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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JAWANTA J. LAMBERT,)	Civil No. 10cv1976 AJB (BLM)
)	
Plaintiff,)	ORDER ADOPTING REPORT AND
v.)	RECOMMENDATION GRANTING
)	DEFENDANTS' MOTION TO DISMISS
FRANK SOTO, et al.,)	WITHOUT PREJUDICE AND WITH
)	LEAVE TO AMEND
Defendants.)	(Doc. No. 24)
_____)	

Presently before the Court are the Plaintiff's objections to the Report and Recommendation ("R&R"), [Doc. No. 24.], issued on October 12, 2011, by Magistrate Judge Barbara Lynn Major granting Defendants motion to dismiss without prejudice and with leave to amend and denying the Plaintiff's request for injunctive relief. For the reasons set forth below, the Court hereby OVERRULES the Plaintiff's objection and ADOPTS the R&R in its entirety.

Procedural Background

On September 20, 2010, Jawanta J. Lambert, ("Plaintiff"), a California prisoner proceeding *pro se* and *in forma pauperis*, filed a civil rights suit against Licenced Vocational Nurse Shady M. Villalobos, Correctional Officer Frank Soto, and an unidentified Medical Physician pursuant to 42

1 U.S.C. § 1983.¹ [Doc. No. 1.] Plaintiff asserts that Defendants’ conduct violated his Eighth
2 Amendment right to be free from cruel and unusual punishment. [Doc. No. 1, at 3-5.] Plaintiff seeks
3 monetary damages in the amount of \$750,000 and injunctive relief preventing Defendant Villalobos
4 from “performing unconstitutional medical practices.” [Doc. No. 1, at 7.] Shady Villalobos and Frank
5 Soto (“Defendants”) filed a motion to dismiss the complaint on May 3, 2011 for failure to state a claim.
6 [Doc. No. 17.] Plaintiff opposed the motion on June 30, 2011, and Defendants filed a reply on July 14,
7 2011. [Doc. Nos. 22 and 23.]

8 These matters were referred to Magistrate Judge Barbara L. Major for report and
9 recommendation (“R&R”) pursuant to 28 U.S.C. § 636. Magistrate Judge Major issued the R&R, [Doc.
10 No. 24], which recommends the Defendants’ motion to dismiss be granted without prejudice and with
11 leave to amend and Plaintiff’s request for injunctive relief be denied. [Doc. No. 24, at 12, 13.] On
12 November 14, 2011, Plaintiff filed a motion for an extension of time to file an objection to the R&R.
13 [Doc. No. 27.] On November 16, 2011, the motion for extension of time was granted and Plaintiff filed
14 his Objection on November 21, 2011. [Doc. No. 28 and 29.] On November 11, 2011, Defendants filed
15 a Notice of Non-Objection to the R&R. [Doc. No. 25.] The Court considered the Plaintiff’s Objection
16 before issuing this order.

17 *Factual Background*

18 According to the complaint, Plaintiff was involved in an “incident” on April 21, 2009, after
19 which he sought medical treatment from a licensed vocational nurse, Defendant Villalobos. [Doc. No. 1
20 at 3.] During the evaluation, Defendant Villalobos completed a medical report of injury form in which
21 she documented Plaintiff’s injuries. *Id.* The injuries mentioned in the report were: (1) pain in the back;
22 (2) pain in the left shoulder; (3) abrasions; and (4) scratches with dried blood. *Id.* Plaintiff alleges that
23 Defendant Villalobos refused to treat these injuries and responded to Plaintiff’s request for first aid by
24 stating that “you shouldn’t have been fighting with staff” before walking away. *Id.*

25 After his medical evaluation with Defendant Villalobos, Plaintiff was escorted back to a holding
26 cell via golf cart by Correctional Officer A. Gonzales and Defendant Soto. *Id.* at 5. During the ride,

27
28 ¹Plaintiff has not named or served the unidentified medical physician in this matter. [Doc. Nos.
1, at 4 and 9.] Accordingly, the instant motion is only brought on behalf of the Defendants who have
been properly named and served.

