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

TOM SMITH,

No. 2:16-cv-1038-TLN-CMK-P

Plaintiff,

vs.

FINDINGS AND RECOMMENDATION

CALIFORNIA CORRECTIONAL
HEALTH CARE SERVICES, et al.,

Defendant.

_____/

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s complaint (Doc. 1). Plaintiff has also filed a motion for summary judgment (Docs. 6, 7) and motion to file evidence (Doc. 9).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “. . . short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2).

1 This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne,
2 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied
3 if the complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon
4 which it rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must
5 allege with at least some degree of particularity overt acts by specific defendants which support
6 the claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is
7 impossible for the court to conduct the screening required by law when the allegations are vague
8 and conclusory.

9 I. PLAINTIFF'S ALLEGATIONS

10 In his first complaint, plaintiff contends the defendants refuse to prescribe him a
11 certain medication, Welbutrin. Plaintiff alleges this is the only medication that controls his
12 suicidal thoughts, but the doctors are refusing to prescribe it because he had a reaction to a
13 different medication resulting in a seizure.

14 II. DISCUSSION

15 The treatment a prisoner receives in prison and the conditions under which the
16 prisoner is confined are subject to scrutiny under the Eighth Amendment, which prohibits cruel
17 and unusual punishment. See Helling v. McKinney, 509 U.S. 25, 31 (1993); Farmer v. Brennan,
18 511 U.S. 825, 832 (1994). The Eighth Amendment “. . . embodies broad and idealistic concepts
19 of dignity, civilized standards, humanity, and decency.” Estelle v. Gamble, 429 U.S. 97, 102
20 (1976). Conditions of confinement may, however, be harsh and restrictive. See Rhodes v.
21 Chapman, 452 U.S. 337, 347 (1981). Nonetheless, prison officials must provide prisoners with
22 “food, clothing, shelter, sanitation, medical care, and personal safety.” Toussaint v. McCarthy,
23 801 F.2d 1080, 1107 (9th Cir. 1986). A prison official violates the Eighth Amendment only
24 when two requirements are met: (1) objectively, the official's act or omission must be so serious
25 such that it results in the denial of the minimal civilized measure of life's necessities; and (2)
26 subjectively, the prison official must have acted unnecessarily and wantonly for the purpose of

1 inflicting harm. See Farmer, 511 U.S. at 834. Thus, to violate the Eighth Amendment, a prison
2 official must have a “sufficiently culpable mind.” See id.

3 Deliberate indifference to a prisoner’s serious illness or injury, or risks of serious
4 injury or illness, gives rise to a claim under the Eighth Amendment. See Estelle, 429 U.S. at
5 105; see also Farmer, 511 U.S. at 837. This applies to physical as well as dental and mental
6 health needs. See Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982). An injury or illness is
7 sufficiently serious if the failure to treat a prisoner’s condition could result in further significant
8 injury or the “. . . unnecessary and wanton infliction of pain.” McGuckin v. Smith, 974 F.2d
9 1050, 1059 (9th Cir. 1992); see also Doty v. County of Lassen, 37 F.3d 540, 546 (9th Cir. 1994).
10 Factors indicating seriousness are: (1) whether a reasonable doctor would think that the condition
11 is worthy of comment; (2) whether the condition significantly impacts the prisoner’s daily
12 activities; and (3) whether the condition is chronic and accompanied by substantial pain. See
13 Lopez v. Smith, 203 F.3d 1122, 1131-32 (9th Cir. 2000) (en banc).

14 The requirement of deliberate indifference is less stringent in medical needs cases
15 than in other Eighth Amendment contexts because the responsibility to provide inmates with
16 medical care does not generally conflict with competing penological concerns. See McGuckin,
17 974 F.2d at 1060. Thus, deference need not be given to the judgment of prison officials as to
18 decisions concerning medical needs. See Hunt v. Dental Dep’t, 865 F.2d 198, 200 (9th Cir.
19 1989). The complete denial of medical attention may constitute deliberate indifference. See
20 Toussaint v. McCarthy, 801 F.2d 1080, 1111 (9th Cir. 1986). Delay in providing medical
21 treatment, or interference with medical treatment, may also constitute deliberate indifference.
22 See Lopez, 203 F.3d at 1131. Where delay is alleged, however, the prisoner must also
23 demonstrate that the delay led to further injury. See McGuckin, 974 F.2d at 1060.

24 Negligence in diagnosing or treating a medical condition does not, however, give
25 rise to a claim under the Eighth Amendment. See Estelle, 429 U.S. at 106. Moreover, a
26 difference of opinion between the prisoner and medical providers concerning the appropriate

1 course of treatment does not give rise to an Eighth Amendment claim. See Jackson v. McIntosh,
2 90 F.3d 330, 332 (9th Cir. 1996).

3 Here, plaintiff has alleged nothing more than a difference of opinion between him
4 and his medical providers as to what medications should be prescribed. Plaintiff disagrees with
5 the decision to try alternate medications due to the reaction he had to different medication
6 resulting in a seizure. He argues Welbutrin is the only effective medication. While plaintiff
7 may believe that a particular medication is the most effective, he does not allege the defendants
8 are refusing to treat him. In fact, plaintiff specifically alleges he is being provided alternate
9 medication. He simply disagrees with the defendants as to the best course of action. Such a
10 difference of opinion cannot constitute a Constitutional violation.

11 **III. MOTION FOR SUMMARY JUDGMENT**

12 Plaintiff has also filed a motion for summary judgment (Docs. 6, 7) and motion to
13 file evidence in support thereof (Doc. 9). Plaintiff's motions are premature. Service has not been
14 authorized and no defendants have made a general appearance. As the case is not at issue, no
15 discovery has been completed and there currently is no opposing party. As such, the motion for
16 summary judgment is premature and should be disregarded. As the recommendation herein is to
17 dismiss this action, plaintiff's motions are also rendered moot.

18 **IV. CONCLUSION**

19 Because it does not appear possible that the deficiencies identified herein can be
20 cured by amending the complaint, plaintiff is not entitled to leave to amend prior to dismissal of
21 the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).

22 Based on the foregoing, the undersigned recommends that plaintiff's complaint be
23 dismissed, without leave to amend, for failure to state a claim, and the motions for summary
24 judgment (Docs. 6, 7) and for filing of evidence (Doc. 9) be disregarded and denied as moot.

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1 These findings and recommendations are submitted to the United States District
2 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
3 after being served with these findings and recommendations, any party may file written
4 objections with the court. Responses to objections shall be filed within 14 days after service of
5 objections. Failure to file objections within the specified time may waive the right to appeal.
6 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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8 DATED: February 10, 2017

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