tilton for violation of the Eighth Amendment. On February 1, 2010, Defendant James Tilton filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), for failure to state a claim upon which relief may be granted.² (Def. Tilton Mot. Dismiss, Doc. 40.) On February 22,

¹ Fictitious name.

² Defendants Julio Campos, J. Acosta, and Chief of Psychiatric Services have not been served.

1 2010, Plaintiff filed his opposition. (Pl.’s Opp’n, Doc. 42.) On April 8, 2010, Plaintiff filed
2 exhibits in support of his opposition. (Doc. 63.) No reply was filed. The matter is submitted
3 pursuant to Local Rule 230(l).

4 On February 22, 2010, Plaintiff also filed a motion to strike portions of Defendant
5 Tilton’s motion. (Doc. 44.) Defendant filed an opposition on February 26, 2010. (Doc. 48.)
6 The Court will first adjudicate the motion to strike prior to adjudicating the motion to dismiss.

7 **II. Motion To Strike**

8 Plaintiff moves to strike Defendant Tilton’s motion pursuant to Federal Rule of Civil
9 Procedure 12(f), contending that portions of Defendant’s motion contains scandalous matter and
10 that other portions are redundant. Plaintiff first complains that Defendant in his memorandum of
11 points and authorities wrote that “Plaintiff was sexually assaulted on multiple occasions while
12 ‘participating’ in a drug smuggling ‘conspiracy.’” (Def.’s Mem. P. & A. 1:23-24.) Plaintiff
13 contends that these statements are made in bad faith and cast a cruelly derogatory light on
14 Plaintiff. (Pl.’s Mot. Strike 4:17-19.) Defendant contends that Defendant’s description goes
15 towards Plaintiff’s state of mind and unwillingness to oppose the drug smuggling plot, and is
16 relevant and material to the motion. (Def.’s Opp’n 2:4-7.)

17 Motions to strike are disfavored and infrequently granted. *Neveau v. City of Fresno*, 392
18 F. Supp. 2d 1159, 1170 (E.D. Cal. 2005). A motion to strike should not be granted unless it is
19 clear that the matter to be stricken could have no possible bearing on the subject matter in the
20 litigation. *Id.* Having reviewed Plaintiff’s amended complaint, the Court finds that the
21 description of the incident is taken directly from Plaintiff’s complaint and is relevant as to the
22 claims herein, namely whether Defendant Tilton implemented an allegedly deficient mental
23 health policy. Plaintiff’s motion to strike on this ground is denied.

24 Plaintiff further complains that Defendant’s description that “Plaintiff did not ask for help
25 from custody staff or report the allegedly traumatic experience to medical staff because he did
26 not want to be labeled a ‘snitch’” is redundant, because it is repeated over 13 times. (Pl.’s Mot.
27 Strike 4:26-5:3.) Defendant contends that it is not redundant because Plaintiff in his amended
28 complaint listed each instance that he was sexually assaulted, and thus placed all his activities

1 during each assault at issue. (Def.’s Opp’n 2:17-20.) Defendant’s argument is persuasive.
2 Having put each incident of alleged sexual assault at issue, Plaintiff’s actions in reporting or not
3 reporting the assault are important to the adjudication of Plaintiff’s Eighth Amendment claims,
4 and is thus not redundant. Plaintiff’s motion to strike on this ground is denied.

5 **II. Motion To Dismiss - Failure To State A Claim**

6 **A. Legal Standard**

7 “The focus of any Rule 12(b)(6) dismissal . . . is the complaint.” *Schneider v. California*
8 *Dept. of Corr.*, 151 F.3d 1194, 1197 n.1 (9th Cir. 1998). In considering a motion to dismiss for
9 failure to state a claim, the court must accept as true the allegations of the complaint in question,
10 *Hospital Bldg. Co. v. Rex Hospital Trustees*, 425 U.S. 738, 740 (1976), construe the pleading in
11 the light most favorable to the party opposing the motion, and resolve all doubts in the pleader's
12 favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). The federal system is one of notice
13 pleading. *Galbraith v. County of Santa Clara*, 307 F.3d 1119, 1126 (2002).

14 Pursuant to Rule 8(a), a complaint must contain “a short and plain statement of the claim
15 showing that the pleader is entitled to relief . . .” Fed. R. Civ. P. 8(a). Detailed factual
16 allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action,
17 supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937,
18 1949 (2009) (citing *Bell. Atl. Corp v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must set
19 forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its face.’”
20 *Iqbal*, 129 S. Ct. at 1949 (quoting *Twombly*, 550 U.S. at 555). While factual allegations are
21 accepted as true, legal conclusions are not. *Id.* “The issue is not whether a plaintiff will
22 ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.
23 Indeed it may appear on the face of the pleadings that a recovery is very remote and unlikely but
24 that is not the test.” *Jackson v. Carey*, 353 F.3d 750, 755 (9th Cir. 2003) (quoting *Scheuer v.*
25 *Rhodes*, 416 U.S. 232, 236 (1974)); *see also Austin v. Terhune*, 367 F.3d 1167, 1171 (9th Cir.
26 2004) (quoting *Fontana v. Haskin*, 262 F.3d 871, 977 (9th Cir. 2001)) (“Pleadings need suffice
27 only to put the opposing party on notice of the claim . . .”).

28 ///

1 **B. Summary of Plaintiff’s Amended Complaint**

2 Plaintiff was incarcerated at Kern Valley State Prison (“KVSP”) in Delano, California,
3 during the events that gave rise to this action. Plaintiff alleges that in November 2005, inmate
4 Navarro coerced Plaintiff to “cooperate” with Defendant Campos, a licensed vocational nurse at
5 KVSP. Plaintiff alleges that inmate Navarro is a “shot-caller” and that Plaintiff understood
6 Navarro’s threats as an order to subject himself to sexual exploitation by Defendant Campos or
7 face serious danger. Plaintiff alleges that he was sexually assaulted by Defendant Campos on a
8 regular basis from November to approximately January 2006. Plaintiff alleges that in return,
9 Defendant Campos delivered drugs to inmate Navarro.

10 Plaintiff alleges that he reported the sexual assault in 2007, and was later seen by
11 Defendant J. Acosta, a clinical case manager. Plaintiff states that he informed Defendant Acosta
12 of the sexual assaults and that Plaintiff was suffering from recurring thoughts of sexual assault,
13 depression, anxiety, paranoia, and nightmares. Plaintiff states that he was informed by
14 Defendant Acosta that Plaintiff was suffering from Post-Traumatic Stress Disorder (“PTSD”).
15 Plaintiff was informed that CDCR did not classify PTSD as a serious medical disorder and did
16 not provide treatment for the condition. Plaintiff alleges Defendant J. Acosta did not provide
17 proper treatment. Plaintiff alleges that Defendant Bindler, the chief psychologist at PVSP,
18 terminated a PTSD study group prematurely. Plaintiff alleges that Defendants Trinh and Syed
19 also diagnosed Plaintiff with PTSD but did not provide treatment. Plaintiff alleges that
20 Defendants Tilton and Doe implemented a policy not to recognize PTSD as a serious medical
21 disorder, thus depriving Plaintiff of proper and adequate mental health treatment. Plaintiff
22 alleges a violation of the Eighth Amendment against all Defendants.

23 **C. Defendant’s Motion**

24 Defendant Tilton contends that Plaintiff fails to state a claim against him. Defendant
25 cites to Exhibits 1 through 18 of Plaintiff’s amended complaint in support of Defendant’s
26 argument. (Pl.’s Am. Compl., Exs. 1-18.) These exhibits are incorporated by reference into
27 Plaintiff’s amended complaint. *Cooper v. Pickett*, 137 F.3d 616, 622 (9th Cir. 1998) (holding
28 that material properly submitted as part of the complaint may be considered on a motion to

1 dismiss). Exhibits 1 through 18 indicate that Plaintiff received treatment for his depression and
2 anxiety. Defendant contends that Plaintiff provides no evidence that the treatment he received
3 was constitutionally inadequate, and is anything other than a difference of medical opinion, citing
4 to *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996). (Def.'s Mot. Dismiss 10:19-22.)

5 Plaintiff contends that the medication he receives has been ineffective. (Pl.'s Opp'n.)
6 Plaintiff submits as exhibits in support several drug requests that were filed from December 2009
7 to January 2010, which indicate that several drugs were prescribed to treat Plaintiff's mental
8 health. Those exhibits, however, do not concern the events in question in this action, which
9 occurred between 2005 and 2008. Furthermore, the Court in a motion to dismiss for failure to
10 state a claim may not examine materials outside the complaint and the pleadings. *Cooper*, 137
11 F.3d at 622.

12 A mere difference of opinion between physician and patient concerning the appropriate
13 course of treatment does not show deliberate indifference in violation of the Eighth Amendment.
14 *Toguchi v. Chung*, 391 F.3d 1051, 1058 (9th Cir. 2006) (citing *Jackson*, 90 F.3d at 332). Here,
15 Plaintiff complains that Defendant Tilton implemented a policy that does not specifically treat
16 PTSD. However, Plaintiff's amended complaint indicates that he did receive treatment for his
17 depression and anxiety. Plaintiff's amended complaint fails to indicate that his disagreement
18 with the mental health treatment he received arises from anything other than a difference of
19 opinion concerning the appropriate course of treatment, which does not rise to the level of
20 deliberate indifference.

21 Plaintiff contends that *Jackson* is inapplicable here, because there is no different choice of
22 treatment available. Plaintiff misinterprets the holding of *Jackson*. It is Plaintiff's burden to
23 plead how the course of treatment the doctors chose was medically unacceptable under the
24 circumstances and that it was chosen in conscious disregard of an excessive risk to his health.
25 *Jackson*, 90 F.3d at 332. Here, Plaintiff has not plead how the course of treatment chosen,
26 namely treating his depression and anxiety, rather than specifically treating his PTSD, was
27 medically unacceptable and chosen in conscious disregard of an excessive risk to his mental
28 health.

1 Accordingly, the Court will grant Defendant Tilton's motion to dismiss for failure to state
2 a claim.

3 **D. Defendants Syed, Trinh, Acosta, and Chief of Psychiatric Services**

4 Defendants Syed, Trinh, Acosta, and Chief of Psychiatric Services were not part of this
5 motion.³ The Court had originally found that had stated a cognizable claim against these four
6 Defendants for violation of the Eighth Amendment when they failed to provide mental health
7 treatment specifically for Plaintiff's PTSD. However, having further examined Plaintiff's
8 amended complaint, the Court finds that Plaintiff has also failed to state a cognizable claim for
9 violation of the Eighth Amendment against Defendants Syed, Trinh, Acosta, and Chief of
10 Psychiatric Services. Plaintiff's amended complaint indicates that he received treatment for his
11 depression and anxiety, if not for his PTSD. Plaintiff has failed to plead how treatment of his
12 depression and anxiety was medically unacceptable and chosen in conscious disregard of an
13 excessive risk to his mental health. Accordingly, the Court finds that Plaintiff has failed to state
14 a cognizable claim against Defendants Syed, Trinh, Acosta, and Chief of Psychiatric Services for
15 violation of the Eighth Amendment, and will dismiss those claims from this action. *See* Fed. R.
16 Civ. P. 54(b) (court may revise any order before entry of judgment adjudicating all claims); 28
17 U.S.C. § 1915A(a), (b) (screening requirement for prisoner civil actions).

18 **E. Without Leave To Amend**

19 Having re-screened Plaintiff's amended complaint, the Court must now decide whether to
20 grant Plaintiff further leave to amend. Leave to amend should be granted unless the pleading
21 cannot possibly be cured by the allegation of other facts. *Lopez v. Smith*, 203 F.3d 1122, 1127
22 (9th Cir. 2000) (en banc). Here, the Court finds that Plaintiff cannot amend his complaint a
23 second time to cure the deficiencies in his claims against Defendants Tilton, Syed, Trinh, Acosta,
24 or the Chief of Psychiatric Services.⁴ Plaintiff's amended complaint indicates that he received
25 treatment for his depression and anxiety. Plaintiff fails to plead how his difference of opinion

26
27 ³ Defendants Syed and Trinh have appeared in this action.

28 ⁴ Plaintiff had previously been provided with the legal standard for an Eighth Amendment claim concerning medical treatment in the Court's June 4, 2009 Order. (Doc. 14.)

1 concerning the treatment he wants and the treatment he received demonstrates that Defendants'
2 actions were medically unacceptably under the circumstances and chosen in conscious disregard
3 of an excessive risk to Plaintiff's mental health. Though he did not receive specific treatment for
4 his PTSD, Plaintiff pleads that he received mental health treatment for his depression and
5 anxiety. Thus, Plaintiff pleads that Defendants Tilton, Syed, Trinh, Acosta, and the Chief of
6 Psychiatric Services provided or implemented a policy that provided some mental health
7 treatment for Plaintiff's mental health issues. This cannot demonstrate conscious disregard of an
8 excessive risk to an inmate's mental health. The Court cannot find any facts that would possibly
9 cure these deficiencies. Accordingly, leave to amend will not be granted as to Plaintiff's claims
10 against Defendants Tilton, Syed, Trinh, Acosta, and the Chief of Psychiatric Services for his
11 mental health treatment.

12 **III. Conclusion And Order**

13 Based on the foregoing, it is HEREBY ORDERED that:

- 14 1. Plaintiff's motion to strike, filed February 22, 2010, is DENIED;
- 15 2. Defendant Tilton's motion to dismiss for failure to state a claim, filed February 1,
16 2010, is GRANTED;
- 17 3. Plaintiff's Eighth Amendment claim regarding his mental health treatment is
18 dismissed with prejudice for failure to state a claim upon which relief may be
19 granted; and
- 20 4. Defendants John Doe-Chief of Psychiatric Services, J. Acosta, D. Trinh, Nayla
21 Syed, and James Tilton are dismissed from this action with prejudice.

22 IT IS SO ORDERED.

23 **Dated: September 22, 2010**

23 **/s/ Dennis L. Beck**
24 UNITED STATES MAGISTRATE JUDGE

24

25

26

27

28