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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHIKEB SADDOZAI,
Plaintiff,

v.

LOMU, et al.,
Defendants.

Case No. 18-04047 BLF (PR)

**ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

(Docket No. 46)

Plaintiff, a state prisoner, filed a *pro se* civil rights complaint under 42 U.S.C. § 1983. The Court found the amended complaint, Dkt. No. 15¹, stated a cognizable claim of deliberate indifference to serious medical needs under the Eighth Amendment against Defendants David Lomu and Zachary Copeland at the San Mateo County Jail, Maguire Correctional Facility (“MCF”), and ordered the matter served on Defendants. Dkt. No. 22. Defendants filed a motion for summary judgment on the grounds that there are no genuine disputes of any material facts and they are entitled to qualified immunity. Dkt. No. 46.²

¹ All page references herein are to the Docket pages shown in the header to each document and brief cited, unless otherwise indicated.

² In support of their motion, Defendants provide the declarations of counsel Paul S. Sheng, Dkt. No. 46-1, and Defendant D. Lomu, Dkt. No. 46-16. Accompanying these

1 Plaintiff filed an opposition along with a declaration and exhibits in support thereof, Dkt.
2 No. 54, and Defendants filed a reply, Dkt. No. 59.³ For the reasons stated below,
3 Defendants' motion for summary judgment is **GRANTED**.

4 5 **DISCUSSION**

6 **I. Statement of Facts**

7 The underlying events took place while Plaintiff was detained at MCF during April
8 and June 2016. The account of the events given by the parties differ as set forth below.

9 **A. April 2016 Incident**

10 The following account is Plaintiff's version of events in his declaration in support
11 of his opposition.⁴ Saddozai Decl.; Dkt. No. 54 at 32-33. On April 19, 2016, Plaintiff
12 alerted Defendant Lomu and his unnamed partner⁵ through the cell intercom that he was
13 experiencing severe abdominal pain and vomiting blood. Saddozai Decl. ¶ 4. Defendant
14 Lomu and his partner ignored Plaintiff's "medical emergency," and disabled his cell's
15 emergency intercom monitor, preventing Plaintiff from alerting the officers for help as his
16 condition worsened. *Id.* ¶ 5. Plaintiff alerted inmates in neighboring cells by yelling
17 through the door and ventilation, to push their emergency intercom buttons to alert officers

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20 declarations are exhibits that include authenticated copies of excerpts from Plaintiff's
21 medical records and investigative reports that were submitted under seal. Dkt. Nos. 44-3,
22 44-4, 44-5, 44-6, 44-7, 44-8, 44-9, 44-10, 44-11. Defendants later withdrew their
23 administrative motion to file these exhibits under seal when it appeared from Plaintiff's
24 opposition to their motion that he consented to unredacted medical records being filed with
25 the Court and being publicly accessible. Dkt. Nos. 44, 70.

26
27 ³ In reply, Defendants object to Plaintiff's opposition as untimely. Dkt. No. 59 at 6. This
28 objection is **OVERRULED** because in a separate order, the Court deemed the opposition
as timely filed after granting Plaintiff's motion for extension of time. Dkt. No. 70.

⁴ Where Plaintiff's facts in his declaration differ from the alleged facts in his verified
amended complaint, the Court will consider the facts stated in Plaintiff's declaration as
superseding those in the amended complaint. *Compare* Dkt. No. 15 and Dkt. No 54 at 32-
33.

⁵ Plaintiff only specifically named Defendants Lomu and Copeland in this action and has
never made any indication that he desired to add their unnamed partners as defendants.

1 to help him; Defendant Lomu and his partner ignored their requests. *Id.* ¶ 6. Defendants
2 initiated recreational program for inmates on B-side and removed Plaintiff’s cellmate,
3 which prevented Plaintiff from receiving assistance to call for help while he lay immobile
4 on the ground, locked in his cell. *Id.* ¶ 7. Defendant Lomu and his partner arrived at
5 Plaintiff’s cell and told him that his medical condition was not serious “or [Plaintiff] would
6 be bleeding from his ears.” *Id.* ¶ 8. Plaintiff waited over four hours for help, and a nurse
7 arrived at his cell to provide Mylanta. *Id.* ¶ 9. Plaintiff vomited the Mylanta, including
8 blood, at which point he began to bang the door and yell for help because Defendants had
9 disabled his cell emergency intercom monitor; he had no way of alerting anyone of his
10 severe pain and vomiting. *Id.* ¶ 10. Defendant Lomu shut down “inmates recreational
11 program” and arrived at Plaintiff’s cell and pushed the alarm for a code blue, causing the
12 fire department to arrive and transfer Plaintiff to the hospital where he was diagnosed with
13 kidney stones. *Id.* ¶ 11.

14 The following account is Defendant Lomu’s version of events as provided in his
15 declaration, which is consistent with the account given in his incident report prepared the
16 day following the incident. Dkt. No. 46-16; Dkt. No. 44-3. On April 19, 2016, Defendant
17 Lomu was assigned as a Correctional Officer to MCF’s “6 West,” which is a protective
18 custody housing unit. Lomu Decl. ¶ 2. At approximately 0624 hours that day, Defendant
19 Lomu and his partner began to conduct “count and inspection,” and arrived at cell #20.
20 Lomu Decl. ¶ 3. At that time, cell #20 housed Plaintiff and inmate Robert Walker. *Id.* ¶ 4.
21 Plaintiff told the officers that he was feeling pains coming from his lower left side of his
22 stomach, and requested they call medical. *Id.* After Defendant Lomu and his partner
23 completed their rounds, they called down to the medical floor and informed the nurse of
24 Plaintiff’s medical issue. *Id.* At approximately 0653 hours, Nurse Liz Martinez arrived on
25 the pod and spoke with Plaintiff. *Id.* ¶ 5. The incident report indicates that Defendant
26 Lomu was present at each of Nurse Martinez’s encounters with Plaintiff. Dkt. No. 44-3.
27 The nurse later provided Plaintiff with Maalox and advised him to take it to help with the
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1 abdominal pain. Lomu Decl. ¶ 5. Plaintiff requested that they call the paramedics and
2 have him shipped to the hospital. *Id.* At approximately 0717 hours, Plaintiff used the
3 intercom to inform Defendant Lomu that he was in pain and the medicine was not
4 working; Defendant Lomu called the nurse at 0718 and informed the nurse of Plaintiff's
5 pain. *Id.* ¶ 6. At approximately 0724 hours, the nurse arrived on the pod to examine and
6 speak to Plaintiff. *Id.* ¶ 7. Plaintiff claimed that his appendix felt like it was going to
7 explode. *Id.* Plaintiff was on the ground in a fetal position and holding the left side of his
8 stomach. *Id.* After the nurse took a look at him, she informed Plaintiff that she would
9 notify the charge nurse on the medical floor. *Id.* Plaintiff demanded that an ambulance be
10 called to take him to the hospital. *Id.* He began yelling and hitting the door, demanding an
11 ambulance. *Id.* At the time, Plaintiff's cellmate, Inmate Walker, was trying to sleep but
12 could not because Plaintiff was making so much noise; Defendant Lomu decided to move
13 Inmate Walker to cell #42. They continued to communicate with Plaintiff and the nurse
14 waiting a decision of any further and progressive actions. *Id.* Defendant Lomu contacted
15 the nurse again at 0822 hours, to update her that Plaintiff was now claiming that he was
16 throwing up. *Id.* ¶ 8. The nurse arrived on the pod at 0826 hours to evaluate Plaintiff
17 again. *Id.* ¶ 9. Plaintiff informed the nurse that he did not want to be seen by the prison's
18 doctor and that he could not get up. *Id.* Plaintiff requested that they physically drag him
19 out and or call the paramedics. *Id.* The nurse left and returned with a wheelchair and
20 offered to escort Plaintiff via wheelchair down to the doctor on site in the 2nd floor clinic,
21 where they can run more tests on him. *Id.* Plaintiff refused, and once again demanded an
22 ambulance. *Id.* Nurse Martinez left the pod to update and consult with the charge nurse
23 and doctor. *Id.* At approximately 0855 hours, Defendant Lomu called the clinic and was
24 informed that they were preparing Plaintiff's paperwork in prep of his transportation. *Id.* ¶
25 10. At approximately 0906 hours, Charge Nurse Gladys informed Defendant Lomu that
26 Plaintiff would be transported to San Mateo General Hospital on a Code 3. *Id.* ¶ 11. The
27 message was relayed to control as well as the Housing Sergeant. *Id.* At approximately
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1 0907 hours, Nurse Martinez arrived on the pod to take Plaintiff's vitals, which came back
2 normal. *Id.* ¶ 12. At approximately 0915 hours, local Redwood City Fire Department and
3 paramedics arrived on the pod. *Id.* Plaintiff was escorted out of the pod at 0923 hours
4 with Fire and paramedics as well as Deputy Sheriff Cost #475. *Id.*

5 **B. June 2016 Incident**

6 The following account is Plaintiff's version of events in his declaration in support
7 of his opposition.⁶ Saddozai Decl.; Dkt. No. 54 at 35-36. According to Plaintiff, on June
8 11, 2016, Defendant Copeland and his unnamed partner⁷ denied Plaintiff serious medical
9 needs "by refusing to call medical personnel upon [Plaintiff's] repeated requests for [his]
10 abdominal pains and chronic constipation in the presence of other inmates." Saddozai
11 Decl. ¶ 4. Defendant Copeland "followed the same course of inaction the following day,"
12 causing Plaintiff's condition to worsen and render him immobile, preventing him from
13 participating in recreational activities, shower, and routine movements. *Id.* ¶ 5. Plaintiff
14 filed medical slips and complaints against Defendant Copeland, which went unanswered.
15 *Id.* ¶ 6. There were no full-time physicians available within the facility, and Defendant
16 Copeland would not call the paramedics. *Id.* ¶ 7.

17 According to Defendants, a Correctional Health Services Progress Report dated
18 June 11, 2016, shows that Plaintiff was seen at 9:00 a.m. that day. Sheng Decl., Ex. I at 1.
19 The nurse practitioner was called by an unnamed deputy to assess Plaintiff secondary to
20 his complaints of a stomach ulcer, nausea and vomiting, severe abdominal pain, and
21 constipation. *Id.* Plaintiff was found to be alert and oriented times three, and not in acute
22 distress. *Id.* His vital signs were taken, and he was found to have positive bowel sounds
23 and soft abdomen and tenderness. *Id.* He was noted to be on Tylenol-Codeine #3 (pain
24 reliever), Docustate (stool softener), and Zofran (anti-nausea). *Id.* Plaintiff was seen again

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26 ⁶ See *supra* at 2, fn. 2.

27 ⁷ See *supra* at 2, fn. 3.

1 later that day. *Id.* At 12:15, the nurse practitioner made a note stating the Emergency
2 Department doctor was called regarding the ongoing constipation, and laxative medication
3 (Bisacodyl) was ordered and given. *Id.*; Sheng Decl., Ex. J.

4 Plaintiff submitted only two inmate request forms on June 14, 2016. Sheng Decl.,
5 Exs. K, L. In the first, Plaintiff requested to be moved from security risk status, and the
6 second related to a medical co-pay issue. *Id.*

7 Plaintiff was seen by Correctional Health on June 23, 2016, when it was noted that
8 he refused his Tamulosin (medication to facilitate urination) for eight consecutive nights,
9 and also refused his Docusate (stool softener) for seven nights with no reason given for the
10 refusal. Sheng Decl., Ex. M.

11 **II. Summary Judgment**

12 Summary judgment is proper where the pleadings, discovery and affidavits show
13 that there is “no genuine dispute as to any material fact and the movant is entitled to
14 judgment as a matter of law.” Fed. R. Civ. P. 56(a). A court will grant summary judgment
15 “against a party who fails to make a showing sufficient to establish the existence of an
16 element essential to that party’s case, and on which that party will bear the burden of proof
17 at trial . . . since a complete failure of proof concerning an essential element of the
18 nonmoving party’s case necessarily renders all other facts immaterial.” *Celotex Corp. v.*
19 *Cattrett*, 477 U.S. 317, 322-23 (1986). A fact is material if it might affect the outcome of
20 the lawsuit under governing law, and a dispute about such a material fact is genuine “if the
21 evidence is such that a reasonable jury could return a verdict for the nonmoving party.”
22 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

23 Generally, the moving party bears the initial burden of identifying those portions of
24 the record which demonstrate the absence of a genuine issue of material fact. *See Celotex*
25 *Corp.*, 477 U.S. at 323. Where the moving party will have the burden of proof on an issue
26 at trial, it must affirmatively demonstrate that no reasonable trier of fact could find other
27 than for the moving party. But on an issue for which the opposing party will have the

1 burden of proof at trial, the moving party need only point out “that there is an absence of
2 evidence to support the nonmoving party’s case.” *Id.* at 325. If the evidence in opposition
3 to the motion is merely colorable, or is not significantly probative, summary judgment may
4 be granted. *See Liberty Lobby*, 477 U.S. at 249-50.

