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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DANIEL LEE THORNBERRY,
Plaintiff,
v.
JAMES CHAU, et al.,
Defendant.

No. 2:18-cv-0094-WBS-EFB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff, a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983, has filed a request for leave to proceed in forma pauperis.

I. Request to Proceed In Forma Pauperis

Plaintiff has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Plaintiff’s application makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

II. Screening Order

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of

1 the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief
2 may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.”
3 *Id.* § 1915A(b).

4 The instant complaint, filed January 16, 2018, alleges that in October of 2016, defendants
5 Chau and Smith were deliberately indifferent to plaintiff’s nerve pain, and that in or around July
6 of 2017, defendant Bobbala was also deliberately indifferent to plaintiff’s nerve pain. *See* ECF
7 No. 1 at 3-7. Examination of the court’s records, and plaintiff’s own complaint, reveal that
8 plaintiff has already commenced an action with a complaint concerning these allegations of
9 deliberate indifference. *See id.* at 2; *Thornberry v. Kernan*, No. 2:17-cv-0953-CMK (E.D. Cal.),
10 ECF No. 1 (May 5, 2017 Complaint); ECF No. 9 (June 12, 2017 Amended Complaint).
11 Therefore, the claims against defendants Chau, Smith, and Bobbala must be dismissed as
12 duplicative of the earlier action. *See Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir.
13 1995) (A complaint that “merely repeats pending or previously litigated claims” may be
14 dismissed as frivolous under the authority of 28 U.S.C. § 1915).

15 The complaint also alleges that on or around October 31, 2017, defendant Mohyuddin
16 caused the Utilization Committee to deny plaintiff epidural steroid injections, which had been
17 recommended by a specialist, and which were effectively the only remaining treatment available
18 for plaintiff’s ongoing nerve pain. Liberally, construed, these allegations are sufficient to state a
19 potentially cognizable Eighth Amendment deliberate indifference to medical needs claim against
20 defendant Mohyuddin.

21 **III. Order and Recommendation**

22 Accordingly, it hereby is ordered that:

- 23 1. Plaintiff’s request to proceed in forma pauperis (ECF No. 3) is granted.
- 24 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be
25 collected in accordance with the notice to California Department of Corrections
26 and Rehabilitation filed concurrently herewith.
- 27 3. Service is appropriate for defendant Mohyuddin.

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- 4. The Clerk of the Court shall send plaintiff one USM-285 form, one summons, an instruction sheet and one copy of the January 16, 2018 complaint.
- 5. Within 30 days from service of this order, plaintiff shall complete the attached Notice of Submission of Documents and submit it to the court with the completed summons, the USM-285 form, and two copies of the endorsed complaint.
- 6. Upon receipt of the necessary materials, the court will direct the United States Marshal to serve defendant Mohyuddin pursuant to Federal Rule of Civil Procedure 4 without payment of costs. Failure to comply with this order may result in this action being dismissed.

Further, it is RECOMMENDED that the claims against defendants Chau, Smith, and Bobbala be dismissed as duplicative.

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 days after being served with these findings and recommendations, any party 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.” Failure to file objections within the specified time may waive the right to appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

Dated: May 2, 2018.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
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No. 2:18-cv-0094-EFB P

NOTICE OF SUBMISSION OF
DOCUMENTS

Plaintiff hereby submits the following documents in compliance with the court's

Screening Order:

- 1 completed summons form
- 1 completed forms USM-285
- 2 copies of the endorsed January 16, 2018 complaint

Plaintiff

Dated: