



1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted  
2 a de novo review of this case. Having carefully reviewed the entire file, including Defendant's  
3 objections and Plaintiff's reply, the Court finds that the Findings and Recommendations are  
4 supported by the record and proper analysis.  
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6 In the Magistrate Judge's analysis, he explained why Defendant's causation argument  
7 failed given Plaintiff's Eighth Amendment allegations of a complete denial of care:  
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9 Defendant Mui's argument is misplaced under the facts of this case. While he is  
10 correct that even gross negligence does not rise to the level of an Eighth Amendment  
11 violation, his argument is not persuasive given Plaintiff's allegation of a complete denial  
12 of treatment. His argument attempts to overlook this, and suggests that even though he  
13 did not provide treatment, Plaintiff ultimately received appropriate care for a non-  
14 displaced fracture, i.e., bed rest and pain medication. Klein Decl. ¶ 5(c). Again, Plaintiff  
15 does not claim that Defendant Mui provided improper treatment for his leg fracture, but  
16 rather that Defendant Mui refused to provide any treatment. In other words, the issue is  
17 whether Defendant Mui was deliberately indifferent when he refused care, not whether  
18 the fact that Plaintiff was coincidentally on best rest and pain medication for his jaw  
19 fracture met the standard of care.

20 ECF No. 230, at 6.

21 In his objections, Defendant Mui generally repeats his causation argument and this does  
22 not present grounds for rejecting the Magistrate Judge's analysis.

23 Defendant Mui also argues that his circumstances are similar to those of Defendant  
24 Neubarth, and that the Court should grant summary judgment in the same way. However,  
25 Plaintiff's allegations against Defendant Neubarth did not involve *solely* a complete denial of  
26 treatment. Defendant Mui acknowledges as much when he states that Plaintiff's claim against  
27 Defendant Neubarth was based, "in part," on a failure to provide treatment. ECF No. 233, at 8.  
28 The Magistrate Judge's explanation remains correct:

In his reply, Defendant Mui characterizes Plaintiff's argument as a difference of  
opinion regarding treatment. This characterization, however, misstates Plaintiff's

1 argument. As the Court explained above, this case involves allegations of a complete  
2 denial of care. A difference of opinion assumes that some level of treatment was offered  
3 in the first instance.

4 ECF No. 230, at 7.

5 Accordingly, IT IS HEREBY ORDERED that:

6 1. The Findings and Recommendations, filed on July 17, 2015, are adopted in full;  
7 and

8 2. Defendant Mui's motion for summary judgment (Document 179) is DENIED.<sup>1</sup>  
9 IT IS SO ORDERED.

10 Dated: August 31, 2015

/s/ Lawrence J. O'Neill  
11 UNITED STATES DISTRICT JUDGE  
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26 <sup>1</sup> The Findings and Recommendations regarding the remaining Defendants' motion for summary judgment are  
27 pending, and Plaintiff has been granted an extension of time within which to file objections. The Court will set this  
28 matter for trial once the pending motion for summary judgment is decided.