UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLES D. VILLACRES,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF CORRECTIONS, et al.,

Defendants.

No. 2:16-cv-0305 JAM AC P

ORDER and FINDINGS AND RECOMMENDATIONS

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

I. Application to Proceed In Forma Pauperis

Plaintiff has submitted multiple declarations that make the showing required by 28 U.S.C. § 1915(a). ECF Nos. 4, 12, 13. Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of $350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments

of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds $10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

II. Motion to Transfer

Plaintiff has submitted a motion to transfer this action to the Northern District of California. ECF No. 14. He complains that this court has delayed screening the instant claims because the court did not obtain the proper documents needed to determine whether he qualifies to proceed in forma pauperis. Id. The federal venue statute provides that a civil action "may be brought in a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located" or in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated." 28 U.S.C. § 1391(b)(1), (2).

In this case, the claim arose and the defendants appear to be located in San Joaquin County and Sacramento County, which are in the Eastern District of California. Petitioner fails to mention any connection with the Northern District of California. ECF No. 1. Therefore, the court has proper venue to review plaintiff's claims and the motion to transfer venue will be denied.

III. Statutory Screening of Prisoner Complaints

A. Standards

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

A claim "is [legally] frivolous where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). "[A] judge may dismiss [in forma pauperis] claims which are based on indisputably

meritless legal theories or whose factual contentions are clearly baseless." Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989) (citation and internal quotations omitted), superseded by statute on other grounds as stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000); Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. Id.

"Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). However, in order to survive dismissal for failure to state a claim, a complaint must contain more than "a formulaic recitation of the elements of a cause of action;" it must contain factual allegations sufficient "to raise a right to relief above the speculative level." Id. (citations omitted). "[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action." Id. (alteration in original) (quoting 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004)).

"[A] complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp., 550 U.S. at 570). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. (citing Bell Atl. Corp., 550 U.S. at 556). In reviewing a complaint under this standard, the court must accept as true the allegations of the complaint in question, Hosp. Bldg. Co. v. Rex Hosp. Trs., 425 U.S. 738, 740 (1976), as well as construe the pleading in the light most favorable to the plaintiff and resolve all doubts in the plaintiff's favor, Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

B. Complaint

Plaintiff presents four grounds for relief, which for screening purposes will be denominated as follows: (1) the Board of Prison Hearings ("BPH"), comprised of defendants

Shaffer, Labahn, Garner, Anderson, and Fasnatch, denied plaintiff's compassionate release based on their conclusion that plaintiff was a current danger to society, without supporting evidence to prove such finding; (2) Diana Touche, Acting Undersecretary of Health for the California Department of Corrections and Rehabilitation ("CDCR"), failed to answer plaintiff's CDCR-602 First Level Appeal which requested evidence to show that plaintiff was a current danger to society; (3) defendant M. Voong of the California Department of Corrections, Office of Appeals, responded to plaintiff's grievance stating that the appeals office had no jurisdiction over defendant Touche's findings and the San Joaquin County Superior Court failed to require that the appeal be answered; and (4) California Health Care Facility ("CHCF") Warden Brian Duffy and medical staff denied plaintiff's "inalienable right" to procure alternate nutritional supplementation in the form of Chlorophyllin and NK Cell Activater to help abate the spread of plaintiff's terminal cancer on the grounds that "vitamins are not medicine." ECF No. 1 at 2-3, 5-6, 9. Plaintiff seeks injunctive relief and punitive damages from each defendant based on the above claims. Id. at 3.

C. Claims Involving Denial of Compassionate Release and Parole

1. Scope of § 1983

Plaintiff alleges that the BPH did not grant him compassionate release because defendant Touche sent a memorandum to BPH investigator Elizabeth Allen stating that plaintiff was a "current danger to society." ECF No. 1 at 3, 5. Plaintiff also alleges that defendants Touche, Voong, and the San Joaquin County Superior Court did not answer his appeals to compel defendant Touche to provide evidence to support her findings. Id. at 5. Though not clearly a separate claim, plaintiff also asserts that he was denied parole for the same reason he was denied compassionate release. Id. at 5-6. He requests that he be released immediately if defendants are unable to provide some evidence that he was a current danger to society. Id. at 3.

