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

GEORGE BERRY STRONG,

Plaintiff,

vs.

KENNETH ELLIOTT,

Defendant.

Case No. 1:09-cv-00583 AWI JLT (PC)

FINDINGS AND RECOMMENDATIONS
RECOMMENDING THAT CERTAIN
CLAIMS BE DISMISSED

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Plaintiff is a state prisoner proceeding pro se and *in forma pauperis* with a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is Plaintiff’s complaint filed at the Kings County Superior Court on January 16, 2009.¹

I. SCREENING

A. Screening Requirement

The Court is required to review a case filed *in forma pauperis*. 28 U.S.C. § 1915(A)(a). The Court must review the complaint and dismiss the action if it is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915 (e)(2). If the Court determines the complaint fails to state a claim, leave

¹ On March 30, 2009, Defendant removed this case to this Court by filing a Notice of Removal of Action pursuant to 28 U.S.C. § 1441(b). (Doc. 1.) On April 17, 2009, Plaintiff filed a motion to remand this action back to the Kings County Superior Court. (Doc. 4.) This Court denied Plaintiff’s motion on July 29, 2009. (Docs. 7 & 11.)

1 to amend may be granted to the extent that the deficiencies of the complaint can be cured by amendment.

2 Lopez v. Smith, 203 F.3d 1122, 1127-28 (9th Cir. 2000) (en banc).

3 **B. Section 1983**

4 The Civil Rights Act under which this action was filed provides as follows:

5 Every person who, under color of [state law] . . . subjects, or causes to be
6 subjected, any citizen of the United States . . . to the deprivation of any rights,
7 privileges, or immunities secured by the Constitution . . . shall be liable to the
party injured in an action at law, suit in equity, or other proper proceeding for
redress.

8 42 U.S.C. § 1983.

9 To plead a § 1983 violation, the plaintiff must allege facts from which it may be inferred that (1)
10 plaintiff was deprived of a federal right, and (2) the person who deprived plaintiff of that right acted
11 under color of state law. West v. Atkins, 487 U.S. 42, 48 (1988); Collins v. Womancare, 878 F.2d 1145,
12 1147 (9th Cir. 1989). To warrant relief under § 1983, the plaintiff must allege and show that the
13 defendants' acts or omissions caused the deprivation of the plaintiff's constitutionally protected rights.
14 Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1993). "A person deprives another of a constitutional right,
15 within the meaning of section 1983, if he does an affirmative act, participates in another's affirmative
16 acts, or omits to perform an act which he is legally required to do that causes the deprivation of which
17 [the plaintiff complains]." Id. There must be an actual causal connection or link between the actions
18 of each defendant and the deprivation alleged to have been suffered by the plaintiff. See Monell v. Dept.
19 of Social Services, 436 U.S. 658, 691-92 (1978) (citing Rizzo v. Goode, 423 U.S. 362, 370-71(1976)).

20 **C. Rule 8(a)**

21 Section 1983 complaints are governed by the notice pleading standard in Federal Rule of Civil
22 Procedure 8(a), which provides in relevant part that:

23 A pleading that states a claim for relief must contain:

- 24 (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court
25 already has jurisdiction and the claim needs no new jurisdictional support;
- 26 (2) a short and plain statement of the claim showing that the pleader is entitled to relief;
and
- 27 (3) a demand for the relief sought, which may include relief in the alternative or different
28 types of relief.

1 The Federal Rules of Civil Procedure adopt a flexible pleading policy. Nevertheless, a complaint
2 must give fair notice and state the elements of the plaintiff’s claim plainly and succinctly. See Bell
3 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). In other words, the plaintiff is required to give
4 the defendants fair notice of what constitutes the plaintiff’s claim and the grounds upon which it rests.
5 Jones v. Community Redevelopment Agency, 733 F.2d 646, 649 (9th Cir. 1984). Although a complaint
6 need not outline all the elements of a claim, there “must contain sufficient factual matter, accepted as
7 true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 129 S. Ct. 1937, 173 L.
8 Ed. 2d 868 (2009) (quoting Twombly, 550 U.S. at 570). Vague and conclusory allegations are
9 insufficient to state a claim under § 1983. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir.
10 1982).

