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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ERNESTO SOTO,)	1:12cv00477 DLB PC
)	
Plaintiff,)	ORDER DISMISSING THIRD
)	AMENDED COMPLAINT
vs.)	WITHOUT LEAVE TO AMEND
)	
LOADHOLT, et al.,)	
)	
Defendants.)	

Plaintiff Ernesto Soto (“Plaintiff”), a state prisoner proceeding pro se, filed this civil rights complaint on March 29, 2012. Plaintiff paid the filing fee and is not proceeding in forma pauperis.¹

Pursuant to Court order, Plaintiff filed a First Amended Complaint on April 22, 2013, and a Second Amended Complaint on March 6, 2014. The Court dismissed the Second Amended Complaint, with leave to amend, on August 13, 2014. The Court warned Plaintiff that this would be his final opportunity to amend.

Plaintiff filed his Third Amended Complaint on November 3, 2014. He names, Dr. J. Moon, R.N. M. Ceballos, Dr. J. Kim, Dr. M. Loadholt, Dr. Edgar Clark, R.N. P. Rouch, Teresa

¹ Plaintiff consented to the jurisdiction of the United States Magistrate Judge on April 17, 2012.

1 Macias and L. Zamora as Defendants.² Except for Defendant Zamora, all Defendants were
2 employed at Corcoran State Prison (“CSP”) during the relevant time period.

3 **A. LEGAL STANDARD**

4 The Court is required to screen complaints brought by prisoners seeking relief against a
5 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).

6 The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
7 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or
8 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.

9 § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been
10 paid, the court shall dismiss the case at any time if the court determines that . . . the action or
11 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C.

12 § 1915(e)(2)(B)(ii).

13 **B. PLAINTIFF’S ALLEGATIONS**

14 Plaintiff is currently incarcerated in High Desert State Prison in Susanville, California.

15 The events at issue occurred while Plaintiff was housed at CSP.

16 Plaintiff alleges that in the beginning of September 2007, he began experiencing intense,
17 sharp pain in the back of his right knee, lower back, right testicle and rectal area. He also had
18 trouble urinating.

19 Plaintiff submitted a medical care request form and was seen by R.N. Johnson and
20 Defendant Loadholt a few days later. Plaintiff told Defendant Loadholt his problems and he was
21 given a rectal/prostate examination. Plaintiff was prescribed Terazosin for prostate enlargement,
22 but he did not receive any pain medication to relieve his sciatic nerve pain.

23 About a week later, Plaintiff returned to Defendant Loadholt for his ongoing pain. He
24 told Defendant Loadholt that the Terazosin was not working, and was causing adverse side

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² Although Plaintiff named Matthew Cate and Connie Gipson in his prior complaints, he now states that he wishes to dismiss them from this action.

1 effects such as pain and complications with urination. Defendant Loadholt's response was
2 "negative," and she "just prescribed a second pill." ECF No. 32, at 5. Plaintiff thought that the
3 second medication was for pain relief. However, the medication, Oxybutynin, was also for
4 prostate enlargement. Plaintiff alleges that Defendant Loadholt's conduct in ignoring his health
5 concerns on multiple occasions (November 24, 2007, November 29, 2007, December 4, 2007
6 and February 20, 2008) constituted deliberate indifference.

7
8 On November 25, 2007, Defendant Ceballos conducted a catheter procedure.

9 On November 26, 2007, Plaintiff was seen by Defendant Kim. Plaintiff told Defendant
10 Kim about his pains and "lack of health from the prescribed medications given by Defendant
11 Loadholt." ECF No. 32, at 7. Plaintiff also told Defendant Kim about his serious medical needs
12 and pains. Defendant Kim said, "I'm the doctor here, just keep taking your medication pills if
13 you want to get well." ECF No. 32, at 7. Plaintiff believes that Defendant Kim knew of
14 Plaintiff's medical needs and was deliberately indifferent when he ignored them.

