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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MICHAEL L. FOSTER,  
Plaintiff,  
v.  
GODWIN UGWUEZE, et al.,  
Defendants.

Case No. 1: 13-cv-00659-LJO-MJS (PC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS TO:

- 1) DENY PLAINTIFF'S MOTION FOR APPOINTMENT OF EXPERT WITNESS (ECF NO. 33)
- 2) DENY DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (ECF NO. 29)
- 3) GRANT PLAINTIFF'S MOTION FOR EXTENSION OF TIME NUNC PRO TUNC (ECF NO. 34)
- 4) GRANT DEFENDANT'S MOTION FOR EXTENSION OF TIME NUNC PRO TUNC (ECF NO. 38)
- 5) GRANT PLAINTIFF'S MOTION FOR ADDITIONAL DISCOVERY (ECF NO. 32)

Plaintiff is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983. The action proceeds against Defendants Ugwueze and Enenmoh on Plaintiff's Eighth Amendment inadequate medical care claim. (ECF No. 15.) The matter was referred to a United States

1 Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 of the United  
2 States District Court for the Eastern District of California.

3 On April 17, 2015, the Magistrate Judge issued Findings and Recommendations  
4 to deny Defendants' motion for summary judgment (ECF No. 29.), deny Plaintiff's  
5 motion for appointment of an expert witness (ECF No. 33.), grant nunc pro tunc to  
6 March 30, 2015 Plaintiff's motion for extension of time (ECF No. 34.), grant nunc pro  
7 tunc to April 8, 2015 Defendants' motion for extension of time, and grant Plaintiff's  
8 motion for additional discovery (ECF No. 32.). On May 1, 2015, Defendants filed  
9 objections to the Findings and Recommendations. (ECF No. 41.) Plaintiff has not filed  
10 a reply and the time to do so has passed.

11 In accordance with the provisions of 28 U.S.C. § 636(b)(1), the Court has  
12 conducted a de novo review of this case. Having carefully reviewed the entire file, the  
13 Court finds the Findings and Recommendations to be supported by the record and by  
14 proper analysis.

15 Defendants contend that contrary to the Magistrate Judge's finding that it was  
16 undisputed that Plaintiff suffered a serious medical need, Defendant Ugwueze testified  
17 in his declaration that Plaintiff's condition was not serious, and Plaintiff failed to present  
18 expert testimony to prove otherwise and to establish Defendants were deliberately  
19 indifferent.

20 The Court has reviewed Defendants' motion for summary judgment and reply.  
21 Defendants did not present any argument in their motion disputing that Plaintiff's  
22 condition was "serious" under Eighth Amendment standards. Defendant Ugwueze  
23 testified in his declaration that Plaintiff's condition was not "serious" in the sense that it  
24 would not cause Plaintiff death or impairment of function. However, neither death nor  
25 impairment of function is necessary to establish a serious medical need. *See McGuckin*  
26 *v. Smith*, 974 F.2d 1050, 1059-60 (9th Cir. 1992) ("The existence of an injury that a  
27 reasonable doctor or patient would find important and worthy of comment or treatment;  
28

1 the presence of a medical condition that significantly affects an individual's daily  
2 activities; or the existence of chronic and substantial pain are examples of indications  
3 that a prisoner has a 'serious' need for medical treatment."). Additionally, even if  
4 Defendant Ugwueze's statement could be construed as an argument that Plaintiff's  
5 condition was not important, worthy of comment, chronic, or did not provide Plaintiff with  
6 substantial pain and therefore not a serious medical need under the Eighth Amendment,  
7 Plaintiff presented contrary evidence in his medical records, presenting a genuine issue  
8 of material fact precluding summary judgment in Defendants' favor. Therefore,  
9 Defendants' objections do not raise an issue of law or fact under the Findings and  
10 Recommendations.

11 Accordingly, it is HEREBY ORDERED that:

- 12 1. The Court adopts the Findings and Recommendations (ECF No. 40.) filed  
13 on April 17, 2015 in full;
- 14 2. Defendants' motion for summary judgment (ECF No. 29.) is DENIED;
- 15 3. Plaintiff's motion for appointment of an expert witness (ECF No. 33.) is  
16 DENIED;
- 17 4. Plaintiff's motion for extension of time (ECF No. 34.) is GRANTED nunc  
18 pro tunc to March 30, 2015;
- 19 5. Defendants' motion for extension of time (ECF No. 38.) is GRANTED nunc  
20 pro tunc to April 8, 2015; and
- 21 6. Plaintiff's motion for additional discovery (ECF No. 32.) is GRANTED.  
22 Defendants are ordered to produce Plaintiff's relevant medical records  
23 within **fourteen** (14) days of service of this order.

24 IT IS SO ORDERED.

25 Dated: May 22, 2015

/s/ Lawrence J. O'Neill  
26 UNITED STATES DISTRICT JUDGE