

1 plaintiff was medically evaluated. (*Id.* at 14–15, ¶¶ 19–22.) When the evaluation was nearly
2 complete, defendants Lopez, Razo, Athie, and Garza began to strike plaintiff on both sides of his
3 face. (*Id.* at 15, ¶¶ 21–22.) Defendants then slammed him onto the ground and continued to kick,
4 knee, and choke him. (*Id.* at 15–16, ¶¶ 22–24.) Defendant Vasquez did not attempt to stop the
5 altercation despite having the opportunity to prevent it. (*Id.* at 16, ¶ 24.) While plaintiff was in a
6 “holding cage,” defendant Aro, a nurse, documented plaintiff’s injuries. (*Id.* at 17–18, ¶ 27.)
7 Defendant Aro’s report indicated that plaintiff had swollen areas to the right side of the head, ear
8 lobe, right inner leg, and left elbow, bruising to the mouth, a cut and reddened area to the right
9 arm, and bruising or discolored area which was swollen to the left side of the mouth. (*Id.*)
10 Plaintiff requested medical treatment and indicated to the nurse that he was in pain, but defendant
11 Aro did not provide him treatment. (*Id.*)

12 On April 18, 2017, the assigned magistrate judge issued findings and recommendations
13 recommending that this action proceed on plaintiff’s claims against defendants Lopez, Razo,
14 Athie, and Garza for excessive use of force, and against defendant Vasquez for failing to
15 intervene during the alleged use of excessive force, and that all other claims and defendants be
16 dismissed. (Doc. No. 7.) On May 3, 2017, plaintiff notified the court that he was willing to
17 proceed only on the claims found to be cognizable in the court’s screening order. (Doc. No. 8.)
18 On May 4, 2017, the assigned magistrate judge issued findings and recommendations
19 recommending that the remaining claims and defendants be dismissed from this action for the
20 failure to state a claim. (Doc. No. 9.) Plaintiff was permitted fourteen days to file objections.
21 More than fourteen days have passed, and no objections were filed.

22 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
23 *de novo* review of this case. Having carefully reviewed the entire file, the court finds that with
24 respect to plaintiff’s claims of excessive force, failure to intervene in the use of excessive force,
25 conspiracy to file false incident and medical reports, and unconstitutional conditions of
26 confinement, the May 4, 2017 findings and recommendations are supported by the record and
27 proper analysis. Accordingly, the court will adopt that part of the findings and recommendations.
28 However, as discussed below, the court declines to adopt the findings and recommendations with

1 respect to plaintiff’s deliberate indifference claim against defendant Aro.

2 **DELIBERATE INDIFFERENCE**

3 In the findings and recommendations, the assigned magistrate judge concluded that
4 plaintiff failed to state a cognizable claim of deliberate indifference under the Eighth Amendment
5 against defendant Aro.

6 To maintain an Eighth Amendment claim based on inadequate medical care, a prisoner-
7 plaintiff must allege facts showing “deliberate indifference to serious medical needs.” *Estelle v.*
8 *Gamble*, 429 U.S. 97, 104 (1976); *see also Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006).

9 In the Ninth Circuit, a deliberate indifference claim has two components:

10 First, the plaintiff must show a “serious medical need” by
11 demonstrating that “failure to treat a prisoner's condition could
12 result in further significant injury or the unnecessary and wanton
13 infliction of pain.’ Second, the plaintiff must show the defendant's
14 response to the need was deliberately indifferent. This second
15 prong—defendant's response to the need was deliberately
16 indifferent—is satisfied by showing (a) a purposeful act or failure
to respond to a prisoner's pain or possible medical need and (b)
harm caused by the indifference. Indifference may appear when
prison officials deny, delay or intentionally interfere with medical
treatment, or it may be shown by the way in which prison
physicians provide medical care.

17 *Jett*, 439 F.3d at 1096.