15 On February 12, 2008, Plaintiff was admitted to the emergency room and seen by
16 Defendant Moon. Plaintiff told Defendant Moon that the Terazosin and Oxybutynin medications
17 were prescribed by Defendant Loadholt, and that he was experiencing very serious side effects.
18 Plaintiff asked to see a nerve specialist for his sciatic nerve damage. However, Defendant Moon
19 "simply stated, 'you are not going to die from those side effects, just keep taking your pills.'" ECF
20 No. 32, at 6-7. He underwent a fourth "disrespectful" prostate examination. Plaintiff
21 contends that Defendant Moon knew of his medical needs and was deliberately indifferent when
22 he ignored them.

23
24 On February 12, 2008, Plaintiff received a second catheter procedure from Defendant
25 Ceballos. Plaintiff contends that the procedure was conducted in a "very aggressive and painful
26 manner." ECF No. 32, at 6. Plaintiff told Defendant Ceballos that she was hurting him, but she
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1 “maintain[ed] a negative and painful approach.” ECF No. 32, at 6. Plaintiff contends that she
2 was deliberately indifferent.

3 On April 9, 2008, Plaintiff underwent a cystoscopy that revealed “mild smooth prostate
4 enlarge.” ECF No. 32, at 7. Plaintiff had a second cystoscopy done in 2012, and the results were
5 the same. Plaintiff contends that this shows that his prostate enlargement medications, which he
6 had asked doctors to change, were “doing nothing good.” ECF No. 32, at 8.

7 After the second cystoscopy, Plaintiff asked another doctor for his opinion. This doctor
8 was “alarmed” and cancelled Plaintiff’s prostate enlargement medications. ECF No. 32, at 8.
9 He told Plaintiff that mild prostate enlargement was nothing to be alarmed about.
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11 On February 9, 2010, Plaintiff submitted a medical appeal. In his appeal, Plaintiff
12 complained of abdominal pain, nerve pain, and pain during urination. He also complained that
13 his pain medication had been discontinued without warning or reason.

14 On April 16, 2010, Defendant Rouch interviewed Plaintiff in connection with his appeal.
15 He told her all of his health problems and asked to be referred to a nerve specialist. Defendant
16 Rouch denied his request, stating that the prison did not have sufficient funds to send him to a
17 specialist. As to his complaints about his prostate medications, Defendant Rouch stated, “that’s
18 not the issue at this time.” ECF No. 32, at 10.

19 On June 16, 2010, Defendant Macias denied the appeal at the First Level of Review.
20 Plaintiff contends that Defendants Rouch and Macias knew of his medical problems but were
21 deliberately indifferent in ignoring them.
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23 On October 25 and 26, 2010, Defendants Clark and Macias denied the appeal at the
24 Second Level of Review. The reviewers explained that they had reviewed Plaintiff’s medical
25 records and determined that there was no evidence to support his request to see a specialist. As
26 for his pain medication, the reviewers determined that it was appropriate treatment according to
27 the new California Prison Health Care Services guidelines. Plaintiff contends that Defendants
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1 Clark and Macias knew of his medical needs but were deliberately indifferent in delaying
2 medical care.

3 On October 31, 2010, Plaintiff submitted his appeal for Director’s Level Review.

4 On March 20, 2011, the appeal was denied by Defendant Zamora. Defendant Zamora
5 explained that Plaintiff had received Primary Care Provider evaluations, as well as a January 18,
6 2011, nephrology evaluation for complaints of abdominal pain, pain with urination and
7 hematuria. Documentation dated January 10, 2011, indicates a normal abdominal examination,
8 during which Plaintiff was in no acute distress and appeared well. Plaintiff had active orders for
9 medications, including analgesics and bladder antispasmodics. Plaintiff contends that Defendant
10 Zamora knew of his medical needs but was deliberately indifferent by denying medical attention.
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12 Based on these allegations, Plaintiff requests declaratory relief, injunctive relief and
13 monetary damages.

