

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DAVID CODELL PRIDE, JR.,

Plaintiff,

vs.

M. CORREA, et al.,

Defendant.

CASE NO. 07cv1382-BEN (JMA)

ORDER:

(1) RULING ON OBJECTIONS TO
REPORT and RECOMMENDATION;
and
(2) GRANTING DEFENDANTS'
MOTION TO DISMISS PLAINTIFF'S
CLAIM FOR INJUNCTIVE RELIEF

Now before the Court is the Report and Recommendation filed on June 18, 2008, recommending that the Court deny Defendants' Motion to Dismiss Plaintiff's claims for injunctive relief. Defendants filed timely Objections and Plaintiff has filed a response to the Objections.¹

BACKGROUND

On July 27, 2007, Plaintiff David Codell Pride, Jr., a *pro se* state prisoner currently incarcerated at Calipatria State Prison, filed the complaint in this matter. Plaintiff seeks relief under 42 U.S.C. § 1983 and alleges that Defendants have denied Plaintiff a double mattress and knee braces necessary to alleviate orthopedic pain. Plaintiff alleges violations of his rights under the Eighth Amendment, and seeks \$1 million in compensatory and punitive damages as well as injunctive relief from the four named individual Defendants sued in their individual capacities.

¹ Plaintiff's response was received on July 29, 2008 and is unsigned and undated. Nevertheless, the Court has considered Plaintiff's response in reviewing the Report and Recommendation.

1 Defendants moved to dismiss Plaintiff's claim for injunctive relief. Defendants contend that
 2 Plaintiff's injunctive relief claim should be dismissed pursuant to Fed. R. Civ. P. 12(b)(1) for lack of
 3 jurisdiction over the subject matter because the claim is currently pending as a class action (addressing
 4 all medical care in California's prison system) before another federal court in *Plata v. Schwarzenegger*,
 5 No. 01-1351 (N.D. Cal. Feb. 14, 2006).

6 STANDARD OF REVIEW

7 The duties of the district court in connection with a Report and Recommendation are set forth
 8 in Rule 72(b) of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1). Where the parties
 9 object to a Report and Recommendation, a *de novo* determination is required. 28 U.S.C. § 636(b)(1).
 10 A district court may accept, reject, or modify, in whole or in part, the findings or recommendations.
 11 28 U.S.C. § 636(b)(1); *Wilkins v. Ramirez*, 455 F.Supp.2d 1080, 1088 (S.D. Cal. 2006).

12 ANALYSIS

13 Defendants filed Objections in this case. Accordingly, the Court has reviewed the motion and
 14 the Report and Recommendation *de novo*. The Court finds that the Magistrate Judge correctly
 15 concluded that whether to dismiss Plaintiff's claim for injunctive relief in view of the pending *Plata*
 16 class action is within this Court's discretion. The Magistrate Judge correctly notes that a decision from
 17 the Northern District of California in a similar context declined to dismiss an individual prisoner's
 18 action, notwithstanding *Plata*. See *Tillis v. Lamarque*, Case No. C 04-3763, slip op., 2006 WL 644876
 19 (N.D. Cal. Mar. 9, 2006). Plaintiff also urges this court to adopt the *Tillis* view. Defendants, on the
 20 other hand, suggest the better course is to follow the direction of two decisions granting dismissal of
 21 individual claims where class actions are pending. See *Coyle v. Cambra*, Case No. C 02-1810, slip
 22 op., 2005 WL 2397517 (N.D. Cal. Sept. 27, 2005); and *Jacobson v. Schwarzenegger*, 357 F.Supp.2d
 23 1198 (C.D. Cal. 2004).

24 In *Plata*, the United States District Court for the Northern District of California, District Judge
 25 Thelton Henderson, has appointed a Receiver to take control of the delivery of medical services to
 26 California state prisoners. Improving medical staffing and screening procedures are part of the
 27 appointed Receiver's assigned tasks. See *Plata v. Shwarzenegger*, No. 01-1351, 2005 WL 2932253,
 28 at *12 (N.D. Cal. Oct. 3, 2005). Thus, Plaintiff's claim for injunctive relief asserts interests that are

1 already being provided for by another court.


2 In a similar context, another Judge of this district faced with the same issue dismissed a
3 California prisoner's claims for medical injunctive relief. *See Gary v. Hawthron*, Case No. 06cv1528-
4 WQH (PCL), slip op., 2007 WL 2781098 (S.D. Cal. Sept. 19, 2007) (Hayes, J.). This Court finds the
5 reasoning of *Hawthron* to be persuasive. *See Crawford v. Bell*, 599 F.2d 890, 892-93 (9th Cir. 1979)
6 (holding that district court may dismiss individual plaintiff's action where plaintiff is a member of a
7 pending class action raising the same claims). Therefore, this Court declines to adopt the Report and
8 Recommendation and grants Defendants' Motion to Dismiss Plaintiff's claims for injunctive relief
9 regarding medical services.

10 CONCLUSION

11 Plaintiff's claim for injunctive relief regarding medical services is dismissed. Plaintiff's other
12 claim for monetary damages against the four individual prison staff Defendants, acting in their
13 individual capacities, is not the subject of Defendants' Motion to Dismiss, and therefore remains.

14 IT IS SO ORDERED.

15 Dated: September 8, 2008.

16 
17 HONORABLE ROGER T. BENITEZ
18 UNITED STATES DISTRICT JUDGE
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