State prisoners may not attack the fact or length of their confinement in a § 1983 action and "habeas corpus is the appropriate remedy" for such claims. Preiser v. Rodriguez, 411 U.S. 475, 490 (1973); see also Nettles v. Grounds, 830 F.3d 922, 930 (9th Cir. 2016) (holding that habeas corpus is "available only for state prisoner claims that lie at the core of habeas (and is the exclusive remedy for such claims), while § 1983 is the exclusive remedy for state prisoner claims

that do not lie at the core of habeas"). Here, plaintiff requests that this court order his compassionate release, or possibly release on parole, if no evidence can be offered to show that he was a current danger to society. Such a claim lies directly within the core of habeas corpus because a plaintiff is challenging the validity of his continued confinement and a favorable determination would result in his immediate release. To the extent that plaintiff's first, second, and third claims challenge the fact or duration of his confinement, these allegations do not state a cognizable claim for relief under § 1983.

2. Heck Bar

A claim to recover monetary damages is not cognizable under § 1983 if the claim "would necessarily imply the invalidity of [the plaintiff's] conviction or sentence." Heck v. Humphrey, 512 U.S. 477, 487 (1994). In order to recover damages, a plaintiff must prove "that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of writ of habeas corpus." Id. at 486-87. The so-called "Heck bar" also applies to administrative determinations that bear directly on the length of time to be served. Edwards v. Balisok, 520 U.S. 641, 643-47 (1977) (extending Heck rule to § 1983 claims that, if successful, would imply the invalidity of a prison disciplinary decision that resulted in the deprivation of good-time credits).

A decision regarding compassionate release is an administrative action that directly affects the duration of custody. Accordingly, Heck bars claims for damages predicated on the invalidity of the decision to deny release. Plaintiff makes no showing that his underlying conviction, denial of parole, or denial of compassionate release has been reversed, expunged, invalidated, or impugned by a writ of habeas corpus. To the extent that plaintiff's first, second, and third claims seek monetary damages based on a finding that he was improperly denied parole or compassionate release, Heck bars the claims.

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3. Compassionate Release

Plaintiff's first claim challenges the denial of compassionate release based on an allegedly fabricated finding that he was a current danger to society. This court has no authority to order compassionate release. As another magistrate judge in this district explained:

> A plea for compassionate release is not one which federal courts, sitting in habeas, or any other situation, are entitled to act upon. "There is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence." Greenholtz v. Inmates of Nebraska Penal and Correctional Complex, 442 U.S. 1, 7, 99 S.Ct. 2100, 60 L.Ed.2d 668 (1979). "[N]either § 2241 nor § 2254 vest this Court with habeas corpus jurisdiction to order a compassionate release." Fox v. Warden Ross Correctional Inst., 2012 WL 3878143, *2[, 2012 U.S. Dist. LEXIS 126478, at *3] (S.D. Ohio Sept. 6, 2012). California's law authorizing a court to recall a sentence is not mandatory, but only permissive, and contains no language permitting, let alone mandating, a compassionate release. Gonzales v. Marshall, 2008 WL 5115882, *5[, 2008 U.S. Dist. LEXIS 124599, at *12-13] (C.D. Cal. Dec. 4, 2008), citing Cal. Penal Code § 1170(d).

Tucker v. Dep't of Corr., No. 2:13-cv-0293 GGH P, 2013 WL 1091282, at *1, 2013 U.S. Dist. LEXIS 36347, at *2-3 (E.D. Cal. Mar. 15, 2013, adopted in full Apr. 24, 2013).

