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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARIO AMADOR GONZALEZ,  
Plaintiff,  
v.  
DR. SCHARFFENBERG et al.,  
Defendants.

No. 1:16-cv-01675-DAD-EPG

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS  
(Doc. Nos. 64 & 67)

Plaintiff Mario Amador Gonzalez is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed his second amended complaint on June 1, 2016. (Doc. No. 25.) The matter was referred to a United States magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On December 5, 2016, defendants C.O. Archuleta, Sgt. Chan, Sgt. Devine, R.N. Padilla, Dr. Scharffenberg, Warden Sherman, and R.N. Soto filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). (Doc. No. 64.) On February 23, 2017, the assigned magistrate judge entered findings and recommendations, recommending that the motion to dismiss be granted in part and denied in part. (Doc. No. 67.) Specifically, the magistrate judge recommended that plaintiff's second amended complaint be allowed to proceed on plaintiff's Eighth Amendment claims against defendants R.N. Soto and Dr. Scharffenberg for deliberate

1 indifference to serious medical needs. (*Id.*). The magistrate judge recommended that all other  
2 defendants and causes of action should be dismissed from this action. (*Id.*) The parties were  
3 provided an opportunity to file objections to the findings and recommendations within thirty days.  
4 On March 27, 2017, plaintiff filed objections. (Doc. No. 71.)

5 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this  
6 court has conducted a *de novo* review of this case. Having carefully reviewed the entire file,  
7 including plaintiff's objections, the court finds the findings and recommendations to be supported  
8 by the record and proper analysis. In his objections, plaintiff alleged facts that he had not  
9 previously alleged in his second amended complaint. Specifically, in his objections plaintiff now  
10 alleges that defendant C.O. Archuleta knew that plaintiff was in pain and that plaintiff had  
11 showed defendant C.O. Archuleta that he was bleeding. (Doc. No. 71 at 2.) Plaintiff had made  
12 no previous mention of his allegation that defendant C.O. Archuleta knew plaintiff was bleeding.  
13 Based upon this new allegation, the court finds that it is appropriate that plaintiff be granted  
14 further leave to amend his complaint as to his Eighth Amendment claim defendant C.O.  
15 Archuleta.<sup>1</sup> The findings and recommendations will otherwise be adopted in full.

16 Should plaintiff choose to further amend his complaint, any third amended complaint he  
17 elects to file should be brief. Fed. R. Civ. P. 8(a). The amended complaint must allege  
18 constitutional violations under the law as discussed above. Specifically, plaintiff must state what  
19 each named defendant did that led to the deprivation of plaintiff's constitutional or other federal  
20 rights. Fed. R. Civ. P. 8(a); *Iqbal*, 556 U.S. at 678; *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir.  
21 2002). There is no *respondeat superior* liability, and each named defendant may only be found  
22 liable for his or her own misconduct. *Iqbal*, 556 U.S. at 676. Plaintiff must also allege facts  
23 demonstrating that each defendant *personally* participated in the deprivation of his rights by  
24 acting with deliberate indifference to plaintiff's health or safety, which is sufficiently serious.  
25 *Jones*, 297 F.3d at 934 (emphasis added). Plaintiff is advised that a short, concise statement of  
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27 <sup>1</sup> Plaintiff is advised that further leave to amend is being granted for the sole purpose of allowing  
28 him to amend his complaint with respect to C.O. Archuleta and only concerning the events at  
issue in this action and not for any other purpose.

1 allegations in chronological order will assist the court in identifying his claims. Plaintiff should  
2 name each defendant and explain what happened, describing personal acts by the individual  
3 defendant that resulted in the violation of plaintiff's rights. Plaintiff should also describe any  
4 harm he suffered as a result of the violation.

5 Plaintiff is advised that an amended complaint supersedes the original complaint, *Lacey v.*  
6 *Maricopa County*, 693 F. 3d 896, 907 n.1 (9th Cir. 2012) (*en banc*), and it must be complete in  
7 itself without reference to the prior or superseded pleading, Local Rule 220. Therefore, in an  
8 amended complaint, as in an original complaint, each claim and the involvement of each  
9 defendant must be sufficiently alleged—including the **Eighth Amendment claims against**  
10 **defendants R.N. Soto and Dr. Scharffenberg for deliberate indifference to serious medical**  
11 **needs**. The amended complaint should be clearly and boldly titled “Third Amended Complaint,”  
12 refer to the appropriate case number, and be an original, signed under penalty of perjury.

13 If plaintiff chooses to proceed on his current complaint, the case will proceed only against  
14 defendants R.N. Soto and Dr. Scharffenberg.

15 Accordingly,

- 16 1. The February 23, 2017 findings and recommendations (Doc. No. 67) are adopted as  
17 indicated above;
- 18 2. Defendants' motion to dismiss (Doc. No. 64) is granted in part and denied in part;
- 19 3. Plaintiff is permitted to proceed on his Eighth Amendment claims against defendants  
20 R.N. Soto and Dr. Scharffenberg for deliberate indifference to serious medical needs;
- 21 4. Plaintiff's Eighth Amendment claim against defendant C.O. Archuleta is dismissed  
22 with leave to amend and any third amended complaint or notice that plaintiff wishes to  
23 proceed only on the claims in his second amended complaint which have found to be  
24 cognizable in the February 23, 2017 findings and recommendations shall be filed and  
25 served within twenty-one days of the service of this order;

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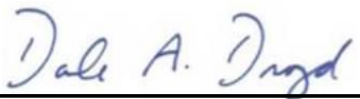
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- 5. All other defendants and causes of action are dismissed from this action without further leave to amend; and
- 6. This case is referred back to the magistrate judge for further proceedings.

IT IS SO ORDERED.

Dated: June 21, 2017

  
UNITED STATES DISTRICT JUDGE