

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSHUA NEIL HARRELL,  
Plaintiff,  
v.  
CALIFORNIA FORENSIC MEDICAL  
GROUP, INC., et al.,  
Defendants.

No. 2:15-cv-0579 KJM DB P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff alleges defendants’ refusal to treat him with Hepatitis C medication violates various constitutional rights. Before the court is plaintiff’s motion for an extension of time to file an amended complaint and his sixth amended complaint<sup>1</sup> for screening. While the court is sympathetic to plaintiff’s concerns about the potential effects of Hepatitis C, the court finds below that plaintiff has, again, failed to state a cognizable claim for relief under § 1983. Plaintiff has had multiple opportunities, over several years, to allege a  
///

---

<sup>1</sup> Plaintiff identifies the most recent complaint as his fifth amended complaint. However, as set forth below, he filed six prior complaints in this case. Therefore, his most recent complaint is his sixth amended complaint.

1 cognizable claim. At this point, this court finds permitting plaintiff further opportunities to  
2 amend would be fruitless and will recommend dismissal of this action for failure to state a claim.

### 3 **BACKGROUND**

4 Plaintiff initiated this action in March 2015. The gist of his complaint, and of his six  
5 amended complaints, is that he suffers from Hepatitis C and wants to be treated with the  
6 prescription medication Harvoni. Plaintiff attempted to file his original complaint under seal.  
7 (ECF No. 1.) That request was denied and plaintiff was given the opportunity to file an amended  
8 complaint. (ECF No. 5.) Plaintiff filed a first amended complaint and numerous supplements to  
9 it between April and July 2015. (ECF Nos. 9, 10, 11, 14, 15, 16, 17.) On screening, the court  
10 permitted plaintiff to file a second amended complaint in order to make his complaint a single  
11 document as required by Local Rule 220. (ECF No. 20.) In addition, the court instructed plaintiff  
12 on the requirements for pleading an Eighth Amendment claim of deliberate indifference. (Id. at  
13 4-7.)

14 Plaintiff filed a second amended complaint on October 28, 2015. (ECF No. 25.) The  
15 court found that plaintiff failed to state a cognizable Eighth Amendment claim because he had not  
16 shown the treatment doctors chose for his Hepatitis C was “medically unacceptable under the  
17 circumstances” or how each of the named defendants was responsible for plaintiff’s injuries.  
18 (ECF No. 27.) Plaintiff was again given an opportunity to file an amended complaint and was  
19 again instructed on how to state a claim for deliberate indifference. (Id. at 5-8.)

20 Plaintiff filed a third amended complaint and, before it was screened, filed a request to  
21 amend that complaint to include a state law claim. (ECF Nos. 28, 30.) That request was granted.  
22 (ECF No. 31.) On April 20, 2016, plaintiff filed a fourth amended complaint. (ECF No. 38.)  
23 Plaintiff repeated his assertion that he is being denied Harvoni. The court again found plaintiff  
24 failed to state a claim for deliberate indifference. (ECF No. 51.) Plaintiff was once more  
25 informed about the legal standards for stating a claim and about the pleading requirements. The  
26 court warned plaintiff that he would be given just one last opportunity to state a claim. (Id. at 1.)

27 Plaintiff then filed an appeal. (ECF Nos. 53, 54.) The Court of Appeals dismissed it for  
28 lack of jurisdiction on June 14, 2017. (ECF No. 55.) Thereafter, on July 11, 2017, the court

1 granted plaintiff's request for an extension of time to file an amended complaint. (ECF 57.)  
2 However, the copy of the order served on plaintiff was returned as undeliverable. By October  
3 2017, plaintiff had not updated his address with the court or otherwise resumed prosecution of  
4 this action. The court issued an order to show cause why the case should not be dismissed for  
5 plaintiff's failure to prosecute. (ECF No. 58.) When plaintiff did not respond, on November 28,  
6 2017, the court recommended this action be dismissed. (ECF No. 60.)

7 On January 22, 2018, plaintiff filed a motion for an extension of time to file an amended  
8 complaint. (ECF No. 61.) Because plaintiff demonstrated good cause for an extension of time,  
9 that request will be granted. Plaintiff also filed objections to the recommended dismissal of this  
10 case. Because plaintiff is now resuming prosecution of his case, this court will vacate that  
11 recommendation.

12 Plaintiff filed his fifth amended complaint on January 22, 2018 and, before the court had  
13 an opportunity to consider it, he filed a sixth amended complaint on April 2, 2018. (ECF Nos. 62,  
14 65.) The court will consider plaintiff's most recent amended complaint as the complaint he  
15 wishes to proceed on.

16 Plaintiff has also filed several requests for a preliminary injunction to force the prison to  
17 provide him Harvoni. The court denied each request. (ECF Nos. 27, 31, 43.)

### 18 **SCREENING**

19 The court has stated the standards for pleading a claim under 42 U.S.C. § 1983 and the  
20 legal standards for an Eighth Amendment deliberate indifference claim in three prior orders. (See  
21 ECF Nos. 20, 27, 51.) Those standards will not be restated here. Plaintiff's most recent  
22 complaint is thoroughly inadequate. Plaintiff simply states that (1) he has Hepatitis C; (2) the  
23 disease is causing him a great deal of stress because, among other things, it may lead to liver  
24 cancer and liver damage; (3) the medication Harvoni is a cure for Hepatitis C; and (4) he has been  
25 denied treatment for his disease. While plaintiff lists a number of defendants, he fails to explain  
26 what any of them have done. As plaintiff has been informed numerous times, to allege a claim,  
27 he must explain just what each defendant has done to violate his rights under the Eighth  
28 Amendment. (See, e.g., Mar. 21, 2017 Order (ECF No. 51) at 9.)

1 It is clear from plaintiff's filings that he is, understandably, very worried about the  
2 Hepatitis C diagnosis. However, the fact that he is not receiving the treatment he feels he needs  
3 does not establish deliberate indifference. "A difference of opinion between a prisoner-patient  
4 and prison medical authorities regarding treatment does not give rise to a § 1983 claim." See  
5 Franklin v. Oregon, 662 F.2d 1337, 1344 (9th Cir. 1981) (citing Mayfield v. Craven, 433 F.2d  
6 873, 874 (9th Cir. 1970)).

7 The court has screened four of the seven complaints plaintiff filed in this action. Plaintiff  
8 has been instructed on the deliberate indifference standards and on the requirements for pleading  
9 a cognizable claim under § 1983. Despite these instructions and opportunities, plaintiff has not  
10 stated a claim upon which this court could grant relief. The court finds that providing plaintiff  
11 any further opportunities to amend his complaint would be futile.

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. Plaintiff's request for an extension of time to file an amended complaint (ECF No. 61)  
14 is granted; and
- 15 2. The Findings and Recommendations issued November 28, 2017 (ECF No. 60) are  
16 vacated.

17 Further, IT IS HEREBY RECOMMENDED that this action be dismissed for plaintiff's  
18 failure to state a claim under 42 U.S.C. § 1983.

19 These findings and recommendations will be submitted to the United States District Judge  
20 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
21 after being served with these findings and recommendations, plaintiff may file written objections  
22 with the court. The document should be captioned "Objections to Magistrate Judge's Findings  
23 and Recommendations." Plaintiff is advised that failure to file objections within the specified

24 ///

25 ///

26 ///

27 ///

28 ///

1 time may result in waiver of the right to appeal the district court's order. Martinez v. Ylst, 951  
2 F.2d 1153 (9th Cir. 1991).

3 Dated: April 5, 2018

4  
5   
6 DEBORAH BARNES  
7 UNITED STATES MAGISTRATE JUDGE  
8  
9  
10  
11  
12

13 DLB:9  
14 DLB1/prisoner-civil rights/harr0579.fr  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28