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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LEON LEE MEYERS,

Plaintiff,

v.

ALAMEDA COUNTY PRISON HEALTH
SERVICES, et al.,

Defendants.

No. C-09-4643 TEH (PR)

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT;
ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT LYNN
BOWERS'S MOTION FOR SUMMARY
JUDGMENT

(Doc. ##16 & 19)

Plaintiff Leon Lee Meyers ("Plaintiff"), an inmate¹ at Salinas Valley State Prison, Soledad, California, has filed an amended pro se civil rights action under 42 U.S.C. section 1983 ("section 1983"), alleging deliberate indifference to his serious medical needs. Doc. #7. Specifically, Plaintiff alleges that Defendant

¹ At the time he filed his first amended complaint ("FAC"), Plaintiff was housed in the Alameda County Jail. It remains unclear from Plaintiff's pleadings whether he was a pretrial detainee. Assuming Plaintiff was a pretrial detainee, his medical claim arises under the Due Process Clause, but the Eighth Amendment serves as a benchmark for evaluating the claim. See Carnell v. Grimm, 74 F.3d 977, 979 (9th Cir. 1996) (Eighth Amendment guarantees provide minimum standard of care for pretrial detainees).

1 Adams, a dentist at Santa Rita Jail, Dublin, California, refused to
2 give him a root canal and offered only to extract the tooth causing
3 him pain. Doc. #7 at 5-8. Plaintiff also alleges that Defendant
4 Bowers, a nurse at the facility, refused to treat him for an earache
5 and problems with urination, and refused to discontinue his diabetic
6 diet. Doc. #7 at 8-12.

7 This Court previously held that Plaintiffs allegations,
8 liberally construed, state a cognizable section 1983 claim for
9 deliberate indifference and ordered the United States Marshal to
10 serve Defendants Adams and Bowers. Doc. #10. The Court dismissed
11 claims against Alameda County Sheriff Gregory Ahern. The Court did
12 not dismiss claims against Defendant Prison Health Services, Santa
13 Rita County Jail, County of Alameda, yet Plaintiff does not allege
14 that this defendant's policies or customs caused him harm, as is
15 required to state a claim against local governments. See Ybarra v.
16 Reno Thunderbird Mobile Home Village, 723 F.2d 675, 681 (9th Cir.
17 1984). Defendant Prison Health Services, Santa Rita County Jail,
18 County of Alameda is therefore DISMISSED pursuant to the Court's
19 power to screen a complaint that "is frivolous, malicious, or fails
20 to state a claim upon which relief may be granted," or "seeks
21 monetary relief from a defendant who is immune from such relief." 28
22 U.S.C. §§ 1915A(a), (b).

23 With regard to Defendant Adams, Plaintiff concedes that Dr.
24 Adams is not the dentist who allegedly violated Plaintiff's
25 constitutional rights. Doc. #20. Furthermore, Plaintiff did not
26 provide sufficient information with which to effectuate service upon
27 Defendant Adams. Doc. #15. Accordingly, claims against Defendant
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1 Adams are hereby DISMISSED. Should Plaintiff wish to file suit
2 against the correct dentist, identified as Dr. J. Barber (Doc. #24),
3 he is free to do so.

4 The remaining defendant, Lynn Bowers ("Defendant"), moved for
5 summary judgment on the grounds that Plaintiff has not demonstrated
6 that there are any material facts in dispute and that therefore, she
7 is entitled to summary judgment as a matter of law. Doc. #19.
8 Plaintiff has filed an opposition and Defendant has filed a reply.
9 Doc. ## 21 & 25.

10 Plaintiff has two motions pending. He filed a motion for
11 summary judgment on his claims that Defendant violated his Eighth
12 Amendment rights. See Doc. #16. Defendant filed an opposition and
13 Plaintiff filed a reply. See Doc. ## 19 & 21. Plaintiff has also
14 filed a motion for sanctions against Defendant (Doc. #32) pursuant
15 to Rule 56(g) of the Federal Rules of Civil Procedure based upon his
16 claim that Defendant's affidavit in support of her motion for
17 summary judgment (Doc. #19) was made in bad faith. As set forth
18 below, the Court defers ruling on this motion pending mediation
19 proceedings and a report and recommendation from Magistrate Judge
20 Vadas.

21
22 I

23 Summary judgment is proper where the pleadings, discovery and
24 affidavits show that there is "no genuine issue as to any material
25 fact and that the moving party is entitled to judgment as a matter
26 of law." Fed. R. Civ. P. 56(c). Material facts are those that may
27 affect the outcome of the case. Anderson v. Liberty Lobby, Inc., 477
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1 U.S. 242, 248 (1986). A dispute as to a material fact is genuine if
2 there is sufficient evidence for a reasonable jury to return a
3 verdict for the nonmoving party. See id.

4 The party moving for summary judgment bears the initial burden
5 of identifying those portions of the pleadings, discovery and
6 affidavits which demonstrate the absence of a genuine issue of
7 material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).
8 Where the moving party will have the burden of proof on an issue at
9 trial, it must affirmatively demonstrate that no reasonable trier of
10 fact could find other than for the moving party. Id. On an issue for
11 which the opposing party will have the burden of proof at trial, the
12 moving party need only point out "that there is an absence of
13 evidence to support the nonmoving party's case." Id.

14 Once the moving party meets its initial burden, the nonmoving
15 party must go beyond the pleadings and, by its own affidavits or
16 discovery, "set forth specific facts showing that there is a genuine
17 issue for trial." Fed. R. Civ. P. 56(e). If the nonmoving party
18 fails to make this showing, "the moving party is entitled to
19 judgment as a matter of law." Celotex Corp., 477 U.S. at 323. To
20 defeat summary judgment on a claim that defendants were deliberately
21 indifferent to a plaintiff's serious medical needs, sweeping
22 conclusory allegations will not suffice; the plaintiff must instead
23 "set forth specific facts as to each individual defendant's
24 deliberate indifference." Leer v. Murphy, 844 F.2d 628, 634 (9th
25 Cir. 1988).

26 When the parties file cross-motions for summary judgment, the
27 district court must consider all of the evidence submitted in
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1 support of both motions to evaluate whether a genuine issue of
2 material fact exists precluding summary judgment for either party.
3 Fair Housing Council of Riverside County, Inc. v. Riverside Two, 249
4 F.3d 1132, 1135 (9th Cir. 2001).

6 II

7 On August 19, 2009, Plaintiff submitted a medical request form
8 to Prison Health Services.² Doc. #21, Ex. A. This form contained the
9 following question: "Tell us below why you want to see health care
10 staff. In the area below, write down anything you want health care
11 staff to know." Doc. #21, Ex. A. In response, Plaintiff wrote: "Hard
12 to urinate, ear ache, need to stop diet." Doc. #21, Ex. A. Defendant
13 initially indicated that she did not see this form, but "[o]n
14 further examination, she has realized this is incorrect because the
15 request form does contain her initials." Doc. #25 at 2.

16 On August 24, 2009, Plaintiff was seen by Defendant, a nurse in
17 the jail's clinic, in response to his medical request form. Doc.
18 #21, Ex. B. At this visit, Plaintiff told Defendant that he was
19 diabetic and wished to discontinue his diabetic diet. Doc. #21, Ex.
20 B. Defendant then told Plaintiff that she would need to "finger
21 stick" him in order to determine his blood sugar level. Doc. #21,
22 Ex. B. Plaintiff told Defendant that his medical chart would
23 indicate he was diabetic, and therefore, she did not need to test
24 his blood sugar. Doc. #21, Ex. B. Plaintiff refused to submit to the
25 test. Doc. #21, Ex. B. In a grievance form filed after this visit,

26 _____
27 ² The facts set forth below are undisputed unless otherwise
28 noted.

