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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ARMANDO HERNANDEZ,	)	Case No. CV 07-7489 JVS(JC)
Plaintiff,	)	ORDER ADOPTING FINDINGS,
v.	)	CONCLUSIONS, AND
WARDEN HARRISON, et al.,	)	RECOMMENDATIONS OF
Defendants.	)	UNITED STATES MAGISTRATE
	)	JUDGE

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Pursuant to 28 U.S.C. § 636, the Court has reviewed the Complaint, all documents filed in connection with the pending motions to dismiss and for a more definite statement, and all of the records herein, including the attached Report and Recommendation of United States Magistrate Judge.<sup>1</sup>

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<sup>1</sup>The specific motions in issue are: (1) the joint motions of Medical Training Assistant (MTA) Parga and R.N. Donnelly (a) to dismiss for failure to state a claim and (b) for a more definite statement; (2) the motions of defendant Dr. Ofoegbu (a) to dismiss for failure to state a claim; and (b) more a more definite statement; (3) the joint motions of defendants Dr. Fortaleza, R.N. Fernandez, MTA D. Johnson, N. Grannis, Facility Captain/Appeals Examiner C. Hall and Warden Harrison (a) to dismiss for failure to exhaust administrative remedies (“Multi-Defendant Exhaustion Motion”); (b) to dismiss for failure to state a claim; and (c) for a more definite  
(continued...)

1 IT IS HEREBY ORDERED: (1) the Complaint is dismissed as against all  
2 defendants to the extent they are sued in their official capacities; (2) the Multi-  
3 Defendant Exhaustion Motion is granted as to defendant Grannis who is dismissed  
4 from this action without prejudice; (3) the Multi-Defendant Exhaustion Motion is  
5 denied as to the remaining moving defendants; (4) the Cassim Exhaustion Motion  
6 is denied; (5) the 12(b)(6) Motions are granted as to defendants Harrison, Johnson,  
7 Hall and Grannis; (6) the 12(b)(6) Motions are granted as to the remaining moving  
8 defendants to the extent plaintiff's claim is predicated upon negligence, medical  
9 malpractice, slander, discrimination, or a violation of the Americans with  
10 Disabilities Act; (7) the 12(b)(6) Motions are otherwise denied as to the remaining  
11 moving defendants; (8) the Definite Statement Motions are denied as moot; and  
12 (9) plaintiff may file a First Amended Complaint within thirty (30) days of this  
13 Order;<sup>2</sup> and (10) if plaintiff fails to file a First Amended Complaint, he may  
14 proceed on the claims and portions of claims which have not been dismissed.


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17 <sup>1</sup>(...continued)  
18 statement; and (4) the motions of defendant Dr. Cassim (a) to dismiss for failure to exhaust  
19 administrative remedies ("Cassim Exhaustion Motion"); and (b) to dismiss for failure to state a  
20 claim. The four motions to dismiss for failure to state a claim will collectively be referred to as  
"the 12(b)(6) Motions." The three motions for a more definite statement will collectively be  
referred to as "Definite Statement Motions."

21 <sup>2</sup>Any First Amended Complaint should contain only exhausted claims and must: (a) be  
22 labeled: "First Amended Complaint;" (b) be complete in and of itself and not refer in any manner  
23 to the original Complaint; (c) contain a "short and plain" statement of the claim for relief. See  
24 Fed. R. Civ. P. 8(a); (d) make each allegation "simple, concise and direct." Fed. R. Civ. P.  
25 8(d)(1); (e) make allegations in numbered paragraphs, "each limited as far as practicable to a  
26 single set of circumstances." Fed. R. Civ. P. 10(b); (f) set forth clearly the sequence of events  
27 giving rise to the claim(s) for relief; and (g) not add defendants without leave of court. Further,  
28 to obviate the need to file a more definite statement, plaintiff should also succinctly and clearly  
(without bolding, underlining, or argument) set forth, as to *each* defendant, the specific acts or  
omissions upon which plaintiff's claim is based and the specific relief sought. If plaintiff claims  
that medical professional defendants failed to follow the recommendation of plaintiff's surgeon,  
plaintiff should, at a minimum, identify as to each such defendant, the specific recommendation  
allegedly not followed.

1 IT IS FURTHER ORDERED that the Clerk serve copies of this Order and  
2 the United States Magistrate Judge's Report and Recommendation on plaintiff and  
3 on defendants' counsel.

4 IT IS SO ORDERED.

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6 DATED: October 29, 2008

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10 HONORABLE JAMES V. SELNA  
11 UNITED STATES DISTRICT JUDGE  
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