14 **C. DISCUSSION**

15 1. Legal Standard

16 Prison officials have a duty to ensure that prisoners are provided adequate shelter, food,
17 clothing, sanitation, medical care, and personal safety, Johnson v. Lewis, 217 F.3d 726, 731 (9th
18 Cir. 2000) (quotation marks and citations omitted), but not every injury that a prisoner sustains
19 while in prison represents a constitutional violation, Morgan, 465 F.3d at 1045 (quotation marks
20 omitted). To maintain an Eighth Amendment claim, inmates must show deliberate indifference
21 to a substantial risk of harm to their health or safety. E.g., Farmer, 511 U.S. at 847; Thomas v.
22 Ponder, 611 F.3d 1144, 1151-52 (9th Cir. 2010); Foster v. Runnels, 554 F.3d 807, 812-14 (9th
23 Cir. 2009); Morgan, 465 F.3d at 1045; Johnson, 217 F.3d at 731; Frost v. Agnos, 152 F.3d 1124,
24 1128 (9th Cir. 1998).
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26 For claims arising out of medical care in prison, Plaintiff “must show (1) a serious
27 medical need by demonstrating that failure to treat [his] condition could result in further
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1 significant injury or the unnecessary and wanton infliction of pain,” and (2) that “the defendant’s
2 response to the need was deliberately indifferent.” Wilhelm v. Rotman, 680 F.3d 1113, 1122
3 (9th Cir. 2012) (citing Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006)).

4 Deliberate indifference is shown by “(a) a purposeful act or failure to respond to a
5 prisoner’s pain or possible medical need, and (b) harm caused by the indifference.” Wilhelm,
6 680 F.3d at 1122 (citing Jett, 439 F.3d at 1096). The requisite state of mind is one of subjective
7 recklessness, which entails more than ordinary lack of due care. Snow v. McDaniel, 681 F.3d
8 978, 985 (9th Cir. 2012) (citation and quotation marks omitted); Wilhelm, 680 F.3d at 1122.
9 Deliberate indifference may be shown “when prison officials deny, delay or intentionally
10 interfere with medical treatment, or it may be shown by the way in which prison physicians
11 provide medical care.” Wilhelm, 680 F.3d at 1122 (citing Jett, 439 F.3d at 1096) (internal
12 quotation marks omitted).
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14 2. Analysis

15 a. *Defendants Loadholt, Moon and Kim*

16 Plaintiff’s allegations against Defendants Loadholt, Moon and Kim are based on his
17 belief that they ignored his medical needs. However, as with his prior amendments, Plaintiff’s
18 allegations do not support a finding that Defendants ignored his complaints. Rather, his
19 allegations demonstrate that Defendants Loadholt, Moon and Kim provided treatment for
20 Plaintiff, though Plaintiff apparently believes that the treatment was insufficient in some way.
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22 Defendant Loadholt gave Plaintiff prostate medications, but no pain medications.
23 Although Plaintiff told her that the medication was causing side effects, she gave him another
24 prostate medication. Plaintiff also told Defendant Kim of his pain and concerns, but he told
25 Plaintiff to keep taking his medications if he wanted to get better. Similarly, Defendant Moon
26 told Plaintiff that the side effects were not serious and that he should keep taking his
27 medications.
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1 While he may not have agreed with their treatment, Defendants Loadholt, Moon and Kim
2 did not ignore Plaintiff’s medical needs. A disagreement with treatment does not rise to the level
3 of deliberate indifference unless Plaintiff can show “that the course of treatment the doctors
4 chose was medically unacceptable under the circumstances and that the defendants chose this
5 course in conscious disregard of an excessive risk to [his] health.” Snow v. McDaniel, 681 F.3d
6 978, 987-988 (9th Cir. 2012) (citing Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989));
7 Wilhelm v. Rotman, 680 F.3d 1113, 1122-23 (9th Cir. 2012) (citing Jackson v. McIntosh, 90
8 F.3d 330, 332 (9th Cir. 1986)).

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10 Plaintiff makes no such showing here. This has been explained to Plaintiff on numerous
11 prior occasions, but he has failed to correct the deficiency. Further leave to amend is not
12 warranted.

13 b. *Defendant Ceballo*

14 Plaintiff contends that Defendant Ceballo was deliberately indifferent when she
15 performed a catheter-insertion procedure on February 12, 2008. Plaintiff states that the
16 procedure was conducted in a “very aggressive and painful manner,” and that even when
17 Plaintiff told her that she was hurting him, she “maintain[ed] a negative and painful approach.”

