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

RICHARD MILLS,

No. CIV S-10-3225-CMK-P

Plaintiff,

vs.

ORDER

HEFFNER, et al.,

Defendants.

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Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c) and no other party has been served or appeared in the action. Pending before the court is plaintiff's complaint (Doc. 1).

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1 On June 23, 2011, the court directed plaintiff to show cause within 30 days why  
2 this action should not be dismissed for failure to state a claim. The court stated:

3 Plaintiff names the following as defendants: Heffner,  
4 Heatley, and Hawkins, all of whom are prison doctors, as well as J. Clark  
5 Kelso, the receiver for prison health care. Plaintiff alleges that defendants  
6 have treated him over the past year and, as such, know that he suffers  
7 degenerative disc disease and that his condition is rapidly deteriorating.  
8 Plaintiff adds:

9 . . . The Defendants have acted very unreasonably in  
10 treating my condition, amounting to no corrective  
11 operation, which would otherwise satisfy the condition. No  
12 reason whatsoever exists to excuse the ignorance of my  
13 medical condition by said Defendants and their ignoring my  
14 treatment is occurring purposely. Said Defendants know  
15 that I am experiencing continuous pain and are not at all  
16 prescribing me effective pain medication, and have  
17 knowingly reduced the dosages I used to get.

18 The treatment a prisoner receives in prison and the  
19 conditions under which the prisoner is confined are subject to scrutiny  
20 under the Eighth Amendment, which prohibits cruel and unusual  
21 punishment. See Helling v. McKinney, 509 U.S. 25, 31 (1993); Farmer v.  
22 Brennan, 511 U.S. 825, 832 (1994). Negligence in diagnosing or treating  
23 a medical condition does not, however, give rise to a claim under the  
24 Eighth Amendment. See Estelle v. Gamble, 429 U.S. 97, 102, 106 (1976).  
25 Moreover, a difference of opinion between the prisoner and medical  
26 providers concerning the appropriate course of treatment does not give rise  
to an Eighth Amendment claim. See Jackson v. McIntosh, 90 F.3d 330,  
332 (9th Cir. 1996).

The court finds that the allegations set forth in the  
complaint describe a difference of opinion between plaintiff and prison  
doctors as to the appropriate course of treatment. In particular, plaintiff  
does not allege the complete denial of medical care. Rather, he states that  
the treatment he has received is “unreasonable” and that his medications  
are not “effective.” Thus, it is clear that he is in fact receiving some kind  
of treatment and medication. Plaintiff’s disagreement with the course of  
his treatment does not state a claim.

22 Plaintiff was cautioned that failure to file a response to the order to show cause could result in  
23 dismissal of the action, both for the reasons stated in the order to show cause and for lack of  
24 prosecution and failure to comply with court rules and orders. See Local Rule 110. To date,  
25 plaintiff has not filed a response to the order to show cause and the court finds that dismissal of  
26 the action is appropriate.

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Accordingly, IT IS HEREBY ORDERED that:

1. This action is dismissed for failure to state a claim;
2. Plaintiff's motion for injunctive relief (Doc. 2) is denied as moot; and
3. The Clerk of the Court is directed to enter judgment and close this file.

DATED: August 1, 2011

  
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**CRAIG M. KELLISON**  
UNITED STATES MAGISTRATE JUDGE