18 Here, plaintiff alleges in his complaint that defendant Aro attended to him after his
19 altercation with defendants Lopez, Razo, Athie, and Garza. (*Id.* at 17–18, ¶ 27.) Plaintiff also
20 alleges that defendant Aro observed him to have a number of injuries—swollen areas on his
21 mouth, head, ear lobes, legs, and arms—and documented these injuries in a report. (*Id.*) Finally,
22 plaintiff alleges that he requested medical treatment from defendant Aro and indicated to
23 defendant that he was in pain, but received no medical treatment. (*Id.*) In the screening order
24 which was incorporated into the findings and recommendations, the magistrate judge essentially
25 found these allegations to be insufficiently detailed to state a cognizable claim of deliberate
26 indifference to a serious medical need. (Doc. No. 7 at 9) (“Plaintiff does not allege what he stated
27 to Defendant Aro when he requested medical care and what response Defendant Aro had.”) The
28 undersigned disagrees.

1 The facts as alleged by plaintiff in his complaint, if taken as true, support a plausible
2 inference that defendant Aro was aware of a serious medical need on the part of plaintiff and
3 consciously disregarded it. *See Hunt v. Dental Dep't*, 865 F.2d 198, 200 (9th Cir. 1989) (finding
4 that plaintiff adequately stated a claim for deliberate indifference under the Eighth Amendment
5 by alleging that that prison officials were aware of dental injuries such as bleeding gums and
6 broken teeth, but failed to take any action to relieve his pain or address his dental injuries); *Austin*
7 *v. County of Alameda*, No. C-15-0942 EMC, 2015 WL 3833239, at * (N.D. Cal. June 19, 2015)
8 (finding that plaintiff adequately alleged deliberate indifference by asserting that defendants
9 failed to provide medical treatment following a beating by prison officials despite apparent
10 injuries); *Baker v. County of Sonoma*, No. C-08-03433 EDL, 2009 WL 330937, at *1, 7 (N.D.
11 Cal. Feb. 10, 2009) (finding that plaintiff adequately alleged deliberate indifference claim by
12 asserting that prison officials denied him pain medication following a beating by correctional
13 officers); *see generally Lemire v. Cal. Dep't of Corr. and Rehab.*, 726 F.3d 1062, 1082–83 (9th
14 Cir. 2013) (explaining that a “failure to act given the patent nature of the inmate’s condition . . . is
15 conduct sufficiently severe to evidence an Eighth Amendment violation”) (citing *Tlamka v.*
16 *Serrell*, 244 F.3d 628, 633 (8th Cir. 2001)). The allegations of the complaint as to this claim have
17 been set forth above. No more detailed allegations with respect to the words spoken by plaintiff
18 or defendant Aro in connection with the denial of medical care are required at the pleading stage.

19 The court will therefore decline to adopt the findings and recommendations to the extent
20 they recommend the dismissal of plaintiff’s claim for deliberate indifference under the Eighth
21 Amendment against defendant Aro.¹

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26 ¹ As noted above, plaintiff has indicated he was willing to proceed only on the claims found to be
27 cognizable in the court’s screening order. (Doc. No. 8.) If plaintiff does not wish to pursue his
28 claim against defendant Aro for deliberate indifference to a serious medical need in violation of
the Eighth Amendment, he is instructed to file a notice of voluntary dismissal as to that claim and
defendant.

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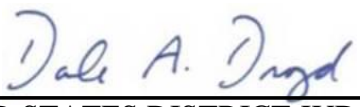
CONCLUSION

Accordingly, for the reasons stated above

1. The May 4, 2017 findings and recommendations (Doc. No. 8) are adopted in part;
2. This action will proceed on plaintiff's claims against: defendants J. Lopez, Jr., R. Razo, P. Athie, and J. Garza for excessive use of force; defendant T. Vasquez for failing to intervene during the alleged use of excessive force, in violation of the Eighth Amendment; and defendant G. Aro for deliberate indifference to a serious medical need in violation of the Eighth Amendment;
3. All other claims, and defendants K. Joseph, S. Monge, J. Gonzalez, and D. Barrios, are dismissed from this action for the failure to state a claim upon which relief may be granted; and
4. This matter is referred back to the assigned magistrate judge for proceedings consistent with this order.

IT IS SO ORDERED.

Dated: August 4, 2017



UNITED STATES DISTRICT JUDGE