18 However, despite Plaintiff’s description, there are no facts to show that Defendant
19 Ceballo acted with the requisite state of mind. Certain procedures are simply painful, and the
20 Eighth Amendment is not violated by the fact that a prisoner experienced pain.

21 Even assuming that Defendant Ceballo erred, a finding that is not supported by the
22 record, an Eighth Amendment claim may not be premised on even gross negligence by a
23 physician. Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990). “Medical malpractice
24 does not become a constitutional violation merely because the victim is a prisoner.” Estelle v.
25 Gamble, 429 U.S. 97, 106, 97 S.Ct. 285 (1977); Snow v. McDaniel, 681 F.3d 978, 987-88 (9th
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1 Cir. 2012), overruled in part on other grounds, Peralta v. Dillard, 744 F.3d 1076, 1082-83 (9th
2 Cir. 2014); Wilhelm v. Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012).

3 Plaintiff therefore fails to state a claim against Defendant Ceballos. The Court explained
4 this deficiency in the prior screening order(s), but Plaintiff has failed to correct it. Further leave
5 to amend is not warranted.

6 c. *Defendants Rouch, Clark, Macias and Zamora*

7 Defendants Rouch, Clark, Macias and Zamora were involved in adjudicating Plaintiff's
8 appeals.

9 Generally, denying a prisoner's administrative appeal does not cause or contribute to the
10 underlying violation. George v. Smith, 507 F.3d 605, 609 (7th Cir. 2007) (quotation marks
11 omitted). However, because prison administrators cannot willfully turn a blind eye to
12 constitutional violations being committed by subordinates, Jett v. Penner, 439 F.3d 1091, 1098
13 (9th Cir. 2006), there may be limited circumstances in which those involved in reviewing an
14 inmate appeal can be held liable under section 1983. That circumstance has not been presented
15 here.

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17 As he did in his prior complaints, Plaintiff fails to allege facts that these Defendants knew
18 of a constitutional violation but failed to prevent it. In fact, Plaintiff has not stated a viable claim
19 against any Defendants relating to his medication care. Absent the presentation of facts
20 sufficient to show that an Eighth Amendment violation occurred in the first place, Plaintiff
21 cannot pursue a claim against those who reviewed the administrative appeal grieving the
22 underlying denial of medical care.

23
24 The Court also notes that the medical grievance at issue was submitted almost two years
25 *after* Plaintiff's last medical treatment described in his complaint. The appeal involved
26 complaints of abdominal pain, nerve pain, and pain during urination. He also complained that
27 his pain medication had been discontinued without warning or reason. Insofar as Plaintiff faults
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1 the treating Defendants for prescribing the prostate medications, it cannot be said that the
2 reviewing officials were aware of the problem and failed to correct it where the grievance
3 doesn't specifically address such allegations. Moreover, given the time lapse, it is unclear
4 whether *any* of the actions of the treating Defendants were even at issue. Involvement in
5 reviewing an inmate's administrative appeal does not necessarily demonstrate awareness of
6 alleged violation. Peralta v. Dillard, 744 F.3d 1076, 1086-87 (9th Cir. 2014).

7
8 Plaintiff has therefore failed to state a claim against Defendants Rouch, Clark, Macias
9 and Zamora. He was informed of these deficiencies in the prior screening order, but has failed to
10 correct them. Further leave to amend is not warranted.

11 **D. CONCLUSION AND ORDER**

12 Plaintiff's Third Amended Complaint fails to state a claim upon which relief may be
13 granted under section 1983. Plaintiff has had numerous opportunities to correct the deficiencies,
14 but he has failed to do so. Plaintiff was warned in the prior screening order that this would be his
15 final opportunity to amend. Accordingly, further amendment is not warranted. Noll v. Carlson,
16 809 F.2d 1446, 1448-49 (9th Cir. 1987).

17 Accordingly, this action is DISMISSED WITHOUT LEAVE TO AMEND.

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19 IT IS SO ORDERED.

20 Dated: February 11, 2015

21 /s/ Dennis L. Beck
22 UNITED STATES MAGISTRATE JUDGE
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