

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

LARRY EUGENE SANTOS, Jr.,
Plaintiff,
v.
SANTA CLARA CO. MAIN JAIL,
Defendant.

No. C 13-4885 PJH (PR)

**ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

This is a civil rights case brought pro se by a prisoner. His claims arise from his detention in the Santa Clara County Jail. Plaintiff alleges that the jail was deliberately indifferent to his serious medical needs in treating his toenail fungus. Plaintiff also alleges the jail has a policy not to treat his type of condition with the medical drug Lamasil. Defendant has filed a motion for summary judgment asserting that there are no undisputed material facts and that plaintiff has failed to exhaust his administrative remedies. Plaintiff has not filed an opposition or otherwise communicated with the court since filing the complaint. For the reasons set forth below, the motion for summary judgment is granted.

DISCUSSION

Motion for Summary Judgment

A. Standard of Review

Summary judgment is proper where the pleadings, discovery and affidavits show that there is "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Material facts are those which may affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute as to a material fact is genuine if there is sufficient evidence for a reasonable jury

1 to return a verdict for the nonmoving party. *Id.*

2 The moving party for summary judgment bears the initial burden of identifying those
3 portions of the pleadings, discovery and affidavits which demonstrate the absence of a
4 genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Nissan*
5 *Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102 (9th Cir. 2000). When the moving
6 party has met this burden of production, the nonmoving party must go beyond the
7 pleadings and, by its own affidavits or discovery, set forth specific facts showing that there
8 is a genuine issue for trial. If the nonmoving party fails to produce enough evidence to
9 show a genuine issue of material fact, the moving party wins. *Id.*

10 **B. Eighth Amendment**

11 Deliberate indifference to serious medical needs violates the Eighth Amendment's
12 proscription against cruel and unusual punishment. *Estelle v. Gamble*, 429 U.S. 97, 104
13 (1976); *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other*
14 *grounds by WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en
15 banc). A determination of "deliberate indifference" involves an examination of two
16 elements: the seriousness of the prisoner's medical need and the nature of the defendant's
17 response to that need. *Id.* at 1059.¹

18 A "serious" medical need exists if the failure to treat a prisoner's condition could
19 result in further significant injury or the "unnecessary and wanton infliction of pain." *Id.*
20 "The existence of an injury that a reasonable doctor or patient would find important and
21 worthy of comment or treatment; the presence of a medical condition that significantly

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23 ¹ It is not entirely clear if plaintiff was a prisoner or detainee during the relevant time,
24 and he appears to no longer be in custody in the jail or in state prison. Regardless, even
25 though pretrial detainees' claims arise under the Due Process Clause, the Eighth
26 Amendment serves as a benchmark for evaluating those claims. See *Carnell v. Grimm*, 74
27 F.3d 977, 979 (9th Cir. 1996) (8th Amendment guarantees provide minimum standard of
28 care for pretrial detainees). The Ninth Circuit has determined that the appropriate standard
for evaluating constitutional claims brought by pretrial detainees is the same one used to
evaluate convicted prisoners' claims under the Eighth Amendment. "The requirement of
conduct that amounts to 'deliberate indifference' provides an appropriate balance of the
pretrial detainees' right to not be punished with the deference given to prison officials to
manage the prisons." *Redman v. County of San Diego*, 942 F.2d 1435, 1443 (9th Cir.
1991) (en banc) (citation omitted).

1 affects an individual's daily activities; or the existence of chronic and substantial pain are
2 examples of indications that a prisoner has a 'serious' need for medical treatment." *Id.* at
3 1059-60.

4 A prison official is deliberately indifferent if he or she knows that a prisoner faces a
5 substantial risk of serious harm and disregards that risk by failing to take reasonable steps
6 to abate it. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). The prison official must not only
7 "be aware of facts from which the inference could be drawn that a substantial risk of serious
8 harm exists," but he "must also draw the inference." *Id.* If a prison official should have
9 been aware of the risk, but was not, then the official has not violated the Eighth
10 Amendment, no matter how severe the risk. *Gibson v. County of Washoe*, 290 F.3d 1175,
11 1188 (9th Cir. 2002).

12 Local governments are "persons" subject to liability under 42 U.S.C. § 1983 where
13 official policy or custom causes a constitutional tort, see *Monell v. Dep't of Social Servs.*,
14 436 U.S. 658, 690 (1978); however, a city or county may not be held vicariously liable for
15 the unconstitutional acts of its employees under the theory of respondeat superior, see
16 *Board of Cnty. Comm'rs v. Brown*, 520 U.S. 397, 403 (1997); *Monell*, 436 U.S. at 691. To
17 impose municipal liability under § 1983 for a violation of constitutional rights, a plaintiff must
18 show: (1) that the plaintiff possessed a constitutional right of which he or she was deprived;
19 (2) that the municipality had a policy; (3) that this policy amounts to deliberate indifference
20 to the plaintiff's constitutional rights; and (4) that the policy is the moving force behind the
21 constitutional violation. *Plumeau v. School Dist. #40 Cnty. of Yamhill*, 130 F.3d 432, 438
22 (9th Cir. 1997).

23 C. Facts

24 The following of defendant's facts are undisputed as plaintiff has not filed an
25 opposition. On May 4, 2013, plaintiff presented to medical staff with a complaint of toenail
26 fungus. Motion for Summary Judgment ("MSJ") at 1. An examination indicated that he had
27 athlete's foot. *Id.* Plaintiff was prescribed Miconazole Nitrate (2% strength), a topical
28 cream, and was instructed to use the cream twice a day for two weeks. *Id.* He was also

1 given clean socks daily for two weeks. *Id.* Plaintiff again presented with a complaint of
2 toenail fungus on November 5, 2013, and he was again prescribed Miconazole Nitrate (2%
3 strength). *Id.* Plaintiff did not complain again of any toenail fungus or other foot-related
4 ailments. *Id.*

5 Miconazole Nitrate (2% strength), or a similar topical cream, is the standard
6 treatment provided to inmates with athlete's foot at Santa Clara County Jail. *Id.* A stronger
7 treatment, such as the prescription drug Lamasil that plaintiff had requested, is only
8 prescribed to county inmates on a case by case basis when deemed medically necessary.
9 *Id.* at 2. Toenail fungus is not considered a serious medical condition for non-diabetics by
10 the jail. *Id.* For non-diabetics such as plaintiff, toenail fungus does not have malevolent
11 side effects, only cosmetic ones and the possibility of developing athlete's foot. *Id.*

12 Oral medication for the treatment of toenail fungus, such as that requested by
13 plaintiff must be taken daily for three to six months to assure its effectiveness. *Id.* It also
14 requires monthly liver function tests to assure that the patient does not develop liver failure,
15 which medications such as Lamasil can cause. *Id.* Because plaintiff's time in the jail was
16 temporary, there was no guarantee that he could finish the course of treatment and receive
17 the liver tests. *Id.*

18 **D. Analysis**

19 Defendant first argues that plaintiff's toenail fungus was not a serious medical need
20 under the Eighth Amendment. As plaintiff only had two isolated instances of toenail fungus
21 that led to athlete's foot which seem to have been properly treated with the topical cream
22 supplied by doctors, this does not appear to be a serious medical need. Regardless, even
23 if it were a serious medical need, there was no constitutional violation, based on the
24 treatment provided by the jail, nor was there a policy in place at the jail not to treat this type
25 of condition.

26 It is undisputed that plaintiff was provided the topical cream treatment on the two
27 occasions that he complained of the toenail fungus and that it appears to have successfully
28 treated the condition. Plaintiff alleges in the complaint that he was not provided with a


1 prescription for Lamasil. Yet, “[a] difference of opinion between a prisoner-patient and
2 prison medical authorities regarding treatment does not give rise to a § 1983 claim.”
3 *Franklin v. Oregon*, 662 F.2d 1337, 1344 (9th Cir. 1981). Similarly, a showing of nothing
4 more than a difference of medical opinion as to the need to pursue one course of treatment
5 over another is insufficient, as a matter of law, to establish deliberate indifference. See
6 *Toguchi v. Chung*, 391 F.3d 1051, 1058-60 (9th Cir. 2004). Moreover, defendant was wary
7 of prescribing Lamasil due to plaintiff possibly leaving the jail and not having his liver
8 functions properly monitored and completing the course of treatment. Defendant has also
9 shown that there is no policy of not prescribing Lamasil because it can be prescribed under
10 certain circumstances. For all these reasons, summary judgment is granted for defendant.²

11
12 **CONCLUSION**

- 13 1. The motion for summary judgment (Docket No. 9) is **GRANTED**.
14 2. The clerk shall close the file.

15 **IT IS SO ORDERED.**

16 Dated: July 30, 2014.

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19 PHYLLIS J. HAMILTON
20 United States District Judge

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² As the court has not found a constitutional violation, the argument that plaintiff failed to exhaust his administrative remedies will not be addressed.