The appropriate avenue for seeking compassionate release appears to be set forth in California Code of Regulations, tit. 15, § 3076 et seq. (Recall of Commitment Recommendation Circumstances). However, claims that prison officials declined to follow this law are not cognizable in federal court because "[a]s a general rule, a violation of state law does not lead to liability under § 1983." Campbell v. Burt, 141 F.3d 927, 930 (9th Cir. 1998) (citing Davis v. Scherer, 468 U.S. 183, 194 (1984); Doe v. Conn. Dept. of Child & Youth Servs., 911 F.2d 868, 869 (2nd Cir. 1990)); see also Ransom v. Adams, 313 F. App'x 948, 949 (9th Cir. 2009) (affirming summary dismissal of petitioner's claim that he was entitled to compassionate release under Section 3076(d), because the assertion that state officials failed to follow state law "is not cognizable" in federal court). Because the denial of compassionate release violates no rights protected by the U. Constitution or other federal law, it cannot support a claim under § 1983.

The court declines to offer plaintiff the option to convert his first claim to an action for habeas corpus relief, because plaintiff's compassionate release claim was previously raised and

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dismissed on the merits in a separate habeas corpus action. Villacres v. CDCR, Case No. 2:16-cv-0843 JAM KJN P (E.D. Cal.).

To the extent plaintiff may be seeking to challenge his parole board denial on grounds that the Board lacked some evidence that he was a current danger to society, this claim also fails as a matter of law. Brown v. Cal. Dept. Corr., 554 F.3d 747, 751 (9th Cir. 2009) ("[P]arole board members are entitled to absolute immunity for parole board decisions.") (citing Bermudez v. Duenas, 936 F.2d 1064, 1066 (9th Cir. 1991)); Swarthout v. Cooke, 562 U.S. 216, 219 (2011) (federal habeas jurisdiction does not extend to review of the evidentiary basis for state parole decisions).

4. Due Process

Plaintiff's second and third allegations also fail to state cognizable claims, and should be dismissed for the reasons now explained.

The complaint alleges that defendant Touche violated plaintiff's due process rights because she did not answer his appeal "to substantiate" the finding that plaintiff was a danger to society. ECF No. 1 at 2. Plaintiff also alleges that defendant Voong of the CDCR Appeals Office failed to compel defendant Touche to answer his initial appeal. Id. Defendant Voong allegedly denied the appeal because his office did not have jurisdiction to review the issue. Id. Finally, plaintiff alleges that the Superior Court of San Joaquin County[1] violated his due process rights in that Judge Humphreys did not require defendant Voong to review his grievance. Id.

Prisoners do not have an independent constitutional due process entitlement to a specific administrative grievance procedure. Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003); see also Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988) (holding that there is no protected liberty interest to a grievance procedure). Prison officials are not required under federal law to process

[1] Neither the state superior court nor the state court judge who denied plaintiff's request that defendant Voong be ordered to respond are identified as defendants. ECF No. 1 at 2. However, even if they were named as defendants, the claims against them would have to be dismissed. Plaintiff alleges that the state court, through the judge, refused to issue an order, something within the scope of the judge's judicial duties. Id. at 6. The Supreme Court has held that judges acting within the course and scope of their judicial duties are absolutely immune from liability for damages under § 1983. Pierson v. Ray, 386 U.S. 547, 553-54 (1967).

inmate grievances in any specific way. Plaintiff's claims that prison officials ignored or failed to process his grievances do not state a cognizable claim for a violation of his due process rights because there is no right to a particular grievance process or response. See, e.g., Towner v. Knowles, No. CIV S-08-2823 LKK EFB P, 2009 WL 4281999, at *2, 2009 U.S. Dist. LEXIS 108469, at *5-6 (E.D. Cal. Nov. 20, 2009) (plaintiff failed to state claims that would indicate a deprivation of his federal rights after defendant allegedly screened out his inmate appeals without any basis); Williams v. Cate, No. 1:09-cv-00468-OWW-YNP PC, 2009 WL 3789597, at *6, 2009 U.S. Dist. LEXIS 107920, at *16 (E.D. Cal. Nov. 10, 2009) ("Plaintiff has no protected liberty interest in the vindication of his administrative claims."). Accordingly, plaintiff's allegations do not state a claim upon which relief may be granted.

5. No Leave To Amend

If the court finds that a complaint should be dismissed for failure to state a claim, the court has discretion to dismiss with or without leave to amend. Lopez v. Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000) (en banc). Leave to amend should be granted if it appears possible that the defects in the complaint could be corrected, especially if a plaintiff is pro se. Id. at 1130-31; see also Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) ("A pro se litigant must be given leave to amend his or her complaint, and some notice of its deficiencies, unless it is absolutely clear that the deficiencies of the complaint could not be cured by amendment.") (citing Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987)). However, if, after careful consideration, it is clear that a complaint cannot be cured by amendment, the court may dismiss without leave to amend. Cato, 70 F.3d at 1005-06.

For the reasons detailed above, plaintiff's first, second and third claims fail to support relief. To the extent plaintiff seeks immediate release, these claims fall outside the scope of § 1983 altogether. This court has no authority to order compassionate release. In addition, plaintiff may not seek damages for a wrongful failure to grant him compassionate release (or parole), because the decisions at issue regarding the duration of his confinement have not been invalidated in any way. Furthermore, the actions of which plaintiff complains do not violate any due process rights as a matter of law. None of these defects in plaintiff's claims are amenable to correction by

amendment. Accordingly, the undersigned concludes that amendment would be futile. See Hartmann v. CDCR, 707 F.3d 1114, 1130 (9th Cir. 2013) ("A district court may deny leave to amend when amendment would be futile.").

The undersigned accordingly recommends dismissing the following defendants and claims without leave to amend: (1) the BPH members and the claim that they wrongfully denied plaintiff's compassionate release; (2) defendant Touche and plaintiff's claim that she failed to answer plaintiff's appeal; and (3) defendant M. Voong and the claim that he refused to answer plaintiff's grievance.

D. Deliberate Indifference

1. Failure To State A Claim

To maintain an Eighth Amendment claim based on inadequate medical treatment, plaintiff must show "'deliberate indifference to serious medical needs.'" Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104 (1976)). This requires plaintiff to show (1) "a 'serious medical need' by demonstrating that 'failure to treat a prisoner's condition could result in further significant injury or the unnecessary and wanton infliction of pain,'" and (2) "the defendant's response to the need was deliberately indifferent." Id. (quoting McGuckin v. Smith, 974 F.2d 1050, 1059-60 (9th Cir. 1992) (some internal quotation marks omitted), overruled on other grounds WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc)).

Indications that a prisoner has a serious medical need for treatment include the "'existence of an injury that a reasonable doctor or patient would find important and worthy of comment or treatment; the presence of a medical condition that significantly affects an individual's daily activities; or the existence of chronic and substantial pain.'" Lopez v. Smith, 203 F.3d 1122, 1131 (9th Cir. 2000) (quoting McGuckin, 974 F.2d at 1059-60). Plaintiff's allegation that he was diagnosed with terminal adenocarcinoma establishes the existence of a serious medical need.

Since plaintiff establishes the existence of a serious medical need, he must state facts to show that prison officials responded to his terminal adenocarcinoma with deliberate indifference. Deliberate indifference is a very strict standard. It is more than "mere negligence." Farmer v.

Brennan, 511 U.S. 825, 837, (1994). A prison official will be found liable under the Eighth Amendment when the "official knows of and disregards an excessive risk to inmate health or safety" and "the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference. Id. A plaintiff can establish deliberate indifference "by showing (a) a purposeful act or failure to respond to a petitioner's pain or possible medical need and (b) harm caused by the indifference." Jett, 439 F.3d at 1096 (citation omitted).

Deliberate indifference "'may appear when prison officials deny, delay, or intentionally interfere with medical treatment.'" Id. at 1096 (quoting Hutchinson v. United States, 838 F.2d 390, 392 (9th Cir.1988)). A difference of opinion between an inmate and prison medical personnel—or between medical professionals—regarding the appropriate course of treatment does not amount to deliberate indifference to serious medical needs. Toguchi v. Chung, 391 F.3d 1051, 1058 (9th Cir. 2004); Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989). To establish a difference of opinion rises to the level of deliberate indifference, plaintiff "must show that the course of treatment the doctors chose was medically unacceptable under the circumstances." Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1996) (citation omitted).

