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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 LANCE WILLIAMS,
12 CDCR #AG-2394,

13 Plaintiff,

14 vs.

15 O. ORTEGA, et al.,

16 Defendants.
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Case No.: 3:18-cv-00547-LAB-MDD

**ORDER GRANTING EXTENSION
OF TIME TO OBJECT TO REPORT
AND RECOMMENDATION;**

**ORDER OVERRULING
PLAINTIFF'S OBJECTIONS TO
REPORT AND
RECOMMENDATION; AND**

**ORDER DISMISSING CLAIMS
AGAINST DEFENDANTS
MELGOZA AND KIMANI**

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22 Lance Williams, a prisoner incarcerated at Richard J. Donovan Correctional Facility
23 in San Diego, California, and proceeding *pro se*, filed this civil rights action bringing
24 claims under 42 U.S.C. § 1983. Williams brought Eighth Amendment claims against
25 Defendants J. Melgoza and M. Kimani, for deliberate indifference to serious medical needs
26 following an altercation with another prison officer. Under 28 U.S.C. § 636(b)(1) and
27 Local Civil Rule 72.1(c), the motion was referred to Magistrate Judge Mitch Dembin who
28 on September 9 issued his report and recommendation (the "R&R"). Williams sought an

1 extension of time to file objections to the R&R, but before the Court ruled on his motion,
2 he filed his objections.

3 Williams' motion for extension of time to file objections (Docket no. 30) is
4 **GRANTED**, and his objections are accepted as filed.

5 **Legal Standards**

6 A district court has jurisdiction to review a Magistrate Judge's report and
7 recommendation on dispositive matters. Fed. R. Civ. P. 72(b). "The district judge must
8 determine de novo any part of the magistrate judge's disposition that has been properly
9 objected to." *Id.* "A judge of the court may accept, reject, or modify, in whole or in part,
10 the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1).
11 This section does not require some lesser review by the district court when no objections
12 are filed. *Thomas v. Arn*, 474 U.S. 140, 149–50 (1985). The "statute makes it clear that the
13 district judge must review the magistrate judge's findings and recommendations de novo *if*
14 *objection is made*, but not otherwise." *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121
15 (9th Cir. 2003) (en banc) (emphasis in original).

16 The R&R correctly sets forth the standard for motions to dismiss, which the Court
17 **ADOPTS**. Although Williams in his opposition to the motion to dismiss alleged some new
18 facts, the R&R correctly points out that these should not be considered when deciding
19 whether the complaint states a claim. While the Court can consider additional allegations
20 made in the briefing when deciding whether to grant leave to amend, when ruling on a
21 motion to dismiss the Court considers only facts alleged in the complaint. *See Cervantes v.*
22 *City of San Diego*, 5 F.3d 1273, 1274 (9th Cir. 1993).

23 Prison officials violate the Eighth Amendment when they are deliberately indifferent
24 to a prisoner's serious medical need. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). To
25 plead a deliberate indifference claim under the Eight Amendment, a plaintiff must plead
26 facts showing that the defendants were deliberately indifferent, not merely negligent, and
27 that his medical needs were serious. *See Estelle v. Gamble*, 429 U.S. 97, 105–06 (1976).
28 Serious medical needs include those that could result in further significant injury if

1 untreated, or in the “unnecessary and wanton infliction of pain.” *Jett v. Penner*, 439 F.3d
2 1091, 1096 (9th Cir. 2006) (citing *Estelle*, 429 U.S. at 104.) Serious medical needs include
3 injuries that a reasonable doctor or patient would find important and worthy of treatment,
4 medical conditions that significantly affect the prisoner’s daily activities, or the existence
5 of chronic and substantial pain. *Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000).

6 **Discussion**

7 Williams filed this action about a week after the incident that gave rise to it. In his
8 opposition to the motion to dismiss, he for the first time refers to other events that had not
9 happened at the time he filed suit, and alleges facts the complaint does not mention. As
10 noted, the Court considers only allegations in the complaint when determining whether the
11 complaint states a claim.

12 Williams’ claims against Kimani include a charge that Kimani falsified Williams’
13 medical records to make his injury seem less serious. Williams argues that falsifying
14 medical records violates California Penal Code sections 132 and 134. The R&R correctly
15 points out that these sections are not privately actionable. Furthermore, the falsification of
16 medical records, by itself, does not give rise to a deliberate indifference claim.

17 According to the complaint, another officer assaulted Williams, resulting in a
18 cut or bloody nose, a bruised and cut wrist, throbbing pain in his body, and inability to
19 move his ring finger. (Compl. at 5(b).) Williams first showed his injuries to numerous
20 other inmates then asked Melgoza to summon medical help. (*Id.* at 5.) Melgoza allegedly
21 refused to call for medical help himself, but told Williams to see the sergeant about it and
22 let him out of the building so he could do that. (*Id.*) Later Kimani, a nurse, examined
23 Williams. He alleges that she failed to check for bruises, failed to do a mental health check,
24 and failed to call for medical help.

25 In his opposition, Williams alleges new and inconsistent facts, suggesting that the
26 blood was not dry, but still dripping from his wrist when Kimani examined him. He alleges
27 that the seriousness of his injuries would have been obvious to a nurse such as Kimani. He
28 also alleges injury to his finger that later required cortisone injections and surgery. But he

1 does not allege any facts suggesting that immediate medical attention to his finger was
2 necessary or would have helped.

3 According to the pleadings, neither Melgoza nor Kimani was indifferent to
4 Williams' serious medical needs, both because the needs were not serious for purposes of
5 Eighth Amendment analysis, and because neither of them was indifferent. Melgoza did
6 not call for medical help, but did allow Williams to talk to the sergeant about his medical
7 needs, which resulted in Williams being seen by a nurse, Kimani.

8 For her part, Kimani examined Williams and inquired about the cause of his injuries.
9 Although he alleges she should have examined him for bruises, at least some parts of his
10 body (his forehead and neck) that he said were throbbing in pain were visible to her.
11 Objectively, the injuries were not serious for Eighth Amendment purposes. Besides the
12 pain, he says he "showed her my bruised, cut wrist mainly on top and fresh dried blood all
13 over my wrist and the cut in my nose." (Compl. at 5(b).) And, as the R&R correctly points
14 out, before seeking medical help, Williams first walked around, showing his injuries to
15 other prisoners.

16 When considering similar injuries, both district courts and the Ninth Circuit have
17 held they did not amount to a "serious medical need" within the meaning of the Eight
18 Amendment. In *Pratt v. Minnix*, 2012 WL 359658 (D. Nev., Feb. 2, 2012), a prisoner
19 alleged that a prison officer assaulted him. The plaintiff there suffered a swollen eye, a
20 bloody nose, and abrasions and bruises on his face and back. *Id.* at *7. The district court
21 held that these injuries were "not so serious to require further prompt treatment," and
22 dismissed the deliberate indifference claim. *Id.* at *8. The Ninth Circuit agreed, calling
23 the injuries "minor." 538 Fed. Appx. 771, 772 (9th Cir. 2012).

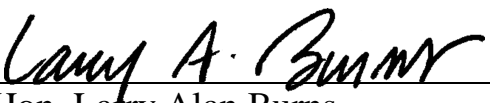
24 In *Campbell v. Portillo*, 2012 WL 6561271, at 10 (D. Nev., Oct. 16, 2012), a prisoner
25 involved in an altercation with an officer suffered a bloody nose and a red mark on his
26 clavicle, and vomited. Depriving the plaintiff of immediate treatment for these, the district
27 court found, did not violate the Eighth Amendment. *Id.*; see also *Campbell v. Portillo*, 609
28 Fed. Appx. 439, 439 (9th Cir. 2015) (affirming dismissal of deliberate indifference claim).

1 **Conclusion and Order**

2 The Court has reviewed *de novo* those portions of the R&R to which Williams has
3 made specific written objections, and **OVERRULES** the objections. The Court finds the
4 R&R to be correct, except that because Melgoza permitted Williams to ask the sergeant for
5 medical help, it is obvious he cannot be held liable for deliberate indifference. The R&R
6 is deemed modified to include this change. So modified, the R&R is **ADOPTED**. The
7 Court **GRANTS** in part the motion to dismiss. (Docket no. 26.) All claims against Melgoza
8 are **DISMISSED WITH PREJUDICE** and Melgoza is **DISMISSED** as a party. Claims
9 against Kimani for falsifying medical records are also **DISMISSED WITH PREJUDICE**.
10 Claims against Kimani for deliberate indifference to serious medical needs are
11 **DISMISSED WITHOUT PREJUDICE**. If Williams believes he can successfully amend
12 to state a claim against Kimani for deliberate indifference to serious medical needs, he may
13 file an amended complaint within **21 days of the date this order is issued**. Any necessary
14 amendments are likely to be mainly factual in nature, and Williams is familiar with his own
15 medical history. Therefore, it is unlikely he would be given additional time to conduct legal
16 research.

17 **IT IS SO ORDERED.**

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19 Dated: November 4, 2019

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22 Hon. Larry Alan Burns
23 Chief United States District Judge
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