

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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ARTHUR LEE GIBSON,

Plaintiff,

v.

VANJANI, et al.,

Defendants.

Case No. [17-cv-01705-EMC](#)

ORDER OF SERVICE

Docket No. 1

United States District Court
For the Northern District of California

I. INTRODUCTION

Arthur Lee Gibson, an inmate at San Quentin State Prison, filed this *pro se* prisoner’s civil rights action seeking relief under 42 U.S.C. § 1983. His complaint is now before the Court for review under 28 U.S.C. § 1915A.

II. BACKGROUND

In his complaint, Mr. Gibson alleges the following: Mr. Gibson has hepatitis C, and was told as far back as 2011 or 2012 that he qualified for treatment but that treatment would be deferred until a new hepatitis C medication was released. That new medication, Harvoni, was later released. Dr. Vanjani told Mr. Gibson on April 7, 2016, that Mr. Gibson no longer qualified for Harvoni for his hepatitis C. Dr. Rowe and Dr. Tootell thereafter agreed with Dr. Vanjani, and denied the Harvoni treatment for Mr. Gibson.

III. DISCUSSION

A federal court must engage in a preliminary screening of any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or

1 seek monetary relief from a defendant who is immune from such relief. *See id.* at § 1915A(b).
2 *Pro se* pleadings must be liberally construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d
3 696, 699 (9th Cir. 1990).

4 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a
5 right secured by the Constitution or laws of the United States was violated and (2) that the
6 violation was committed by a person acting under the color of state law. *See West v. Atkins*, 487
7 U.S. 42, 48 (1988).

8 Deliberate indifference to an inmate's serious medical needs violates the Eighth
9 Amendment's proscription against cruel and unusual punishment. *See Estelle v. Gamble*, 429 U.S.
10 97, 104 (1976); *Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004). To establish an Eighth
11 Amendment claim on a condition of confinement, such as medical care, a prisoner-plaintiff must
12 show: (1) an objectively, sufficiently serious, deprivation, and (2) the official was, subjectively,
13 deliberately indifferent to the inmate's health or safety. *See Farmer v. Brennan*, 511 U.S. 825,
14 834 (1994).

15 The complaint alleges that Drs. Vanjani, Rowe, and Tootell have refused to provide Mr.
16 Gibson with treatment for his hepatitis C -- treatment that is both available and necessary.
17 Liberally construed, the complaint states a cognizable Eighth Amendment claim against the three
18 doctors for deliberate indifference to Mr. Gibson's medical needs.

19 **IV. CONCLUSION**

20 1. The complaint states a cognizable Eighth Amendment claim against Dr. Vanjani,
21 Dr. Rowe, and Dr. Tootell.

22 2. The Clerk shall issue a summons and the United States Marshal shall serve, without
23 prepayment of fees, the summons, a copy of the amended complaint and a copy of all the
24 documents in the case file upon the following defendants, all of whom apparently work in San
25 Quentin's medical department:

- 26 ▪ Dr. D. Vanjani
- 27 ▪ Dr. Michael Rowe
- 28 ▪ Dr. E. Tootell (chief medical executive)

1 3. In order to expedite the resolution of this case, the following briefing schedule for
2 dispositive motions is set:

3 a. No later than **September 15, 2017**, Defendants must file and serve a motion
4 for summary judgment or other dispositive motion. If Defendants are of the opinion that this case
5 cannot be resolved by summary judgment, Defendants must so inform the court prior to the date
6 the motion is due. If Defendants file a motion for summary judgment, Defendants must provide to
7 plaintiff a new *Rand* notice regarding summary judgment procedures at the time they file such a
8 motion. *See Woods v. Carey*, 684 F.3d 934, 939 (9th Cir. 2012).

9 b. Plaintiff's opposition to the summary judgment or other dispositive motion
10 must be filed with the court and served upon defendants no later than **October 13, 2017**. Plaintiff
11 must bear in mind the notice and warning regarding summary judgment provided later in this
12 order as he prepares his opposition to any motion for summary judgment.

13 c. If defendants wish to file a reply brief, the reply brief must be filed and
14 served no later than **October 27, 2017**.

15 4. Plaintiff is provided the following notices and warnings about the procedures for
16 motions for summary judgment:

17 The defendants may make a motion for summary judgment by
18 which they seek to have your case dismissed. A motion for
19 summary judgment under Rule 56 of the Federal Rules of Civil
20 Procedure will, if granted, end your case. . . . Rule 56 tells you what
21 you must do in order to oppose a motion for summary judgment.
22 Generally, summary judgment must be granted when there is no
23 genuine issue of material fact -- that is, if there is no real dispute
24 about any fact that would affect the result of your case, the party
25 who asked for summary judgment is entitled to judgment as a matter
26 of law, which will end your case. When a party you are suing
27 makes a motion for summary judgment that is properly supported by
28 declarations (or other sworn testimony), you cannot simply rely on
what your complaint says. Instead, you must set out specific facts in
declarations, depositions, answers to interrogatories, or
authenticated documents, as provided in Rule 56(e), that contradict
the facts shown in the defendants' declarations and documents and
show that there is a genuine issue of material fact for trial. If you do
not submit your own evidence in opposition, summary judgment, if
appropriate, may be entered against you. If summary judgment is
granted, your case will be dismissed and there will be no trial. *Rand*
v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998).

If a defendant files a motion for summary judgment for failure to exhaust administrative remedies,

1 he is seeking to have the case dismissed. As with other defense summary judgment motions, if a
2 motion for summary judgment for failure to exhaust administrative remedies is granted, Plaintiff's
3 case will be dismissed and there will be no trial.

4 5. All communications by Plaintiff with the Court must be served on a Defendant's
5 counsel by mailing a true copy of the document to the Defendant's counsel. The Court may
6 disregard any document which a party files but fails to send a copy of to his opponent. Until a
7 Defendant's counsel has been designated, Plaintiff may mail a true copy of the document directly
8 to the Defendant, but once a Defendant is represented by counsel, all documents must be mailed to
9 counsel rather than directly to that Defendant.

10 6. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.
11 No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16 is required
12 before the parties may conduct discovery.

13 7. Plaintiff is responsible for prosecuting this case. Plaintiff must promptly keep the
14 Court informed of any change of address and must comply with the Court's orders in a timely
15 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
16 to Federal Rule of Civil Procedure 41(b). Plaintiff must file a notice of change of address in every
17 pending case every time he is moved to a new facility.

18 8. Plaintiff is cautioned that he must include the case name and case number for this
19 case on any document he submits to the Court for consideration in this case.

20

21 **IT IS SO ORDERED.**

22

23 Dated: July 5, 2017


24

25

26

27

28


EDWARD M. CHEN
United States District Judge