Plaintiff alleges that he was denied access to nutritional supplementation which prevented his ability to abate the spread of adenocarcinoma. However, it is unclear from the Complaint whether the requested supplements, Chlorophyllin and NK Cell Activater, are medically-recognized methods of treatment. Plaintiff seems to suggest that because the manufacturer of the supplements, Life Extension, is also a research foundation, the treatment should be accepted as credible. ECF No. 1 at 5. However, the fact that the manufacturer conducts research does not support a conclusion that the supplements will prevent further harm to plaintiff. Neither does plaintiff's own opinion demonstrate that treatment with these or any other supplements was medically indicated or necessary. The judges of this court have questioned the medical value and effectiveness of alternative supplement treatments in the past. See e.g., Moore v. CDCR Dir., No. 2:12-cv-1240 GGH P, 2012 WL 3204479, at *3, 2012 U.S. Dist. LEXIS 108515, at *7 (E.D. Cal. Aug. 2, 2012) ("Plaintiff does not have a constitutional right to have multivitamins and iron

supplements provided for him at the cost of the state. . . . [T]hese products cannot be regarded as necessities of which he is being deprived."); Chappell v. Newbarth, No. 1:06-cv-01378-OWW-WMW (PC), 2009 WL 1211372, at *5, 2009 U.S. Dist. LEXIS 41499, at *12 (E.D. Cal. May 1, 2009) (finding that a plaintiff diagnosed with Hepatitis C did not state sufficient allegations to show the denial of liver aid vitamins "was harmful and/or caused him any injury").

To establish deliberate indifference, plaintiff must allege facts showing that treatment with the supplements was indicated by more than his own opinion, and that the defendant's act caused him further harm. He has not done so. Furthermore, plaintiff's allegations suggest that medical staff prescribed chemotherapy to treat his adenocarcinoma. ECF No 1 at 9. Taken as a whole, the current allegations show no more than a difference of opinion between plaintiff and the medical staff regarding the proper course of treatment,[2] which does not support a claim for deliberate indifference. Because it is possible that additional facts could cure the defect, leave amend should be granted.

Plaintiff alleges that CHCF Warden Brian Duffy denied his requested treatment, but this bare allegation against an administrative official is not sufficient to state a claim for deliberate indifference. Plaintiff also makes a vague reference to "the CA A.G. get[ting] on this inane bandwagon of denial" (id. at 5), which is presumably a reference to Deputy Attorney General Patricia Heim, who is identified as a defendant (id. at 2). In order to state a claim for deliberate indifference, plaintiff must be able to truthfully allege specific facts that show that defendants Duffy and Heim intentionally denied and interfered with the alternative treatment despite being aware of a serious risk to plaintiff's health or safety. Because the court cannot exclude the possibility that such facts exist, this claim should be dismissed with leave to amend.

2. Leave to Amend

If plaintiff chooses to file a first amended complaint, he must demonstrate how the conditions about which he complains resulted in a deprivation of his constitutional rights. Rizzo

[2] Plaintiff identifies Dr. Church as a defendant (ECF No. 1 at 2), but in making his allegations refers to medical staff generically (id. at 5, 9). It is unclear whether plaintiff's references to medical staff are meant to refer to defendant Church or whether he intends to bring claims against additional, unidentified staff members.

v. Goode, 423 U.S. 362, 370-71 (1976). Also, the complaint must allege in specific terms how each named defendant is involved. Arnold v. Int'l Bus. Machs. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981). There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant's actions and the claimed deprivation. Id.; Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, "[v]ague and conclusory allegations of official participation in civil rights violations are not sufficient." Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982) (citations omitted).

