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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE B. ORTIZ,
Plaintiff,
v.
REYNOLDS et al.,
Defendants.

No. 2:10-cv-1380-MCE-EFB P

ORDER

Plaintiff is a state prisoner who proceeded without counsel in this action brought under 42 U.S.C. § 1983. The parties agreed to settle all remaining claims on February 22, 2017. ECF No. 163. The case was accordingly dismissed on March 14, 2017. ECF No. 169.

On July 31, 2017, plaintiff submitted a letter to the court complaining that defendants had not complied with the settlement agreement. ECF No. 171.

I. Background

A. The Parties' Settlement

Plaintiff's underlying claim in this action is that defendant Miranda discontinued and threatened to discontinue plaintiff's prescription for Gabapentin in violation of his First and Eighth Amendments rights. See ECF Nos. 80, 85, 121.

A court supervised settlement conference occurred on February 22, 2017. ECF No. 154.

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1 On that date, the parties reached a settlement and the terms of their agreement were entered into
2 the record in open court. ECF No. 166. First, the parties stipulated that the CDCR would pay
3 plaintiff \$5,500, “obviously with the understanding that [the money would] go towards any
4 restitution [plaintiff might] owe.” *Id.* at 6. It was further stipulated that the CDCR would “need a
5 maximum of 180 days to have the money credit to [plaintiff’s] restitution account.” *Id.* at 10.
6 Second, the parties stipulated that defendants would make a “good faith effort” to find plaintiff a
7 radio to replace one that was taken from him. *Id.* at 7–8. Plaintiff stated on the record that, while
8 the CDCR would make an effort to find him a radio, “there[] [was] no guarantee” that he would
9 receive one. *Id.* at 8. Third, the parties stipulated that the CDCR would ask “the Chief Medical
10 Executive [“CME”] of Pleasant Valley State Prison [“PVSP”] to review plaintiff’s medical
11 records and make any appropriate recommendations for [his] ongoing care deemed necessary
12 based on the [CME’s] clinical assessment.” *Id.* at 5. The request was to be made to the CME at
13 PVSP within seven days of the “signing of the settlement agreement and release” and was to
14 include “a further personal evaluation by a staff physician deemed most appropriate by the
15 [CME].” *Id.* at 5-6.

16 On March 9, 2017, the parties filed a stipulation of dismissal, ECF No. 168, which the
17 court approved, ECF No. 169. The stipulation of dismissal stated, *inter alia*, that the court “shall
18 retain jurisdiction to enforce the terms of the settlement agreement in accordance with the terms
19 of the Settlement Agreement and Release.” ECF No. 168 at 1.

20 **B. The Parties’ Contentions**

21 On July 31, 2017, plaintiff filed a letter stating that, despite his signing the settlement
22 agreement on March 8, 2017, “nothing that was stipulated [to] on the record [at the February 22,
23 settlement conference] has been fulfilled.” ECF No. 171 at 1.

24 Defendants’ response to plaintiff’s letter asserts, generally, that they have fulfilled all the
25 terms of the settlement agreement. ECF No. 173. Defendants support their response with the
26 affidavits of certain CDCR officials. Roscoe Barrow is the Chief Counsel for California
27 Correctional Health Care Services. ECF No. 173-4 ¶ 1. Barrow states that, on March 20, 2017,
28 he received the fully executed settlement agreement. *Id.* ¶ 4. He further states that, on the

1 following day, he requested Dr. Onyeje, the CME at PVSP, to complete his medical review
2 pursuant to the terms of the agreement. *Id.* He also states that, on April 19, 2017, Dr. Onyeje
3 told him that plaintiff had been transferred to California Correctional Institution (“CCI”), *id.* ¶ 5,
4 which occurred on February 24, 2017, ECF No. 173-2 ¶ 2. Moreover, Barrow states that, on the
5 same day, he contacted Dr. Shiesha, the CME at CCI. *Id.* ¶ 6. According to Barrow, Dr. Shiesha
6 told him that plaintiff had refused an appointment with his primary care physician for a physical
7 examination. *Id.* Thereafter, Barrow continues, he asked Dr. Shiesha to review plaintiff’s file,
8 make recommendations regarding his care, and document those recommendations. *Id.* Barrow
9 adds that this review was conducted and that Dr. Shiesha concurred with plaintiff’s primary care
10 physician regarding his care. *Id.*

11 M. Dailo is the Litigation Coordinator at CCI. ECF No. 173-2 ¶ 1. Dailo states that
12 plaintiff arrived at CCI on February 24, 2017 and left on April 3, 2017. *Id.* ¶ 2. He further states
13 that, during this time, CDCR officials diligently searched for a radio and, on March 3, 2017,
14 found two radios for him. *Id.* ¶ 3. Dailo also states that, on March 14, 2017, “Receiving and
15 Release” showed plaintiff the radios that were available, but that he refused them because he
16 wanted “a radio from the institution that [allegedly] owe[d] him one.” *Id.*

17 K.D. Geringer is the Litigation Coordinator at PVSP. ECF No. 173-3 ¶ 1. Geringer states
18 that, on March 14, 2017, he was advised that plaintiff refused the above-mentioned radios. *Id.*
19 ¶ 3. He further states that, thereafter, PVSP personnel continued searching for a radio but could
20 not find one. *Id.* He adds that he has “since again checked with Receiving and Release and there
21 are no radios available.” *Id.*

22 Defendants also submitted affidavits from Gabrielle De Santis Nield to support their
23 response. ECF Nos. 173-1, 174. Nield is an attorney for defendant Miranda. ECF No. 173-1 ¶ 1.
24 Nield states that, on June 5, 2017, the State Controller’s office issued a \$5,238.10 payment that
25 posted to plaintiff’s trust account on June 20, 2017 and was applied directly to his restitution. *Id.*
26 ¶ 3. Nield further states that the additional \$261.90 of the \$5,500 settlement was sent to the
27 Administrative Unit for administrative fees. *Id.* Nield adds that, on August 17, 2017, plaintiff

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1 was “fully evaluated and examined by Dr. Ana De La Sierra at the request of Dr. Onyeje.” ECF
2 No. 174 ¶ 3.

3 Plaintiff responds that he never refused an appointment for a physical examination while
4 at CCI. ECF No. 175 at 1. He also disputes that he was given a full examination by Dr. De La
5 Sierra on August 17, 2017. *Id.* at 2. Plaintiff states that she simply asked him a few questions
6 about his chronic back pain and said she would refer him to a neurologist, who he has yet to see.
7 *Id.* Plaintiff also provides a trust account statement from August 9, 2017 that shows no payment
8 of \$5,230.10. *Id.* at 5. Lastly, plaintiff disputes that any correctional staff offered him a
9 replacement radio and states that he never refused such. *Id.* at 3-4.

10 **II. Legal Analysis**

11 **A. Jurisdiction**

12 “Federal courts have no inherent power to enforce settlement agreements entered into by
13 parties litigating before them.” *K.C. ex rel. Erica C. v. Torlakson*, 762 F.3d 963, 967 (9th Cir.
14 2014) (citation omitted). However, federal courts have ancillary jurisdiction to enforce a
15 settlement agreement if the parties’ obligation to comply with the terms of the settlement
16 agreement has been made part of the order of dismissal, such as by a provision retaining
17 jurisdiction over the settlement agreement. *Id.* (bracketing in original) (citation omitted).

18 Here, the court approved the parties’ stipulation, ECF No. 169, which specifically
19 provided that the court would retain jurisdiction to enforce the terms of the settlement agreement,
20 ECF No. 168 at 1. Furthermore, the parties stipulated on the record during the settlement hearing
21 that the court would retain jurisdiction over the agreement. ECF No. 166 at 4–5. Accordingly,
22 the court has ancillary jurisdiction to review defendants’ compliance with the agreement.

23 **B. Discussion**

24 Courts treat settlement agreements as contracts. *Rouser v. White*, 825 F.3d 1076, 1081
25 (9th Cir. 2016). The court construes plaintiff’s letter as a motion to enforce the settlement
26 agreement. Accordingly, the question before the court is whether defendants have substantially
27 complied with the agreement. *Id.* at 1081-82. Defendants have substantially complied if any

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1 deviation from the terms of the agreement is unintentional and so minor or trivial as to not
2 substantially defeat the object of the agreement. *Id.* at 1082.

3 Defendants' evidence shows that they have complied with some of the terms of the
4 settlement agreement. Defendants asked the CME at PVSP, Dr. Onyeje, to review plaintiff's
5 medical records and make any appropriate recommendations. Barrow states that, a day after
6 receiving the fully executed settlement agreement, he asked Dr. Onyeje to complete the agreed-
7 upon medical review. Although Dr. Onyeje did not immediately complete this review, the
8 evidence shows that plaintiff was at CCI, not PVSP, at this time. Subsequently, the CME at CCI,
9 Dr. Shiesha, informed Barrow that plaintiff had refused an appointment with his primary care
10 physician. Dr. Shiesha reviewed plaintiff's file and agreed with his primary care physician
11 regarding his care. Later, Dr. Onyeje performed the records review required by the settlement,
12 and a doctor at PVSP fully examined plaintiff at Dr. Onyeje's request. Plaintiff has not made any
13 argument that Dr. Onyeje's delay has harmed him or defeated the purpose of the settlement
14 agreement. Further, while plaintiff may be unsatisfied with the thoroughness of Dr. La Sierra's
15 exam, the settlement agreement simply provided for "a personal evaluation by a staff physician."
16 ECF No. 166 at 6. He has received that and thus, defendants have substantially complied with
17 this term of the agreement.

18 The evidence on the remaining terms is subject to some dispute, however. Niels states
19 that the \$5,500 payment posted to plaintiff's account on June 20, 2017 and was automatically
20 applied to his restitution (less an administrative fee). But plaintiff has submitted a trust account
21 statement from August 9, 2017 which does not explicitly show this transaction. ECF No. 175 at
22 5. The statement does show that \$5,279.14 has been paid on a restitution order in Court Case No.
23 0038340, which perhaps includes the \$5,238.10 in settlement funds. But the question cannot be
24 resolved on the current record. Accordingly, to resolve this issue, the court instructs defense
25 counsel to provide documentary evidence which explicitly shows the application of the settlement
26 funds to plaintiff's restitution and/or fines and account for any other funds that were withheld, if
27 any.

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1 In addition, the parties dispute whether defendants have made a good faith effort to find
2 plaintiff a radio. Dailo states that CCI officials located plaintiff two radios, but that he refused
3 them. Likewise, Geringer states that, upon learning that plaintiff refused the radios, PVSP
4 officials tried to find him a radio. Although they were unsuccessful, this evidence supports a
5 finding that they in good faith tried to find one for him, which is all the agreement required.
6 Plaintiff, on the other hand, flatly contradicts Dailo's testimony. He states a preference for a "J-
7 Win Radio" such as he owned previously, but says he will "settle for a Super 3" and that there are
8 many such radios at PVSP.

9 In an effort to avoid calling the parties in to obtain live testimony regarding defendants'
10 efforts to provide plaintiff with a radio and resolve the credibility dispute, the court will direct
11 defendants to, within the time provided by this order, make a further effort to locate a
12 replacement radio. The court notes that defense counsel explicitly stated during the settlement
13 conference that CDCR had raised its financial settlement offer from \$5000 to \$5500 to resolve the
14 issue regarding the radio but that CDCR would nonetheless attempt to find a replacement. ECF
15 No. 166 at 7-8. On the other hand, the court informed plaintiff at the conference that there was
16 "no guarantee" that he would receive a replacement radio, and plaintiff acknowledged that fact.
17 *Id.* at 8. Thus, plaintiff should be aware that under the terms of the agreement he is not entitled to
18 a radio (much less a radio of his choice) *if* defendants cannot secure one despite a good faith
19 effort to do so.

20 **III. Order**

21 For the foregoing reasons, it is HEREBY ORDERED that:

- 22 1. Within 30 days of the date of this order, defense counsel shall provide the court with
23 evidence showing explicitly the application of the settlement funds issued in this case
24 to plaintiff's restitution fines;
- 25 2. Within 21 days of the date of this order, CDCR shall make a further good faith effort
26 to find a radio to replace plaintiff's "J-Win" radio; and
- 27 3. Within 30 days of the date of this order, defense counsel shall inform the court what
28 efforts were made to secure a replacement radio.

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4. The court will issue a ruling on plaintiff's July 31, 2017 letter (ECF No. 171), construed as a motion to enforce the settlement agreement, upon receiving these submissions from defense counsel.

DATED: October 16, 2017.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE