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

TONY ROBERTS,

Plaintiff,

No. 2:08-cv-2624 KJN P

vs.

MATTHEW CATE, et al.,

Defendants.

ORDER AND

FINDINGS AND RECOMMENDATIONS

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Plaintiff is a state prisoner proceeding without counsel and in forma pauperis with an action filed pursuant to 42 U.S.C. § 1983. On December 22, 2009, defendants filed a motion to dismiss on the grounds that plaintiff fails to state a claim upon which relief can be granted, and that his claim for injunctive relief is barred in light of Coleman v. Schwarzenegger, No. 2:90-cv-0520 LKK JFM (E.D. Cal.), a class action suit concerning mental health care in California state prisons. On January 6, 2010, plaintiff filed a timely opposition to the motion.

Background

In his complaint plaintiff alleges as follows. Plaintiff suffers from a history of mental health problems, including suicidal thoughts. On December 27, 2007, Dr. McDogold, plaintiff’s psychologist at California Medical Facility, recommended plaintiff be “moved to a correctional facility close to [plaintiff’s] family in Southern California.” (Am. Compl. at 6.)

1 This recommendation was based on Dr. McDogold’s conclusion that plaintiff’s family is a
2 “stabilizing factor” in plaintiff’s life, and his mental health would benefit from family visits.
3 (Id.) On February 29, 2008, a Unit Classification Committee recommended plaintiff for transfer
4 to a correctional facility close to his family in Southern California. (Id.) On March 18, 2008, a
5 Classification Staff Representative endorsed plaintiff for transfer to California Men’s Colony
6 solely on the basis of Dr. McDogold’s recommendation. (Id.) However, contrary to the above,
7 plaintiff was transferred to a prison in Central California, where his family was unable to travel
8 to visit plaintiff.

9 Plaintiff alleges that all defendants were deliberately indifferent to his serious
10 medical needs when they failed to ensure plaintiff was transferred to a prison facility in Southern
11 California, in violation of the Eighth Amendment. Plaintiff also alleges that defendants Cate and
12 Marshall are “directly responsible for tacit authorization of violative policy and practices . . . or
13 implementation of a policy or custom of inadequate mental health care within CDCR and CMC.”
14 (Am. Compl. 5, 10.) Plaintiff also alleges defendant Knowles “failed to exercise ministerial
15 duties by refusing to enforce, monitor, and abide by the terms of a mental health care system”
16 that would have provided plaintiff with a stable condition of confinement, in part by transferring
17 him to a facility in Southern California, pursuant to his psychologist’s recommendation. Plaintiff
18 seeks injunctive relief only.

19 Legal Standards

20 Rule 12(b)(6) of the Federal Rules of Civil Procedures provides for motions to
21 dismiss for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6).
22 In considering a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the
23 court must accept as true the allegations of the complaint in question, Erickson v. Pardus, 551
24 U.S. 89 (2007), and construe the pleading in the light most favorable to the plaintiff. Jenkins v.
25 McKeithen, 395 U.S. 411, 421 (1969); Meek v. County of Riverside, 183 F.3d 962, 965 (9th Cir.
26 1999). In order to survive dismissal for failure to state a claim, a complaint must contain more

1 than “a formulaic recitation of the elements of a cause of action;” it must contain factual
2 allegations sufficient “to raise a right to relief above the speculative level.” Bell Atlantic Corp. v.
3 Twombly, 550 U.S. 544, 554 (2007). However, “[s]pecific facts are not necessary; the statement
4 [of facts] need only ‘give the defendant fair notice of what the . . . claim is and the grounds upon
5 which it rests.’ ” Erickson, 551 U.S. 89 (citations omitted).

6 A motion to dismiss for failure to state a claim should not be granted unless it
7 appears beyond doubt that the plaintiff can prove no set of facts in support of his claims which
8 would entitle him to relief. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Palmer v.
9 Roosevelt Lake Log Owners Ass’n, 651 F.2d 1289, 1294 (9th Cir. 1981). In general, pro se
10 pleadings are held to a less stringent standard than those drafted by lawyers. Haines v. Kerner,
11 404 U.S. 519, 520 (1972). The court has an obligation to construe such pleadings liberally.
12 Bretz v. Kelman, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985) (en banc). However, the court’s
13 liberal interpretation of a pro se complaint may not supply essential elements of the claim that
14 were not pled. Ivey v. Bd. of Regents of Univ. of Alaska, 673 F.2d 266, 268 (9th Cir. 1982).

15 Analysis

16 Prison Transfer

17 Plaintiff claims that defendants failed to ensure plaintiff was transferred to a
18 prison in Southern California near his family and failed to enforce the psychologist’s
19 recommendation he be transferred, in violation of the Eighth Amendment.

20 Plaintiff contends that defendants’ failure to comply with Dr. McDogold’s
21 recommendation denies plaintiff the “therapeutic effect . . . and [interferes] with feasible
22 measures necessary to implement and to adopt a comprehensive treatment plan” prescribed for
23 plaintiff’s serious mental health needs. (Opp’n at 4.) Plaintiff also contends that California

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1 Penal Code § 5068¹ provides plaintiff a protected liberty interest entitling him to due process.

2 Plaintiff seeks a court order requiring defendants to comply with Dr. McDogold's
3 recommendation, and transfer plaintiff to a prison in Southern California near his family. (Am.
4 Compl. at 16.)

5 Defendants contend plaintiff has no constitutional right to determine his housing
6 placement and should not be held liable for violations of the Eighth Amendment because
7 plaintiff's housing is outside his family's ability to travel. (Mot. at 4-5.)

8 Deliberate indifference to a prisoner's serious medical needs violates the Eighth
9 Amendment's proscription against cruel and unusual punishment. See Estelle v. Gamble, 429
10 U.S. 97, 102-04 (1975). Prisoners' mental health needs are among the medical needs covered by
11 the Eighth Amendment. See Doty v. County of Lassen, 37 F.3d 540, 546 (9th Cir. 1994); see

12
13 ¹ Section 5068 provides, in pertinent part:

14 The Director of Corrections shall cause each person who is newly
15 committed to a state prison to be examined and studied. This
16 includes the investigation of all pertinent circumstances of the
17 person's life such as the existence of any strong community and
18 family ties, the maintenance of which may aid in the person's
19 rehabilitation, and the antecedents of the violation of law because
20 of which he or she has been committed to prison. Any person may
21 be reexamined to determine whether existing orders and
22 dispositions should be modified or continued in force.

19 Upon the basis of the examination and study, the Director of
20 Corrections shall classify prisoners ; and when reasonable, the
21 director shall assign a prisoner to the institution of the appropriate
22 security level and gender population nearest the prisoner's home,
23 unless other classification factors make such a placement
24 unreasonable.

22 As used in this section, "reasonable" includes consideration of
23 the safety of the prisoner and the institution, the length of term, and
24 the availability of institutional programs and housing.

24 As used in this section, "prisoner's home" means a place where
25 the prisoner's spouse, parents, or children reside at the time of
26 commitment. . . .

26 Cal. Penal Code § 5068.

1 also Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982) (mental health care requirements
2 analyzed as part of general health care requirements), abrogated in part on other grounds by
3 Sandin v. Connor, 515 U.S. 472 (1995). To prove that the response of prison officials to a
4 prisoner's mental health needs was constitutionally deficient, the prisoner must establish: (1) a
5 serious mental health need; and (2) deliberate indifference to that need by prison officials. See
6 McGuckin v. Smith, 974 F.2d 1050, 1059-60 (9th Cir. 1992), overruled on other grounds, WMX
7 Technologies, Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc). The subjective
8 prong standard is the same for the mental health needs claim as a claim involving alleged
9 prisoner safety: a prison official is deliberately indifferent if he knows that a prisoner faces a
10 substantial risk of serious harm and disregards that risk by failing to take reasonable measures to
11 abate it. See Farmer v. Brennan, 511 U.S. 825, 837, 844 (1994).

12 Plaintiff alleges a serious mental health need. The mental health need must be
13 similar to a serious medical need, i.e., such a need exists

14 if the failure to treat a prisoner's condition could result in further
15 significant injury or the "unnecessary and wanton infliction of
16 pain." The "routine discomfort" that results from incarceration and
17 which is "part of the penalty that criminal offenders pay for their
18 offenses against society" does not constitute a "serious" medical
19 need.

18 Doty, 37 F.3d at 546 (citations omitted). Liberally construed, plaintiff contends he suffers from
19 suicidal tendencies, perceptual disturbances, hallucinations, paranoia and guilt. (Am. Compl. at
20 8.) These allegations are sufficient to plead a serious medical need.

21 Plaintiff also alleges deliberate indifference by defendants based upon their failure
22 to ensure his transfer or enforce his transfer to a prison near his family as recommended by his
23 psychologist, and based on the psychologist's conclusion that housing plaintiff near his family
24 would serve as a stabilizing factor in addressing plaintiff's mental health needs. Plaintiff alleges
25 that after he was transferred to California Men's Colony he was temporarily transferred back to
26 CMF for required Acute Inpatient Level of care, and plaintiff had been under suicide watch.

1 (Am. Compl. at 7.) These allegations state a potential claim for deliberate indifference to
2 plaintiff's serious medical needs in violation of the Eighth Amendment.

3 Defendants object that plaintiff does not have a constitutional right to determine
4 his own housing placement. Opp'n at 4; Meachum v. Fano, 427 U.S. 215, 225 (1976). In
5 Meachum, prisoners challenged their transfers to less favorable institutions without due process.
6 Id. The court found an inmate had no due process right to confinement in a particular facility
7 because confinement in any of the state's prisons was "within the normal limits or range of
8 custody which the conviction has authorized the State to impose " Id., 427 U.S. at 225.
9 Moreover, defendants point out that plaintiff confirms defendants attempted to comply with the
10 mental health recommendation by transferring plaintiff to California Men's Colony, which is
11 closer to plaintiff's family than California Medical Facility. Plaintiff, however, contends his due
12 process rights were violated because his serious mental health needs require prison officials to
13 follow his psychologist's recommendation to house him in a prison much closer to his family.

14 Ultimately, defendants may be able to show consideration was given to house
15 plaintiff in a prison in Southern California, but due to lack of space or other penological
16 concerns, they were unable to accommodate plaintiff's needs. However, defendants provided no
17 such facts or argument here. Absent such a showing, it appears defendants ignored the
18 recommendation and arbitrarily placed plaintiff at California Men's Colony. Therefore, absent
19 further development of the record, it appears plaintiff's allegations state a claim for deliberate
20 indifference to his mental health condition.

21 However, even assuming plaintiff has stated a cognizable Eighth Amendment
22 claim, plaintiff only seeks injunctive relief herein.² As discussed more fully below, based on the
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24 ² The court has considered whether to grant plaintiff leave to amend to pursue an Eighth
25 Amendment claim for damages. However, plaintiff expressly states that "money damages will
26 not adequately compensate plaintiff for the denial of his civil rights or to alleviate psychiatric
distress with mental health care. . . .," and that "money damages for plaintiff's injuries is
extremely difficult to calculate." (Am. Compl. at 16-17.) Thus, plaintiff seeks only injunctive

1 pending class action, Coleman v. Schwarzenegger, No. 2:90-cv-0520 LKK JFM, plaintiff cannot
2 personally pursue injunctive relief claims. Thus, defendants’ motion to dismiss this claim must
3 be granted.

4 Request for Injunctive Relief

5 As discussed above, plaintiff alleges that defendants Cate and Marshall are
6 “directly responsible for tacit authorization of violative policy and practices . . . or
7 implementation of a policy or custom of inadequate mental health care within CDCR and CMC.”
8 (Am. Compl. 5, 10.) Plaintiff seeks injunctive relief only.

9 A plaintiff who is a member of a class action for equitable relief from prison
10 conditions may not maintain a separate, individual suit for equitable relief involving the same
11 subject matter of the class action. See Crawford v. Bell, 599 F.2d 890, 892-93 (9th Cir. 1979);
12 see also McNeil v. Guthrie, 945 F.2d 1163, 1165 (10th Cir. 1991) (“Individual suits for
13 injunctive and equitable relief from alleged unconstitutional prison conditions cannot be brought
14 where there is an existing class action.”); Gillespie v. Crawford, 858 F.2d 1101, 1103 (5th Cir.
15 1988) (en banc) (“To allow individual suits would interfere with the orderly administration of the
16 class action and risk inconsistent adjudications.”).

17 A class action pending in this court, Coleman v. Schwarzenegger, No. 2:90-cv-
18 0520 LKK JFM, involves a constitutional challenge to the adequacy of mental health care
19 provided in the California state prison system. These claims involve the same subject matter
20 presented by plaintiff’s equitable claims in this action. The class in Coleman is comprised of
21 mentally ill inmates incarcerated in California prisons alleging that prison officials are depriving
22 them of constitutionally required mental health care. More precisely, the class includes “all
23 inmates with serious mental disorders who are now or who will in the future be confined within
24 the California Department of Corrections. . . .” See Coleman v. Wilson, 912 F. Supp. 1282, 1293

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26 relief.

1 (E.D. Cal. 1995).

2 In this case, plaintiff seeks injunctive relief based on his claim that defendants
3 authorized an inadequate mental health care system, both at CMF and CMC. However, plaintiff
4 is a member of the Coleman class and must bring his “claims for equitable relief . . . through the
5 class representative until the class action is over or the consent decree is modified.” McNeil, 945
6 F.2d at 1166. See also Crawford, 599 F.2d at 892-93; Frost v. Symington, 197 F.3d 348, 359
7 (9th Cir. 1999). Accordingly, defendants’ motion to dismiss plaintiff’s claims for injunctive
8 relief should be granted.

9 Conclusion

10 In accordance with the above, IT IS HEREBY ORDERED that the Clerk of the
11 Court is directed to assign a district judge to this case; and

12 IT IS HEREBY RECOMMENDED that:

- 13 1. Defendants’ December 22, 2009 motion to dismiss (Dkt. No. 21) be partially
14 granted;
- 15 2. Plaintiff’s claims for injunctive relief be dismissed; and
- 16 3. This action proceed on plaintiff’s Eighth Amendment claims, as set forth
17 above.

18 These findings and recommendations are submitted to the United States District
19 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-
20 one days after being served with these findings and recommendations, any party may file written
21 objections with the court and serve a copy on all parties. Such a document should be captioned
22 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
23 objections shall be filed and served within fourteen days after service of the objections. The

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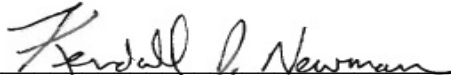
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1 parties are advised that failure to file objections within the specified time may waive the right to
2 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: July 27, 2010

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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