

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

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

JOE TAYLOR,  
  
Plaintiff,  
  
v.  
  
J. LEWIS, et al.,  
  
Defendants.

No. 2:18-CV-0149-JAM-DMC-P

FINDINGS AND RECOMMENDATIONS

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 first amended complaint (ECF No. 12).

On August 16, 2019, the court issued a screening order addressing the sufficiency of plaintiff’s allegations. See ECF No. 13. The court summarized plaintiff’s allegations and claims as follows:

Plaintiff names ten Defendants including Does 1-5. The named Defendants are: (1) J. Lewis, (2) J. Ma, (3) M. Bobbala, (4) P. Sahota (5) S. Chaiken. Plaintiff alleges Defendants violated his Eighth Amendment right against cruel and unusual punishment by denying him proper medical treatment and failing to provide him adequate pain medication. Plaintiff asserts he underwent arthroscopic knee surgery. Plaintiff takes issue with the treatment plan implemented by certain Defendants, questioning their “ability to provide serious relief to Plaintiff’s pain and deteriorating condition.” Plaintiff also takes issue with the use of ibuprofen to control his pain—Plaintiff asserts it is ineffective and causes him stomach problems. Plaintiff’s allegations as to each Defendant are less than clear.

1 Plaintiff alleges that Defendant J. Lewis was deliberately  
2 indifferent when he denied Plaintiff's grievance related to his knee pain.  
3 Plaintiff alleges that Defendant J. Ma was deliberately indifferent by  
4 failing to provide proper medical treatment. Plaintiff seems to indicate J.  
5 Ma did not treat his knee issues, requiring another physician to drain  
6 Plaintiff's knee of fluid and provide him steroid injections. Plaintiff asserts  
7 he is receiving no treatment from J. Ma other than receiving ibuprofen.  
8 Plaintiff alleges M. Bobbala was deliberately indifferent in denying  
9 Plaintiff's second level HC Appeal requesting the use of Tramadol.  
10 Plaintiff alleges P. Sahota was deliberately indifferent in denying  
11 Plaintiff's request for pain relief despite knowing the pain was "quite  
12 worse". Plaintiff alleges Defendant Chaiken was deliberately indifferent  
13 by denying Plaintiff's request to be removed from Dr. J. Ma's case load  
14 and failing to address Plaintiff's plea for pain relief. Finally, Plaintiff  
15 makes no allegations in the first amended complaint as to Does 1-5.

16 ECF No. 13, pgs. 2-3.

17 The court concluded plaintiff states sufficient facts to proceed on his Eighth  
18 Amendment claim against defendant Ma. See id. at 5. The court also concluded plaintiff's first  
19 amended complaint was insufficient as to the remaining defendants, Lewis, Bobbala, Sahota, and  
20 Chaiken. See id. After outlining the applicable legal standards for Eighth Amendment medical  
21 care claims, the court stated:

22 Plaintiff alleges sufficient facts against J. Ma to proceed  
23 past screening. However, Plaintiff's allegations against J. Lewis, M.  
24 Bobbala, P. Sahota, S. Chaiken, and Does 1-5 cannot pass screening.  
25 These allegations are all based on Plaintiff's belief that the modification to  
26 his pain regime are ineffective at managing his pain despite several  
27 doctors and the Pain Management Committee's determination that the  
28 modification is proper based on Plaintiff's condition. This amounts to a  
difference of opinion between Plaintiff and these Defendants. Such a  
difference of opinion, based on the facts alleged, does not state a claim  
sufficient to establish a constitutional violation under the Eighth  
Amendment. See Jackson v. McIntosh, 90 F.3d at 332. For that reason,  
Plaintiff's complaint cannot pass the screening stage.

Id. at 5.

Plaintiff was provided an opportunity to file an amended complaint within 30 days addressing the  
deficiencies identified in the screening order. See id. at 5-6. To date, plaintiff has not filed an  
amended complaint.<sup>1</sup>

///  
\_\_\_\_\_

<sup>1</sup> By separate order issued herewith, the court has directed plaintiff to submit documents necessary for service of the first amended complaint on defendant Ma.

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

Based on the foregoing, the undersigned recommends that:

1. Defendants Lewis, Bobbala, Sahota, and Chaiken be dismissed; and
2. This action proceed on plaintiff's first amended complaint against defendant Ma only.

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 14 days after being served with these findings and recommendations, any party may file written objections with the court. Responses to objections shall be filed within 14 days after service of objections. Failure to file objections within the specified time may waive the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: October 3, 2019



---

DENNIS M. COTA  
UNITED STATES MAGISTRATE JUDGE