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United States District Court
For the Northern District of California

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

JAMES BRIAN HAMILTON,
Plaintiff,

No. C 12-4279 WHA (PR)

**ORDER GRANTING MOTION TO
DISMISS; DENYING MOTIONS FOR
SUMMARY JUDGMENT AND FOR
APPOINTMENT OF COUNSEL**

v.

DR. JAVATE; DR. HEDDEN; R.N.
WALL; SRYN GRANT; DR. R.
DELGADO; DR. G. THIEL; L.D.
ZAMORA; J. KELSO,

(Docket Nos. 17, 29, 30)

Defendants

_____ /

INTRODUCTION

Plaintiff, an inmate at California State Prison, Soledad, filed this pro se civil rights action pursuant to 42 U.S.C. 1983. Defendants have filed a motion to dismiss the case pursuant to Rule 12(b)(6) of the Federal Rules of Civil procedure, for failure to state a claim upon which relief can be granted. Plaintiff opposed this motion by filing a motion for summary judgment. Defendants and plaintiff filed reply briefs. For the reasons discussed below, the motion to dismiss is **GRANTED**. Plaintiff's motions for summary judgment is **DENIED**, as is his second motion for appointment of counsel.

ANALYSIS

A. STANDARD OF REVIEW

Failure to state a claim is a grounds for dismissal under Rule 12(b)(6) of the Federal

1 Rules of Civil Procedure. Dismissal for failure to state a claim is a ruling on a question of law.
2 *Parks School of Business, Inc., v. Symington*, 51 F.3d 1480, 1483 (9th Cir. 1995). "The issue is
3 not whether plaintiff will ultimately prevail, but whether he is entitled to offer evidence to
4 support his claim." *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987).

5 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the
6 claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the
7 statement need only give the defendant fair notice of what the . . . claim is and the grounds
8 upon which it rests." *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations and internal
9 quotations omitted). Although in order to state a claim a complaint "does not need detailed
10 factual allegations, . . . a plaintiff's obligation to provide the 'grounds of his 'entitle[ment] to
11 relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a
12 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief
13 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007)
14 (citations omitted). A complaint must proffer "enough facts to state a claim for relief that is
15 plausible on its face." *Id.* at 1986-87. A motion to dismiss should be granted if the complaint
16 does not proffer "enough facts to state a claim for relief that is plausible on its face." *Id.* at 570;
17 *see, e.g., Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1952 (2009).

18 Review is limited to the contents of the complaint, *Clegg v. Cult Awareness Network*, 18
19 F.3d 752, 754-55 (9th Cir. 1994), including documents physically attached to the complaint or
20 documents the complaint necessarily relies on and whose authenticity is not contested. *Lee v.*
21 *County of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). In addition, the court may take
22 judicial notice of facts that are not subject to reasonable dispute. *Id.* at 688 (discussing Fed. R.
23 Evid. 201(b)). Allegations of fact in the complaint must be taken as true and construed in the
24 light most favorable to the non-moving party. *Sprewell v. Golden State Warriors*, 266 F.3d
25 979, 988 (9th Cir. 2001). The court need not, however, "accept as true allegations that are
26 merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *Ibid.*

27 A *pro se* pleading must be liberally construed, and "however inartfully pleaded, must be
28 held to less stringent standards than formal pleadings drafted by lawyers." *Twombly*, 550 U.S.

1 at 570 (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). Allegations of fact in the
2 complaint must be taken as true and construed in the light most favorable to the non-
3 moving party. *Symington*, 51 F.3d at 1484.

4 **B. ANALYSIS**

5 Plaintiff alleges that he suffers from chronic cervical pain and that defendants denied
6 him necessary medical treatment while he was housed at the California Training Facility
7 (“CTF”). Specifically, plaintiff claims that defendants denied him x-rays and an M.R.I. of his
8 spine between June 2011 and July 2012 because they believed that he was faking his injury and
9 they wanted him to take these tests after he was paroled. In order to establish a violation of his
10 Eighth Amendment rights, plaintiff would have to show that defendants were deliberately
11 indifferent to his serious medical needs. *See Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

12 With respect to the x-rays, it is assumed at this stage of the proceedings, when all
13 inferences must be drawn in plaintiff’s favor and all allegations liberally construed, that he was
14 in fact in severe pain and that x-rays were medically necessary. However, his medical records
15 show that plaintiff did in fact receive x-rays of his spine between June 2011 and July 2012
16 (Compl. 32-36). Two sets of x-rays were taken on July 18, 2011, and a third set were taken on
17 June 29, 2012 (*ibid.*).

18 These medical records also show that plaintiff had no medical need for an M.R.I.
19 between June 2011 and July 2012. The x-rays taken in July 2011 showed that his spinal
20 condition was relatively normal, that he had no fractures or subluxation, and that he only had
21 “mild” or “minimal age appropriate” degeneration (*id.* 32-33). Based upon these results, on
22 January 27, 2011, Dr. Javate concluded that no M.R.I. was necessary (*id.* 35-38). The x-rays
23 taken on June 29, 2012, showed “moderate to severe” degeneration, but the radiologist opined
24 only that an M.R.I. “can be considered . . . if necessary” (*id.* 34). Plaintiff’s allegation that he
25 needed an M.R.I. amounts to no more than a disagreement between him and Dr. Javate and the
26 radiologists, neither of whom found that an M.R.I. was medically necessary. Such a
27 disagreement does not amount to deliberate indifference within the meaning of the Eighth
28 Amendment. *See Franklin v. Oregon*, 662 F.2d 1337, 1344 (9th Cir. 1981) (“A difference of

1 opinion between a prisoner-patient and prison medical authorities regarding treatment does not
2 give rise to a § 1983 claim."). Furthermore, the medical records attached to the complaint show
3 that throughout plaintiff's stay at CTF, including between June 2011 and July 2012, plaintiff
4 was seen numerous times by medical staff in the prison, taken to chiropractors outside the
5 prison, and prescribed pain medication, including aspirin and naproxen (Compl. 24-29, 68).

6 The complaint does not state a cognizable claim that defendants violated his Eighth
7 Amendment rights by failing to give him x-rays and an M.R.I. for his spine between June 2011
8 and 2012 because medical records attached to the complaint establish that he did in fact receive
9 x-rays — in addition to pain medication and other medical care — and there was no medical
10 necessity for an M.R.I. during that time. Accordingly, defendants' motion to dismiss will be
11 granted, and plaintiff's motion for summary judgment will be denied. The claims cannot be
12 cured by amendment because the medical records show that he did not receive constitutionally
13 inadequate medical care for his spine during the relevant time period. Accordingly, leave to
14 amend the complaint will not be granted.

15 **CONCLUSION**

16 For the foregoing reasons, defendants' motion to dismiss (dkt. 17) is **GRANTED**,
17 plaintiff's motion for summary judgment (dkt. 30) is **DENIED**, and the motion for appointment
18 of counsel is **DENIED** as moot (dkt. 29).

19 The clerk shall close the file and enter judgment in defendants' favor.

20 **IT IS SO ORDERED.**

21 Dated: April 19, 2013.

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23 _____
24 WILLIAM ALSUP
25 UNITED STATES DISTRICT JUDGE