1 Plaintiff explained that he wanted to discontinue the diabetic diet
2 because "they have sent me the exact same meal 4 times in a row and
3 they fail[ed] to send my extra snack" Doc. #21, Ex. D at 1.

4 Plaintiff states that during this medical visit, he told
5 Defendant that he was experiencing difficulty urinating and had an
6 earache. Doc. #16 at 12. Defendant disputes this allegation,
7 asserting that Plaintiff only told her about his desire to
8 discontinue his diabetic diet, and did not mention any other medical
9 issues he was having at the time. Doc. #19-1 at 2.

10 Plaintiff and Defendant had subsequent contact at the door of
11 Plaintiff's cell on August 26, 2009. Doc. ##19-1 at 3-4; 22 at ¶¶7-
12 9. The parties agree that the focus of this visit was Plaintiff's
13 diabetes, and whether he would submit to a finger stick. Doc. ##19-1
14 at 3-4; 7 at 50-51. They disagree as to whether Plaintiff mentioned
15 his earache and urinary problems during the cell visit, but they
16 agree that Defendant did not treat him for an earache or urinary
17 problems then or thereafter. Doc. ##19-1 at 3-4; 7 at 50-51. As of
18 August 28, 2009, Plaintiff had not seen a doctor or other medical
19 staff in response to the earache and urination problems mentioned in
20 his medical request form. Doc. #21, Ex. E. Plaintiff bought
21 medication from other inmates in an attempt to treat his earache.
22 Doc. ##17 at 6 (¶¶ 12, 14); 21 at 20. He "has suffered urinary
23 discomfort and pain" since he first complained of these symptoms.
24 Doc. #17 at ¶13.

25 After he transferred to San Quentin State Prison, Plaintiff was
26 examined by Jenny Espinoza-Marcus, M.D., of the California Prison
27 Health Care Services at San Quentin. Doc. #29. Dr. Espinoza-Marcus's
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1 notes, dated March 29, 2010, indicate that Plaintiff suffered from
2 chronic kidney disease. Doc. #29 at 5-6. When asked about his
3 urinary symptoms, Plaintiff indicated he was having trouble
4 urinating. Doc. #29 at 5. In the "Assessment/Plan" portion of her
5 notes, Dr. Espinoza-Marcus stated that the etiology of Plaintiff's
6 kidney disease was unclear, but "postobstructive etiology is
7 theoretically possible since [Plaintiff] is endorsing some urinary
8 hesitancy. . . ." Doc. #29 at 6.

9 In another set of notes dated April 29, 2010, Dr. Espinoza-
10 Marcus indicated that Plaintiff was still having urinary hesitancy.
11 Doc. #29 at 8. Dr. Espinoza-Marcus again stated that the etiology of
12 Plaintiff's chronic kidney disease was unclear, and prescribed ten
13 milligrams of Lisinopril to Plaintiff to treat his kidney disease,
14 indicating she was prescribing this medication for "renal
15 protection." Doc. #29 at 8-9.

16 Plaintiff filed a complaint in the instant action on September
17 30, 2009. Doc. #1. This complaint was dismissed with leave to amend
18 on October 13, 2009. Doc. #6. Plaintiff filed a first amended
19 complaint on November 5, 2009. Doc. #7.

20
21 III

22 Plaintiff claims that Defendant violated his Eighth Amendment
23 rights when she was deliberately indifferent to his serious medical
24 needs regarding his diabetic diet, earache, and urination problems.
25 Doc. ##16 & 21. Defendant argues that (1) Plaintiff's medical needs
26 were not serious; (2) she was not deliberately indifferent; and (3)
27 her conduct caused Plaintiff no harm. Doc. ## 19 & 25.

A

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2 Deliberate indifference to serious medical needs violates the
3 Eighth Amendment's proscription against cruel and unusual
4 punishment. Estelle v. Gamble, 429 U.S. 97, 104 (1976). "A
5 determination of 'deliberate indifference' involves an examination
6 of two elements: the seriousness of the prisoner's medical need and
7 the nature of the defendant's response to that need." McGuckin v.
8 Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other
9 grounds, WMX Technologies, Inc. v. Miller, 104 F.3d 1133, 1136 (9th
10 Cir. 1997) (en banc). "A 'serious' medical need exists if the
11 failure to treat a prisoner's condition could result in further
12 significant injury or the 'unnecessary and wanton infliction of
13 pain.'" Id., 974 F.2d at 1059. "The existence of an injury that a
14 reasonable doctor or patient would find important and worthy of
15 comment or treatment; the presence of a medical condition that
16 significantly affects an individual's daily activities; or the
17 existence of chronic and substantial pain are examples of
18 indications that a prisoner has a 'serious' need for medical
19 treatment." Id. at 1059-60.

20 Deliberate indifference is proven "by showing (a) a purposeful
21 act or failure to respond to a prisoner's pain or possible medical
22 need and (b) harm caused by the indifference." Jett v. Penner, 439
23 F.3d 1091, 1096 (9th Cir. 2006). The prison official must not only
24 "be aware of facts from which the inference could be drawn that a
25 substantial risk of serious harm exists," but she "must also draw
26 the inference." Farmer v. Brennan, 511 U.S. 825, 837 (1994). If a
27 prison official should have been aware of the risk, but was not,
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1 then the official has not violated the Eighth Amendment, no matter
2 how severe the risk. Gibson v. County of Washoe, 290 F.3d 1175, 1188
3 (9th Cir. 2002), cert. denied, Washoe County v. Gibson, 537 U.S.
4 1106 (2003). The harm caused by the indifference need not be
5 "substantial," McGuckin, 974 F.2d at 1060, but serious harm tends to
6 support a claim of deliberate indifference. Id.

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8 B

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10 Analysis of Plaintiff's Claim Regarding Defendant's Treatment of His

11 Diabetic Diet

12 Plaintiff's claim that Defendant was deliberately indifferent
13 to his request to discontinue his diabetic diet in violation of the
14 Eighth Amendment does not survive summary judgment. Plaintiff has
15 not shown that his request to discontinue his diabetic diet amounted
16 to a "serious medical need" protected by the Eighth Amendment. In
17 the grievance form he filled out on August 28, 2009, Plaintiff
18 explained that he wanted to discontinue the diet because "they have
19 sent me the exact same meal 4 times in a row and they fail[ed] to
20 send my extra snack" Doc. #21, Ex. D at 1. Thus he sought
21 out medical care for reasons of personal preference rather than a
22 medical concern regarding the treatment of his diabetes. Plaintiff
23 does not argue or offer evidence showing that Defendant's failure to
24 alter his diet could have resulted in injury or pain, and thus his
25 was not a serious need for medical treatment.

26 Nor did Defendant's conduct amount to deliberate indifference.
27 It is undisputed that Defendant made several attempts to test
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1 Plaintiff's blood sugar. Doc. #7 at 42; Doc. #21, Ex. D at 1. While
2 Plaintiff might have disagreed with Defendant's methods, "[a]
3 difference of opinion between a prisoner-patient and prison medical
4 authorities regarding treatment does not give rise to a § 1983
5 claim" based on deliberate indifference. Franklin v. Oregon, 662
6 F.2d 1337, 1344 (9th Cir. 1981).

7 Even when viewed in the light most favorable to Plaintiff, the
8 evidence in the record demonstrates that no reasonable trier of fact
9 could find that Defendant was deliberately indifferent to
10 Plaintiff's serious medical needs in her response to his request to
11 discontinue his diabetic diet. Plaintiff's motion for summary
12 judgment as to Defendant's deliberate indifference to his dietary
13 request is DENIED, and Defendant's motion for summary judgment with
14 regard to same is GRANTED.

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17 Analysis of Plaintiff's Claim Regarding Defendant's Treatment of His
18 Earache and Urinary Problems

19 Plaintiff claims that Defendant violated his Eighth Amendment
20 rights when she was deliberately indifferent to his request for
21 medical care for his earache and urinary problems. See Doc. ##16 &
22 21. Defendant argues that neither medical issue amounts to a serious
23 medical need because Plaintiff complained of each only once. Doc.
24 #19 at 8. Not only does Defendant not offer authority supporting her
25 argument that a single complaint cannot indicate a serious medical
26 need, but (1) the record shows that Plaintiff complained of these
27 symptoms at least twice, See Doc. #21 at Ex. A, Ex. D at 2, and (2)

1 the question of how many more times Plaintiff complained to
2 Defendant of an earache and urinary problems is in dispute. See Doc.
3 ##19-1 at 2-4; 16 at 12; 7 at 50-51. Defendant also contends that
4 Plaintiff's statements about his medical condition are hearsay, but
5 does not describe these statements or cite to them.³ Doc. #19 at 8.

6 Defendant's summary dismissal of the evidence in the record
7 overlooks its significance under the relevant legal standard.
8 Plaintiff complained of his earache and urinary problems at least
9 twice - once in his medical request form and again four days later
10 in his grievance form. See Doc. #21 at Ex. A, Ex. D at 2. He bought
11 medication from other inmates in an attempt to treat his earache.
12 Doc. ##17 at 6 (¶¶12, 14); 21 at 20. He "has suffered urinary
13 discomfort and pain" since he first complained of these symptoms.
14 Doc. #17 at ¶13. Plaintiff's discomfort - stated and implied from
15 the fact that he sought to self medicate and complained of his
16 symptoms - is some evidence that these were symptoms that required
17 treatment in order to avoid further significant injury or
18 unnecessary and wanton pain. See McGuckin, 974 F.2d at 1059.
19 Plaintiff's own response to his symptoms - self medicating and
20 filing a medical request form and grievance - is some evidence that
21 a reasonable patient would find these symptoms important and worthy
22

23 ³ In her evidentiary objections, Defendant challenges as hearsay
24 Plaintiff's statements regarding Dr. Espinoza-Marcus's diagnosis of
25 his kidney disease. Doc. #25-1. The Court need not rule on this and
26 Defendant's other objections because the evidence they challenge is
27 not necessary to the Court's analysis. Other evidence precludes ruling
28 in favor of Defendant's summary judgment motion, and the challenged
evidence, if the Court had considered it, would not have quieted
genuine issues of material fact as to whether Plaintiff's summary
judgment motion should prevail.

1 of comment or treatment. See id. at 1059-60. Finally, Defendant
2 incorrectly asserts that she should be granted summary judgment
3 based upon the absence of "competent medical evidence" that
4 Plaintiff suffered an earache and urinary problems at the time he
5 was treated by Defendant. See Doc. ##19 at 8; 25 at 2. While
6 reasonable juries might disagree as to the probative value of
7 Plaintiff's evidence, the fact that Plaintiff does not offer medical
8 proof of the symptoms Defendant failed to treat does not prove that
9 Plaintiff did not experience them.⁴ See Doc. #25 at 1; Hardy v. 3
10 Unknown Agents, 690 F. Supp. 2d 1074, 1093-94 (C.D. Cal. 2010).

11 Evidence submitted after the briefing period shows that
12 Plaintiff was diagnosed with chronic kidney disease by a doctor at
13 San Quentin some eight months after being treated by Defendant. Doc.
14 #29, Ex. A, B. Defendant has not had an opportunity to respond to
15 this evidence, which appears to have become available to Plaintiff
16 after Defendant filed her reply. Doc. ##27 & 29. This evidence does
17 not influence the Court's ruling on either motion, however, and
18 whether to consider it in spite of its late production need not be
19 addressed. The above analysis shows that even without this evidence,
20 Defendant's motion for summary judgment fails. The evidence also
21 does not conclusively prove that Plaintiff's urinary problems were a
22 serious medical need in August 2009, when Plaintiff was treated by
23 Defendant. Dr. Espinoza-Marcus's notes state that while it is
24 "theoretically possible" that Plaintiff's urinary problems caused

25 _____
26 ⁴ In her reply, Defendant states that Plaintiff has offered no
27 evidence that his earache was a serious medical condition, and
28 therefore has abandoned the claim. Doc. #25 at 2 n.1. This is
unsupported by the record.

1 his kidney disease, "the etiology is unclear." Doc. #29. Reasonable
2 juries could disagree as to whether the urinary problems Plaintiff
3 complained of in August 2009 were symptoms of chronic kidney
4 disease, which is likely a serious medical need.

5 Reasonable juries could also disagree as to whether Defendant
6 was deliberately indifferent to Plaintiff's medical needs. Although
7 the parties dispute whether Plaintiff mentioned his earache and
8 urinary problems to Defendant during their two encounters in August
9 2009, Defendant initialed the medical request form in which
10 Plaintiff complains of an earache and urinary problems. Doc. #21 Ex.
11 A. Reasonable juries could disagree as to whether Defendant's
12 initials on Plaintiff's medical request form indicate that she was
13 subjectively aware of Plaintiff's symptoms when she failed to treat
14 them. See Farmer, 511 U.S. at 837; Gibson, 290 F.3d at 1188. This is
15 particularly true in light of the parties' conflicting accounts of
16 their conversations on August 24 and August 26. Finally, while
17 Plaintiff has not proven that Defendant's inaction caused the harm
18 he describes, a reasonable jury could find that it did. See
19 McGuckin, 974 F.2d at 1060.

20 Because the parties have raised genuine issues of material fact
21 as to whether Plaintiff's earache and urinary problems were serious
22 medical needs to which Defendant was deliberately indifferent,
23 Plaintiff's and Defendants' motions for summary judgment as to
24 Plaintiff's claims relating to his earache and urinary problems are
25 DENIED. These claims will be referred for mediation proceedings as
26 outlined below.

IV

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2 For the foregoing reasons, Plaintiff's motion for summary
3 judgment (Doc. #16) is DENIED and Defendant's motion for summary
4 judgment (Doc. #19) is GRANTED IN PART AND DENIED IN PART.
5 Defendant's motion for summary judgment as to Plaintiff's claim
6 regarding Defendant's treatment of his diabetic diet is GRANTED, and
7 this claim is DISMISSED WITHOUT PREJUDICE. Defendant's motion for
8 summary judgment as to Plaintiff's claims that Defendant was
9 deliberately indifferent to his earache and urination problems is
10 DENIED.

11 Good cause appearing, the instant case will be referred to
12 Magistrate Judge Vadas for mediation proceedings pursuant to the Pro
13 Se Prisoner Mediation Program. The proceedings will consist of one
14 or more conferences as determined by the mediator. The proceedings
15 shall take place within one hundred twenty (120) days of the date
16 this Order is filed. Magistrate Judge Vadas shall coordinate a time
17 and date for the mediation proceedings with all interested parties
18 and/or their representatives and, within ten (10) days after the
19 conclusion of the mediation proceedings, file with the court a
20 report of the mediation proceedings. Failing successful mediation
21 proceedings, the court will consider appointing counsel for
22 Plaintiff and setting a date for trial. The Court defers ruling on
23 Plaintiff's motion for sanctions (Doc. #32) pending review of
24 Magistrate Judge Vadas's report.


25 The Clerk shall mail a copy of the court file, including a copy
26 of this Order, to Magistrate Judge Vadas in Eureka, California.

27 Proceedings in this matter are hereby STAYED until further
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1 order of the court, if necessary, following completion of the
2 mediation proceedings outlined above.

3 IT IS SO ORDERED.

4 DATED: 1/24/11



THELTON E. HENDERSON
United States District Judge

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