Plaintiff is also informed that the court cannot refer to a prior pleading in order to make his first amended complaint complete. Local Rule 220 requires that an amended complaint be complete in itself without reference to any prior pleading. This is because, as a general rule, an amended complaint supersedes the original complaint. Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967), overruled in part by Lacey v. Maricopa County, 693 F.3d 896, 928 (9th Cir. 2012) (claims dismissed with prejudice and without leave to amend do not have to be re-pled in subsequent amended complaint to preserve appeal). Once plaintiff files a first amended complaint, the original complaint no longer serves any function in the case. Therefore, in an amended complaint, as in an original complaint, each claim and the involvement of each defendant must be sufficiently alleged.

E. Summary

The first three claims should be dismissed without leave to amend, because the facts plaintiff presents do not support relief in a civil rights action and no amendment could change that. Plaintiff seeks immediate release from prison absent evidence to substantiate defendant Touche's conclusion that he was a current danger to society. Plaintiff cannot get this kind of relief in a § 1983 action. Plaintiff's claims that he was wrongly denied compassionate release and parole cannot be considered because this court cannot grant compassionate release, parole board members have immunity for their decisions, and the court cannot look at the evidence relied on to deny parole. Plaintiff also cannot recover damages in a § 1983 action if the damages award he seeks necessarily challenges his underlying conviction or denial of release. Furthermore, plaintiff's second and third claims related to his appeals must be dismissed without leave to

amend because prisoners are not entitled to a specific administrative grievance process.

Plaintiff's fourth claim, deliberate indifference to medical needs, will be dismissed with leave to amend. The facts plaintiff has alleged are not enough to state a claim for relief, but it is possible that additional facts might do so. Plaintiff needs to provide more information, if he can do so, to show that the supplements he requested are medically indicated to treat adenocarcinoma. For example, did the CHCF medical staff, or some other medical provider, order the supplements as alternative methods of treatment? Are the supplements medically recognized as necessary for cancer treatment? In other words, plaintiff must allege facts showing that the denial of the request for supplements was medically unacceptable and caused him further harm or injury. Plaintiff must also allege facts to show that defendants were aware of his condition and need for the supplements and ignored it or interfered, denied, or delayed his treatment, causing harm. Plaintiff should allege facts that identify who he believes caused or ignored the risk to his health and explain how they caused or ignored the risk by denying his request for supplements.

If plaintiff chooses to amend his complaint, the first amended complaint must include all of the claims plaintiff wants to make because the court will not look at the claims or information in the original complaint. **Any claims not in the first amended complaint will not be considered.** Plaintiff should also clearly identify who he claims did what. For example, in the defendant section of the complaint, plaintiff identifies Dr. Church as a defendant. ECF No. 1 at 2. However, he only makes allegations against "medical staff" generically. This is not enough to state a claim against Dr. Church.

CONCLUSION

In accordance with the above, IT IS HEREBY ORDERED that:

1. Plaintiff's request for leave to proceed in forma pauperis (ECF Nos. 4, 12, 13) is granted.

2. Plaintiff is obligated to pay the statutory filing fee of $350.00 for this action. Plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the

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Director of the California Department of Corrections and Rehabilitation filed concurrently herewith.

3. Plaintiff's motion to transfer the instant action to the Northern District of California (ECF No. 14) is denied.

4. Plaintiff's Eighth Amendment deliberate indifference claim (Claim Four) is dismissed with leave to amend.

5. Within thirty days after the United States District Judge assigned to the case rules on the findings and recommendations, plaintiff may file an amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must bear the docket number assigned this case and must be labeled "First Amended Complaint." Plaintiff must file an original and two copies of the amended complaint. Failure to file an amended complaint in accordance with this order will result in dismissal of this action.

6. The Clerk of the Court is directed to send plaintiff a copy of the prisoner complaint form used in this district.

IT IS FURTHER RECOMMENDED that plaintiff's claims against defendants Shaffer, Touche, Voong, Labahn, Garner, Anderson, and Fasnatch related to the denial of compassionate release and parole, and his due process claims for failure to respond to his grievance (Claims One through Three), be dismissed without leave to amend.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days after being served with these findings and recommendations, plaintiff may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file

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

DATED: February 7, 2017

ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE