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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

ROBERT CLARK,

No. 2:15-CV-0613-JAM-CMK-P

Plaintiff,

vs.

FINDINGS AND RECOMMENDATIONS

BENNETT FEINBERG, et al.,

Defendants.

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Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s complaint (Doc. 1).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “. . . short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne,

1 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied  
2 if the complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon  
3 which it rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must  
4 allege with at least some degree of particularity overt acts by specific defendants which support  
5 the claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is  
6 impossible for the court to conduct the screening required by law when the allegations are vague  
7 and conclusory.

### 9 I. PLAINTIFF'S ALLEGATIONS

10 Plaintiff names the following as defendants: (1) Feinberg; (2) Lewis; (3) Fong;  
11 and (4) Sahota. Plaintiff states that he broke his finger in December 2013 but was denied  
12 medical care. According to plaintiff, he was seen by defendant Feinberg, apparently a prison  
13 doctor, on May 5, 2014, for "severe pain, throbbing in the index finger area." Plaintiff informed  
14 defendant Feinberg that his finger had never been set correctly. Plaintiff claims that defendant  
15 Sahota reviewed his prison grievance regarding his finger but "denied the medical request for  
16 help." Plaintiff also states that defendant Sahota denied surgery. Next, plaintiff claims that  
17 defendant Fong reviewed his grievances and also denied medical care. Specifically, plaintiff  
18 claims that "no relief was provided for the constant pain after the interview was conduct[ed] by  
19 Lawrence C. Fong on 7/3/2014." Finally, plaintiff claims that he "sought medical relief" from  
20 defendant Lewis by way of a prison grievance but that defendant Lewis also denied care.

21 Attached to plaintiff's complaint are the defendants' responses to plaintiff's  
22 various grievances. In responses dated May 13, 2014, by defendant Sahota and July 3, 2014, by  
23 defendant Lewis, plaintiff was informed as follows:

24 In the First Level Appeal, received on 4/14/2014, you indicated that you  
25 are requesting to be provided with the medical care that a specialist  
26 recommended. Records show that this was a joint replacement in your  
finger. You are requesting an investigation in why you were not provided  
medical care for the pain of your fractured finger.

1 During your interview with Dr. Feinberg, your medical history was  
2 reviewed. It is noted that orthopedic surgery of the 5th finger was  
3 recommended by an orthopedic surgeon on 1/24/14. The request for  
4 services was denied by the Institutional Utilization Management  
5 Committee (IUMC) on 2/6/14. The IUMC recommended to provide  
6 continuous care and to consider buddy taping to the adjacent finger.  
7 Records show that due to the deformity of your finger, taping caused more  
8 pain than not. Dr. Feinberg resubmitted a Request for surgery on 5/5/14  
9 for a right 5th PIP joint replacement. Your case was discussed in length  
10 by the IUMC. The pros and cons of surgery were discussed. The clinical  
11 finding of the IUMC was to deny the surgery. It was felt that any  
12 recommendation at this stage may not return full function of the finger.  
13 The IUMC recommended accommodations to minimize situations causing  
14 discomfort. Your request for surgery is denied.

## 15 II. DISCUSSION

16 The treatment a prisoner receives in prison and the conditions under which the  
17 prisoner is confined are subject to scrutiny under the Eighth Amendment, which prohibits cruel  
18 and unusual punishment. See Helling v. McKinney, 509 U.S. 25, 31 (1993); Farmer v. Brennan,  
19 511 U.S. 825, 832 (1994). The Eighth Amendment “. . . embodies broad and idealistic concepts  
20 of dignity, civilized standards, humanity, and decency.” Estelle v. Gamble, 429 U.S. 97, 102  
21 (1976). Conditions of confinement may, however, be harsh and restrictive. See Rhodes v.  
22 Chapman, 452 U.S. 337, 347 (1981). Nonetheless, prison officials must provide prisoners with  
23 “food, clothing, shelter, sanitation, medical care, and personal safety.” Toussaint v. McCarthy,  
24 801 F.2d 1080, 1107 (9th Cir. 1986). A prison official violates the Eighth Amendment only  
25 when two requirements are met: (1) objectively, the official’s act or omission must be so serious  
26 such that it results in the denial of the minimal civilized measure of life’s necessities; and (2)  
subjectively, the prison official must have acted unnecessarily and wantonly for the purpose of  
inflicting harm. See Farmer, 511 U.S. at 834. Thus, to violate the Eighth Amendment, a prison  
official must have a “sufficiently culpable mind.” See id.

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1 Deliberate indifference to a prisoner's serious illness or injury, or risks of serious  
2 injury or illness, gives rise to a claim under the Eighth Amendment. See Estelle, 429 U.S. at  
3 105; see also Farmer, 511 U.S. at 837. This applies to physical as well as dental and mental  
4 health needs. See Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982). An injury or illness is  
5 sufficiently serious if the failure to treat a prisoner's condition could result in further significant  
6 injury or the ". . . unnecessary and wanton infliction of pain." McGuckin v. Smith, 974 F.2d  
7 1050, 1059 (9th Cir. 1992); see also Doty v. County of Lassen, 37 F.3d 540, 546 (9th Cir. 1994).  
8 Factors indicating seriousness are: (1) whether a reasonable doctor would think that the condition  
9 is worthy of comment; (2) whether the condition significantly impacts the prisoner's daily  
10 activities; and (3) whether the condition is chronic and accompanied by substantial pain. See  
11 Lopez v. Smith, 203 F.3d 1122, 1131-32 (9th Cir. 2000) (en banc).

12 The requirement of deliberate indifference is less stringent in medical needs cases  
13 than in other Eighth Amendment contexts because the responsibility to provide inmates with  
14 medical care does not generally conflict with competing penological concerns. See McGuckin,  
15 974 F.2d at 1060. Thus, deference need not be given to the judgment of prison officials as to  
16 decisions concerning medical needs. See Hunt v. Dental Dep't, 865 F.2d 198, 200 (9th Cir.  
17 1989). The complete denial of medical attention may constitute deliberate indifference. See  
18 Toussaint v. McCarthy, 801 F.2d 1080, 1111 (9th Cir. 1986). Delay in providing medical  
19 treatment, or interference with medical treatment, may also constitute deliberate indifference.  
20 See Lopez, 203 F.3d at 1131. Where delay is alleged, however, the prisoner must also  
21 demonstrate that the delay led to further injury. See McGuckin, 974 F.2d at 1060.

22 Negligence in diagnosing or treating a medical condition does not, however, give  
23 rise to a claim under the Eighth Amendment. See Estelle, 429 U.S. at 106. Moreover, a  
24 difference of opinion between the prisoner and medical providers concerning the appropriate  
25 course of treatment does not give rise to an Eighth Amendment claim. See Jackson v. McIntosh,  
26 90 F.3d 330, 332 (9th Cir. 1996).

