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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNY BROWN,  
Plaintiff,  
v.  
CDCR MEDICAL CARE SYSTEM,  
Defendant.

No. 2:17-cv-1833 CKD P

ORDER AND  
FINDINGS AND RECOMMENDATIONS

Plaintiff is a California prisoner proceeding without counsel. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983, and is proceeding in forma pauperis. This proceeding was referred to this court pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302.

On November 8, 2017, the court screened plaintiff’s complaint, as the court is required to do under 28 U.S.C. § 1915A(a). The court found the complaint failed to state a claim upon which relief can be granted and dismissed with leave to amend. The court provided plaintiff with guidance as to the contents of his amended complaint.

On May 3, 2018, the court screened plaintiff’s amended complaint. The amended complaint was also dismissed for failure to state a claim upon which relief can be granted and leave to amend a second time was granted. Again, the court provided plaintiff with guidance as to how to proceed. In response to the court’s order, plaintiff has filed a second, third and fourth amended complaint. As plaintiff knows, Local Rule 220 requires that any amended complaint be

1 complete in itself without reference to any prior pleading. See ECF Nos. 5 at 3 & 12 at 2.

2 Therefore, the court will now screen plaintiff's latest amended complaint, the fourth amended.

3 As plaintiff also already knows, the court must dismiss a complaint or portion thereof if  
4 the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim  
5 upon which relief may be granted, or that seek monetary relief from a defendant who is immune  
6 from such relief. 28 U.S.C. § 1915A(b)(1), (2).

7 Generally speaking, plaintiff complains about his conviction, sentence and medical care in  
8 his fourth amended complaint. As with his original and first amended complaints, the allegations  
9 are too vague to state a claim upon which relief might be granted under the Eighth Amendment  
10 for denial of medical care despite the fact that in the court's previous two screening orders,  
11 plaintiff was instructed as to the requirements for stating a claim. As for his conviction and  
12 sentence, when a state prisoner challenges the legality of his custody and the relief he seeks is the  
13 determination of his entitlement to an earlier or immediate release, his sole federal remedy is a  
14 writ of habeas corpus. Preiser v. Rodriguez, 411 U.S. 475, 500 (1973).

15 For these reasons, plaintiff's fourth amended complaint fails to state a claim upon which  
16 relief can be granted and must be dismissed. Providing plaintiff with advice a third time as to  
17 how he might state a claim upon which he might proceed under the Eighth Amendment, and  
18 providing plaintiff leave to file a fifth amended complaint appear futile.<sup>1</sup> Therefore, leave to  
19 amend will not be granted.

20 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court assign a district  
21 court judge to this case.

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27 <sup>1</sup> The court has reviewed plaintiff's second and third amended complaints. Neither of those  
28 pleadings state a claim upon which relief can be granted, and neither suggest any reasonable basis  
for again granting plaintiff leave to amend.

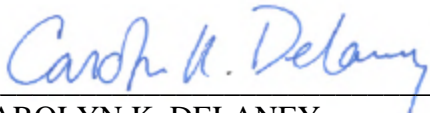
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IT IS HEREBY RECOMMENDED that:

1. Plaintiff’s fourth amended complaint (ECF No. 19) be dismissed for failure to state a claim upon which relief can be granted; and
2. This case be closed.

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 fourteen after being served with these findings and recommendations, plaintiff may file written objections with the court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within the specified time waives the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: October 3, 2018

  
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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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