11 **II. THE COMPLAINT**

12 In his complaint, Plaintiff identifies Correctional Counselor Kenneth Elliott as the sole defendant
13 to this action and alleges the following. In 2006, while confined at Avenal State Prison, Plaintiff was
14 classified as totally medically disabled for work assignment purposes. Plaintiff suffers from carpal
15 tunnel syndrome and has been directed by a physician to wear braces on both wrists. Plaintiff also has
16 chronic back and shoulder pain, which limits his ability to bend, twist, lift, and stand or sit for prolonged
17 periods of time. (Compl. at 7, Exs. A-D.²)

18 On November 27, 2008, Plaintiff was transferred to the California Substance Abuse Treatment
19 Facility. Plaintiff subsequently appeared before a classification committee, which included Defendant,
20 for the purpose of placing Plaintiff at a work assignment. Defendant decided to place Plaintiff on the
21 Support Services waiting list for light restricted duty. Plaintiff informed Defendant of his medical
22 conditions and protested that he was prevented from performing the work. Nevertheless, Defendant
23 indicated that it was his policy that all prisoners be assigned to work regardless of their medical
24 disabilities. (Compl. at 7.)

25 On or around March 2008, Plaintiff was assigned to work as a dishwasher at the dining hall.
26 When Plaintiff reported for duty, he presented his medical documents to his supervisor, who

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28 ² Plaintiff’s complaint is not paginated. Thus, in the interest of consistency, the Court will cite to the pages of the
complaint as they appear on CM/ECF.

1 subsequently ordered Plaintiff to return to his cell. His supervisor explained that there were no tasks at
2 the dining hall that could be performed in light of Plaintiff's medical condition. However, when
3 Defendant was notified of this, he had Plaintiff reassigned to work at the dining hall as a line-server.
4 When Plaintiff reported for duty, he was dismissed once again by the dining hall supervisor due to his
5 medical limitations. (Compl. at 7-8.)

6 On April 29, 2008, Plaintiff appeared before a classification committee that did not include
7 Defendant. The committee decided to classify Plaintiff as medically unassigned pending further medical
8 evaluation. On July 9, 2008, Plaintiff was examined by a physician, who recommended that surgery be
9 performed on Plaintiff's wrists. (Compl. at 8, Ex. F.)

10 On October 30, 2008, Defendant indicated his intention to have Plaintiff placed on a waitlist for
11 a work assignment. On December 9, 2008, Defendant stripped Plaintiff of his medically unassigned
12 status and placed Plaintiff on a waiting list for vocational-landscaping. In reaching this decision,
13 Defendant relied on a report by Physician Assistant T. Byers on December 4, 2008. Plaintiff alleges that
14 Defendant destroyed medical records submitted by Dr. Rotman on November 16, 2008, which indicated
15 that Plaintiff continues to suffer from various disabilities and physical limitations and is unable to work.
16 (Compl. at 8-9.)

17 As of January 11, 2009, Plaintiff's work assignment involved lifting trash, sweeping and
18 mopping floors, cleaning bathrooms, and performing other janitorial duties. As a result, Plaintiff suffers
19 from severe pain daily and risks further injury to his hands, back, shoulder, and knees. Accordingly,
20 Plaintiff claims that Defendant has subjected him to involuntary servitude in violation of the Thirteenth
21 Amendment and to cruel and unusual punishment in violation of the Eighth Amendment. In terms of
22 relief, Plaintiff seeks monetary damages. (Compl. at 6, 9.)

23 **III. DISCUSSION**

24 **A. Thirteenth Amendment**

25 "There is no federally protected right of a state prisoner not to work while imprisoned after
26 conviction." Draper v. Rhay, 315 F.2d 193, 197 (9th Cir. 1963). "Where a person is duly tried,
27 convicted, sentenced and imprisoned for crime in accordance with law, no issue of peonage or
28 involuntary servitude arises." Id. Thus, requiring a prisoner to work in accordance with prison rules

1 does not violate the Thirteenth Amendment. Id.; Berry v. Bunnell, 39 F.3d 1056, 1057 (9th Cir. 1994).
2 Plaintiff's allegations against Defendant fail to state a cognizable claim in this regard.

3 **B. Eighth Amendment**

4 Nevertheless, under the Eighth Amendment, a prisoner may not be "compelled to perform
5 physical labor which is beyond their strength, endangers their lives or health, or causes undue pain."
6 Berry, 39 F.3d at 1057. In order to plead a viable Eighth Amendment claim in this regard, a prisoner
7 must allege facts demonstrating that: (1) a prison official subjected him to a "sufficiently serious"
8 deprivation; and (2) the prison official acted with "deliberate indifference." Farmer v. Brennan, 511 U.S.
9 825, 834 (1994) (quoting Wilson v. Seiter, 501 U.S. 294, 298 (1991)). Deliberate indifference in this
10 context is a high standard, present only where the prison official "knows of and disregards an excessive
11 risk to [the prisoner's] health and safety." Farmer, 511 U.S. at 837. In other words, "the official must
12 both be aware of facts from which the inference could be drawn that a substantial risk of serious harm
13 exists, and he must also draw the inference." Id.

14 Here, Plaintiff alleges that he has a serious medical need. Plaintiff alleges that he suffers from
15 carpal tunnel syndrome, as well as chronic back and shoulder pain, which requires treatment and effects
16 Plaintiff's ability to perform daily activities. See McGuckin v. Smith, 974 F.2d 1050, 1059-60 (9th Cir.
17 1992). In addition, Plaintiff appears to allege facts that, if proven, are sufficient to show Defendant acted
18 with deliberate indifference to those serious medical needs. Specifically, Plaintiff alleges that Defendant
19 persistently assigned Plaintiff to physical work, despite being well aware of Plaintiff's limitations due
20 to his chronic wrist, shoulder, and back pain. Plaintiff also alleges that it is Defendant's policy to assign
21 prisoners to work regardless of their medical limitations and disabilities. Accordingly, Plaintiff appears
22 to state a cognizable claim under the Eighth Amendment. The Court will authorize service of the
23 complaint as to this claim in an order filed concurrently with these findings and recommendations.

24 **C. Leave to Amend**

25 The Court is normally required to provide Plaintiff with notice of the deficiencies in his claims
26 and an opportunity to amend his complaint in order to cure those deficiencies. See Lopez, 203 F.3d at
27 1127. However, in this case, the Court finds that it is absolutely clear that the deficiencies in Plaintiff's
28 Thirteenth Amendment claim cannot be cured by amendment. Accordingly, the Court will recommend

1 that Plaintiff's Thirteenth Amendment claim be dismissed without leave to amend for failure to state a
2 claim. See Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987) (pro se litigant must be given leave to
3 amend his or her complaint unless it is absolutely clear that the deficiencies of the complaint could not
4 be cured by amendment).

5 **IV. CONCLUSION**

6 Accordingly, for the reasons set forth above, it is hereby RECOMMENDED that:

- 7 1. Plaintiff's Thirteenth Amendment claim be dismissed without leave to amend for failure
8 to state a claim upon which relief may be granted; and
- 9 2. This action proceed against Defendant on Plaintiff's Eighth Amendment claim.

10 These findings and recommendations are submitted to the United States District Judge assigned
11 to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local Rules of
12 Practice for the United States District Court, Eastern District of California. Within twenty-one days after
13 being served with these findings and recommendations, Plaintiff may file written objections with the
14 court. Such a document should be captioned "Objections to Magistrate Judge's Findings and
15 Recommendations." Plaintiff is advised that failure to file objections within the specified time may
16 waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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18 IT IS SO ORDERED.

19 Dated: October 25, 2010

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

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