1 Plaintiff told Defendant Soto that Defendant Villalobos refused to treat his injuries and showed
2 Defendant Soto that he was actively bleeding down his leg. *Id.* In response, Defendant Soto merely
3 stated that Defendant Villalobos “should have taken care of it.” *Id.* When Plaintiff informed Defendant
4 Soto that he still needed medical attention, Defendant Soto stated “the medics will take care of it dude.”
5 *Id.* Plaintiff was then taken to his holding cell and left with a bleeding right leg and back and shoulder
6 pain. *Id.*

7 On May 12, 2009, Plaintiff was evaluated by an unnamed yard physician for the injuries
8 sustained on April 21, 2009. *Id.* at 4. At the appointment Plaintiff complained of back and knee pain that
9 made it difficult for him to climb in and out of the top bunk of his bed without assistance. *Id.* Plaintiff
10 told the physician that he had to rest on the ground during the day or remain in his bed for long periods
11 of time due to his injuries. *Id.* The physician ordered x-rays of Plaintiff’s back, prescribed pain
12 medication, and instructed Plaintiff to refrain from doing any push ups or sit ups. *Id.*

13 Plaintiff states that after his evaluations by Defendant Villalobos and the unnamed yard
14 physician, he continued to suffer from pain in his back and knee due to Defendant Villalobos’s
15 “deliberate indifference, malpractice and neglect.” *Id.* at 3. Plaintiff claims that as a result of his
16 untreated injuries from April 21, 2009, he sustained further injury on May 14, 2009, when he fell
17 “approximately five feet” to the ground from the top bunk of his bed. *Id.* at 3 & 4. After the fall, Plaintiff
18 was treated at a local emergency room and housed in the facility’s correctional treatment center for five
19 days on bed rest. *Id.*

20 Legal Standard

21 A district court has jurisdiction to review a Magistrate Judge’s R&R’s on dispositive matters.
22 Fed. R. Civ. P. 72(b). “The district judge must determine de novo any part of the magistrate judge’s
23 disposition that has been properly objected to.” *Id.* “A judge of the court may accept, reject, or modify,
24 in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. §
25 636(b)(1). The Court reviews de novo those portions of the R&R to which specific written objection is
26 made. *United States v. Reyna–Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*). “The statute
27 makes it clear that the district judge must review the magistrate judge’s findings and recommendations
28 de novo if objection is made, but not otherwise.” *Id.*

1 Discussion

2 The Plaintiff objects to the R&R's finding that he failed to state a claim for deliberate
3 indifference to his serious medical needs in violation of his Eighth Amendment right to be free from
4 cruel and unusual punish. The R&R recommended granting Defendants' motion to dismiss Plaintiff's
5 claim of deliberate indifference against Defendants Villalobos and Soto, because Plaintiff failed to meet
6 the objective and subjective prongs of the Eighth Amendment violation test. [Doc. No. 24, at 10.] The
7 R&R also found that the Plaintiff failed to plead facts that sufficiently establish that his condition was
8 objectively serious, that Defendants acted with a culpable state of mind, or that Defendants' actions
9 caused him harm.

10 ***I. Plaintiff's Eighth Amendment Deliberate Indifference Claim***

11 "Deliberate indifference to serious medical needs of prisoners constitutes the "unnecessary and
12 wanton infliction of pain," proscribed by the Eighth Amendment." *Estelle v. Gamble*, 429 U.S. 97, 104
13 (1976) (citation omitted). This principle "establish[es] the government's obligation to provide medical
14 care for those whom it is punishing by incarceration." *Id.* at 103. The Supreme Court has noted that
15 "[a]n inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so,
16 those needs will not be met." *Id.*; *see also West v. Atkins*, 487 U.S. 42, 54-55 (1988).

17 A medical need is serious "if the failure to treat the condition could result in further significant
18 injury or the 'unnecessary and wanton infliction of pain.'" *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th
19 Cir. 1992) *overruled on other grounds by WMX Techs., Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir.
20 1997) (en banc). The existence of an injury that a reasonable doctor or patient would find important and
21 worthy of comment or treatment; the presence of a medical condition that significantly affects an
22 individual's daily activities; or the existence of chronic and substantial pain are examples of indications
23 that a person has a serious need for medical treatment. *Id.* at 1059-60 (citations omitted).

24 A prison official's "deliberate indifference to a prisoner's serious illness or injury" violates
25 the Eighth Amendment's proscription against cruel and unusual punishment. *See Clement v. Gomez*, 298
26 F.3d 898, 904 (9th Cir. 2002). The deliberate indifference to serious medical needs standard has an
27 objective and a subjective component. *Hudson v. McMillian*, 503 U.S. 1, 8-10 (1992). The objective
28 component generally is satisfied so long as the prisoner alleges facts to show that his medical need is

1 sufficiently “serious” such that the “failure to treat [the] condition could result in further significant
2 injury or the unnecessary and wanton infliction of pain.” *Id.*; *Lopez v. Smith*, 203 F.3d 1122, 1131-32
3 (9th Cir. 2000) (en banc).

4
5 **A. *Plaintiff’s Objection to the R&R’s Finding That His Claim Failed to Satisfy the
Objective Prong***

6 In his objection, the Plaintiff argues that his claims met the objective prong of an Eighth
7 Amendment violation. Specifically, the Plaintiff contends that he sufficiently pled that he suffered from
8 a serious medical need because: 1) a reasonable doctor would think his medical condition was worthy of
9 comment or treatment; 2) the condition significantly affects his daily activities; and; 3) the condition
10 causes a chronic or substantial pain. [Doc. No. 29, at 2-3.]

11
12 **1) *A Reasonable Doctor Would Think His Medical
Condition Was Worthy of Comment or Treatment***

13 The Plaintiff argues in his objection that the fact that he was treated by an unnamed doctor on
14 May 12, 2009, for the injuries he sustained on April 21, 2009, should have been considered by the
15 Magistrate Judge and should have been construed in the Plaintiff’s favor.

16 In his complaint, the Plaintiff contends that Defendant Villalobos was deliberately indifferent to
17 his serious medical needs because she failed to treat him after the incident on April 21, 2009, and merely
18 submitted a “medical report of injury” form documenting Plaintiff’s injuries to include pain in the back
19 and left shoulder and abrasions and scratches with dried blood. Plaintiff states that when he asked for
20 first aid for his injuries, Defendant Villalobos responded that he “shouldn’t have been fighting with
21 staff” and left without returning. The Plaintiff also contends that his leg was still bleeding after he was
22 seen by Defendant Villalobos when he was returned to a holding cell.

23 However, the Plaintiff was seen and assessed by Villalobos as indicated by the medical report of
24 injury form that she completed. An even if the Court accepts as true the Plaintiff’s statement that his leg
25 was still bleeding when he was returned to a holding cell by Defendant Soto, the Plaintiff has not
26 alleged that the bleeding was serious or posed a significant threat to his health. *See Nawabi*, 2009 WL
27 3514849 at 7 (finding that plaintiff failed to state an Eighth Amendment violation where plaintiff failed
28 "to show how a bloody lip and/or a scratch to his knee" was a sufficiently serious medical condition and

1 plaintiff had no evidence that defendant "knew of any serious medical risk to plaintiff by not addressing
2 his bloody lip or scratched knee."); *see also Thomas v. Diaz*, 2008 WL 227932, *5 (E.D. Cal., Jan. 28,
3 2008) (finding that plaintiff failed to state a claim under the Eighth Amendment for deliberate
4 indifference to his serious medical needs where plaintiff alleged that defendant was deliberately
5 indifferent to his needs by failing "to request an R.N. or M.D. to examine plaintiff and for failing to
6 clean and bandage his abrasions/wounds subsequent" to an incident); and *Johnson v. Runnels*, 2010 WL
7 3430369, *16 (E.D. Cal., Aug. 30, 2010) (stating that plaintiff submitted no evidence that cuts,
8 abrasions, contusions, and lacerations were the types of injuries that a failure to treat could result in
9 further significant injury or the unnecessary and wanton infliction of pain).

10 Furthermore, the Court notes that the Plaintiff has not alleged any complaints regarding his
11 injuries to prison officials or any further requests for medical treatment or accommodation between the
12 April 21, 2009, when he was returned to a holding cell and the treatment he received on May 12, 2009,
13 from an unnamed physician. As such, the only conclusion the Court can draw from this is as a result of
14 the evaluation performed by Villalobos on April 21, 2009, that the Plaintiff was scheduled to be seen by
15 the Physician on May 12, 2009, where x-rays were taken and the Plaintiff was prescribed pain
16 medication. The facts as alleged by Plaintiff simply do not demonstrate deliberate indifference to a
17 serious medical need, rather they evidence a difference of opinion between the Plaintiff and the treating
18 nurse and physician regarding the nature and severity of his injuries. A mere difference of opinion over
19 proper medical treatment does not constitute deliberate indifference. *Jackson v. McIntosh*, 90 F.3d 330,
20 332 (9th Cir. 1996). The indifference to medical needs must be substantial; inadequate treatment due to
21 malpractice, or even negligence, does not amount to a constitutional violation. *Estelle*, 429 U.S. at 106;
22 *McGuckin*, 974 F.2d at 1059. The facts as alleged by the Plaintiff demonstrate that the Plaintiff was
23 immediately seen and evaluated by nurse Villalobos and the Plaintiff was subsequently scheduled to be
24 seen by a physician who ordered x-rays and prescribed pain medication. Based upon the forgoing the
25 Court agrees with the findings of the R&R that the Plaintiff has failed to demonstrate that Defendant
26 Villalobos was deliberately indifferent to his serious medical need.

1 Plaintiff fails to describe his medical condition with sufficient specificity because an unreasonable
2 number of inferences must be made, such as how the injury was sustained, what type of injury could
3 result in back and shoulder pain, how the injury prevented Plaintiff from climbing into his top bunk bed,
4 and how the injury contributed to the subsequent fall out of his bunk. Furthermore, the R&R is not
5 recommending dismissal with prejudice of the Plaintiff's Eighth Amendment claim. The Plaintiff was
6 granted leave to amend his complaint with the necessary details to allege a "serious" medical injury.
7 [Doc. No. 24, at 10.]

8 ***B. Objection to the Subjective Prong Analysis***

9 To establish a violation of the Eighth Amendment, Plaintiff must plead sufficient acts or
10 omissions to show that defendants were deliberately indifferent to his serious medical needs. *See*
11 *Estelle*, 429 U.S. at 106; *Hunt v. Dental Dep't*, 865 F.2d 198, 200 (9th Cir. 1989). A section 1983
12 plaintiff must allege facts that show the seriousness of his medical need as well as "the nature of the
13 defendant's response to that need." *McGuckin*, 974 F.2d at 1059.

14 The subjective component of the Eighth Amendment violation test requires the prisoner to allege
15 facts which show a deliberate indifference to a substantial risk of serious harm. *Hutchinson*, 838 F.2d at
16 394. The indifference can be manifested when prison officials deny, delay or intentionally interfere
17 with medical treatment, or can manifest in the way prison physicians provide medical care. *Id.*
18 However, "mere negligence in diagnosing or treating a medical condition, without more, does not
19 violate a prisoner's Eighth Amendment rights." *Id.* A prisoner must allege acts or omissions committed
20 by the prison official or physician that were sufficiently harmful to show deliberate indifference to
21 serious medical needs. *Estelle*, 429 U.S. at 104.

22 In his objection, the Plaintiff argues that his claim meets the subjective prong of an Eighth
23 Amendment violation because he alleges Defendants knew or should have known that failure to treat
24 Plaintiff's injuries would result in an unreasonable risk of harm. [Doc. No. 29, at 4.] However, the
25 Plaintiff has not alleged that the Defendants were aware of and disregarded an excessive risk to
26 Plaintiff's health and safety. Plaintiff objects that Defendants knew or should have known that his
27 injuries were not treated because Defendant Soto remarked, "[Villalobos] should have taken care of it"
28 and "the medics will take care of it, dude." [Doc. No. 29, at 4.] However, this remark was directed to

1 the alleged blood running down Plaintiff's leg. These statements fail to prove that the Defendants had a
2 culpable state of mind in failing to treat Plaintiff's abrasion or scratch would result in an unreasonable
3 risk of harm. The Plaintiff does not allege that the abrasion was serious or that the bleeding posed a
4 serious risk to his health. Defendant Villalobos documented the Plaintiff's complaints of back and
5 shoulder pain and noted abrasions and scratches with dried blood on the Medical Report of Injury,
6 which documented Plaintiff's injuries after the April 21, 2009 incident. Plaintiff does not directly refute
7 the accuracy of the report, but instead seems to be arguing that his injuries merited additional medical
8 treatment at the time he interacted with Defendants, but as set forth above, a "difference of opinion does
9 not amount to deliberate indifference to [a plaintiff's] serious medical needs." *Sanchez v. Vild*, 891 F.2d
10 240, 242 (9th Cir. 1989).

