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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MICHAEL D. HARRISON,

1:08-cv-01065-AWI-MJS (PC)

Plaintiff,

ORDER REGARDING FINDINGS AND  
RECOMMENDATIONS AND  
DETERMINING THE CLAIMS ON WHICH  
THIS ACTION WILL PROCEED

v.

D. ADAMS, et al.,

(ECF No. 154)

Defendants.

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Plaintiff Michael D. Harrison (“Plaintiff”) is a prisoner proceeding pro se in a civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. The operative complaint was filed on October 9, 2012, and titled the eighth amended complaint (“complaint”).

On May 5, 2013, the Magistrate Judge filed Findings and Recommendations, recommending this action proceed on some of the complaint’s claims and defendants but that other claims and defendants be dismissed. (ECF No. 154.) Plaintiff has filed objections. (ECF No. 156.)

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(c) and Local Rule 304, this Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the Court finds the Findings and Recommendations allowing this action to proceed as to certain Defendants is supported by the record and by proper analysis. However, in light of the objections and this Court’s review of the pending complaint, the Court adds the additional analysis set forth below.

1           The Magistrate Judge recommended that the Court dismiss the claim against Defendant  
2 Roth concerning his failure to obtain medical help when Plaintiff's arm was broken because  
3 Defendant Roth asked for help. In the objections, Plaintiff contends that the complaint's  
4 allegations state that he asked Defendant Roth for help and Defendant Roth did nothing. The  
5 Court has reviewed the portions of the complaint concerning Defendant Roth. After reading  
6 the relevant sentences, the Court finds that Plaintiff's allegations against Defendant Roth, as  
7 written, could be read two different ways. Given the deference the Court must give to Plaintiff  
8 at this stage of the pleadings, the Court will construe these sentences as Plaintiff explains them  
9 in the objections – Plaintiff asked Defendant Roth for medical help and showed him his broken  
10 arm, but Defendant Roth did not do anything. As such, this action will proceed against  
11 Defendant Roth.

12           A far closer question is whether Plaintiff's allegations concerning those that knew about  
13 Plaintiff's infection and were asked for help, but did nothing, states a claim. The complaint's  
14 allegations are not extraordinarily specific. Plaintiff lists 17 guards and other staff that he had  
15 contact with between June 6, 2007 and September 1, 2007. The complaint then states that each  
16 of these Defendants saw that Plaintiff's arm was swollen, "bleeding and leaking out puss."  
17 The complaint states that Plaintiff asked each of these 17 defendants for medical help and they  
18 did nothing. Rule 8(a) of the Federal Rules of Civil Procedure requires only "a short and plain  
19 statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ.P. 8(a)(2).  
20 Under Rule 8, "a complaint must contain sufficient factual matter, accepted as true, to state a  
21 claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 677 (2009); Bell  
22 Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the  
23 plaintiff pleads factual content that allows the court to draw the reasonable inference that the  
24 defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678. This plausibility  
25 standard is not a probability requirement, but does ask for more than mere possibility; if a  
26 complaint pleads facts "merely consistent with" a theory of liability, it falls short of "the line  
27 between possibility and plausibility." Id.

28           The Court can see ways in which Plaintiff could have been more specific in the

1 complaint; Such as alleging the dates on which Plaintiff had contact with each of these 17  
2 defendants, stating exactly what he said to each of the 17 defendants, and how well they could  
3 view Plaintiff's arm given the circumstances. However, the Court respectfully disagrees with  
4 the Magistrate Judge that Plaintiff's allegations are not sufficient under Rule 8. The complaint  
5 alleges the names of 17 defendants that were at the window of his cell between June 6, 2007  
6 and September 1, 2007. The complaint alleges that he: (1) Told these defendants that his arm  
7 was hurting and bleeding and leaking out puss, and (2) Asked these defendants to take him to  
8 the hospital for help. The complaint alleges Plaintiff made these statements and requests to the  
9 defendants repeatedly. The complaint also alleges these 17 defendants could see Plaintiff's  
10 arm, including the swelling, bleeding, and puss. For Eighth Amendment claims arising out of  
11 medical care in prison, a plaintiff "must show (1) a serious medical need by demonstrating that  
12 failure to treat [his] condition could result in further significant injury or the unnecessary and  
13 wanton infliction of pain," and (2) that "the defendant's response to the need was deliberately  
14 indifferent." Wilhelm v. Rotman, 680 F.3d 1113, 1122 (9<sup>th</sup> Cir. 2012). Deliberate indifference  
15 is shown by "(a) a purposeful act or failure to respond to a prisoner's pain or possible medical  
16 need, and (b) harm caused by the indifference." Id. "Under this standard, the prison official  
17 must not only 'be aware of the facts from which the inference could be drawn that a substantial  
18 risk of serious harm exists,' but that person 'must also draw the inference.'" Toguchi v.  
19 Chung, 391 F.3d 1051, 1057 (9<sup>th</sup> Cir. 2004). The Court finds Plaintiff's requests for help,  
20 along with the obviousness of Plaintiff's serious medical condition, as described in the  
21 complaint, sufficiently states a claim for deliberate indifference by the 17 defendants.

22 In the objections, Plaintiff appears to request that the Court allow Plaintiff more time to  
23 find the names of others who he may have also asked for help so that he can file yet another  
24 amended complaint. This action concerns events from 2007. The action has been pending in  
25 this Court since 2008. The pending complaint is entitled "Eighth Amendment Complaint", and  
26 appears to be at least Plaintiff's fifth or sixth attempt to file some kind of amended complaint or  
27 pleading. It is now time for this action to proceed. As such, no further leave to amend will be  
28 granted.

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Accordingly, IT IS HEREBY ORDERED that:

1. The Findings and Recommendations, filed May 5, 2013, are adopted as amended in this order;
2. This action SHALL proceed as one for damages on Plaintiff's Eighth Amendment medical care claim for failure to treat his broken arm against Defendants Jones, Moore, Burns, Urbano, Campos, Parsons, M. Gonzalez, C. Gonzalez, Cisneros, Zakari, and Roth;
3. This action SHALL proceed as one for damages on Plaintiff's Eighth Amendment medical care claim for failure to treat his infection against Defendants Kim, Dava; Urbano, Campos, Parsons, M. Gonzalez, C. Gonzalez, Cisneros, Zakari, Galvan, Bastianon, Casio, Vicente, Johnson, Raygoza, O'Neal, Coronado, Edmonds, and Tumayo;
4. No further leave to amend will be granted;
5. This action is referred to the Magistrate Judge to set a briefing schedule and for further proceedings.

IT IS SO ORDERED.

Dated: July 30, 2013



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SENIOR DISTRICT JUDGE