11 The Plaintiff's complaint also contains allegations that Defendant Soto knew or should have
12 known that locking the Plaintiff in a holding cell without Plaintiff having received medical treatment for
13 his "actively bleeding right leg and pain in his back and shoulder" created an unreasonable risk of
14 serious harm to Plaintiff and demonstrated deliberate indifference to his serious medical needs.
15 However, as set forth in the R&R, the Plaintiff has failed to allege sufficient facts to demonstrate the
16 back and shoulder pain or abrasions were serious medical needs, but even if he had, his claim that
17 Defendant Soto's failure to ensure he received treatment still fails. *See Thomas v. Diaz*, 2008 WL
18 227932, *5 (E.D. Cal., Jan. 28, 2008)(finding that plaintiff failed to state a claim under the Eighth
19 Amendment for deliberate indifference to his serious medical needs where plaintiff alleged that
20 defendant was deliberately indifferent to his needs by failing "to request an R.N. or M.D. to examine
21 plaintiff and for failing to clean and bandage his abrasions/wounds subsequent" to an incident.)

22 The R&R found that the Plaintiff failed to specifically state how his injuries were exacerbated as
23 a direct result of any of the Defendants' alleged failure to treat.² While Plaintiff argues that his
24 untreated injuries caused him to fall out of his bunk and sustain further injuries, he again lacks the
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26 ² *See Smedley v. Reid*, 2010 WL 391831, *11 (S.D. Cal. Jan. 27, 2010) (to survive Rule 12(b)(6)
27 motion, complaint must directly connect defendants' actions with alleged harm) (citing *Moss v. U.S.*
28 *Secret Service*, 572 F.3d 962, 971 (9th Cir. 2009)); *see also Wilson v. Woodford*, 2009 WL 839921, *26
(E.D. Cal. March 30, 2009) (stating that "if there is no affirmative link between a defendant's conduct
and the alleged injury, there is no deprivation of the plaintiff's constitutional rights") (citing *Rizzo v.*
Goode, 423 U.S., 370 (1976)).

1 necessary factual detail to causally connect these two events. Plaintiff does not allege that he requested
2 to be assigned to a lower bunk or that he notified any of the Defendants of his difficulties getting in or
3 out of the bunk. As such, the Court finds that the Plaintiff fails to meet the subjective prong, because he
4 does not show that Defendants were aware of and disregarded an excessive risk to the Plaintiff's health
5 and safety and that their conduct directly exacerbated his injuries.

6 After reviewing the briefs, applicable law, and R&R, the Court ADOPTS the R&R in its entirety
7 and hereby GRANTS the Defendants' motion to dismiss pursuant to Federal Rule of Civil Procedure
8 Rule 12(b)(6) the Plaintiff's claim for deliberate indifference against Defendants Villalobos and Soto
9 WITH LEAVE TO AMEND.

10 ***II. Qualified Immunity***

11 In the R&R, the Magistrate Judge concluded that the Defendants are not entitled to qualified
12 immunity, because the Plaintiff has not alleged a viable constitutional violation. [Doc. No. 24, 11.]
13 Defendants filed notice of non-objection to the R&R issued by Magistrate Judge Major. [Doc. No. 25.]
14 After a review of the R&R, the Court ADOPTS the R&R and DENIES WITHOUT PREJUDICE
15 Defendants' motion to dismiss Plaintiff's claim against Defendants on qualified immunity grounds.

16 ***III. Injunctive Relief***

17 The R&R concluded that Plaintiff's request for injunctive relief lacked merit because the alleged
18 facts did not demonstrate that Defendants violated federal law. [Doc. No. 24, at 13.] Plaintiff has not
19 filed an objection to the R&R's denial of injunctive relief. After a review of the R&R, the Court
20 ADOPTS the R&R and DENIES Plaintiff's request for injunctive relief.

21 **Conclusion**

22 For the reasons set forth above, the Court OVERRULES the Plaintiff's objections and ADOPTS
23 the R&R in its entirety. The Court GRANTS Defendants' motion to dismiss Plaintiff's claim for
24 deliberate indifference against Defendants Villalobos and Soto WITH LEAVE TO AMEND. Plaintiff
25 must file an Amended Complaint by May 30, 2012. If an amended complaint is not filed within the time
26 indicated, the court will dismiss the matter with prejudice.


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1 In addition, the Court DENIES WITHOUT PREJUDICE Defendants' motion to dismiss on the grounds
2 of qualified immunity. Finally, the Court DENIES Plaintiff's request for injunctive relief.

3 IT IS SO ORDERED.

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5 DATED: March 19, 2012

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8 Hon. Anthony J. Battaglia
9 U.S. District Judge
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