5 The burden then shifts to the nonmoving party to “go beyond the pleadings and by
6 her own affidavits, or by the ‘depositions, answers to interrogatories, and admissions on
7 file,’ designate specific facts showing that there is a genuine issue for trial.” *Celotex*
8 *Corp.*, 477 U.S. at 324 (citations omitted); Fed. R. Civ. P. 56(e). “This burden is not a
9 light one. The non-moving party must show more than the mere existence of a scintilla of
10 evidence.” *In re Oracle Corporation Securities Litigation*, 627 F.3d 376, 387 (9th Cir.
11 2010) (citing *Liberty Lobby*, 477 U.S. at 252). “The non-moving party must do more than
12 show there is some ‘metaphysical doubt’ as to the material facts at issue.” *Id.* (citing
13 *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)). “In
14 fact, the non-moving party must come forth with evidence from which a jury could
15 reasonably render a verdict in the non-moving party’s favor.” *Id.* (citing *Liberty Lobby*,
16 477 U.S. at 252). If the nonmoving party fails to make this showing, “the moving party is
17 entitled to judgment as a matter of law.” *Celotex Corp.*, 477 U.S. at 323.

18 The Court’s function on a summary judgment motion is not to make credibility
19 determinations or weigh conflicting evidence with respect to a material fact. *See T.W.*
20 *Elec. Serv., Inc. V. Pacific Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987).
21 The evidence must be viewed in the light most favorable to the nonmoving party, and the
22 inferences to be drawn from the facts must be viewed in a light most favorable to the
23 nonmoving party. *See id.* at 631. It is not the task of the district court to scour the record
24 in search of a genuine issue of triable fact. *Keenan v. Allen*, 91 F.3d 1275, 1279 (9th Cir.
25 1996). The nonmoving party has the burden of identifying with reasonable particularity
26 the evidence that precludes summary judgment. *Id.* If the nonmoving party fails to do so,
27 the district court may properly grant summary judgment in favor of the moving party. *See*

1 *id.*; see, e.g., *Carmen v. San Francisco Unified School District*, 237 F.3d 1026, 1028-29
2 (9th Cir. 2001).

3 **A. Deliberate Indifference**

4 Deliberate indifference to a prisoner’s serious medical needs violates the Eighth
5 Amendment. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). A prison official violates the
6 Eighth Amendment only when two requirements are met: (1) the deprivation alleged is,
7 objectively, sufficiently serious, and (2) the official is, subjectively, deliberately indifferent
8 to the inmate’s health or safety. See *Farmer v. Brennan*, 511 U.S. 825, 834 (1994).

9 A “serious” medical need exists if the failure to treat a prisoner’s condition could
10 result in further significant injury or the “unnecessary and wanton infliction of pain.” *Id.*
11 The following are examples of indications that a prisoner has a “serious” need for medical
12 treatment: the existence of an injury that a reasonable doctor or patient would find
13 important and worthy of comment or treatment; the presence of a medical condition that
14 significantly affects an individual’s daily activities; or the existence of chronic and
15 substantial pain. *McGuckin v. Smith*, 974 F.2d 1050, 1059-60 (9th Cir. 1992), overruled
16 on other grounds, *WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997)
17 (en banc).

18 A prison official is deliberately indifferent if he knows that a prisoner faces a
19 substantial risk of serious harm and disregards that risk by failing to take reasonable steps
20 to abate it. See *Farmer*, 511 U.S. at 837. The official must both know of “facts from
21 which the inference could be drawn” that an excessive risk of harm exists, and he must
22 actually draw that inference. *Id.* If a prison official should have been aware of the risk,
23 but was not, then the official has not violated the Eighth Amendment, no matter how
24 severe the risk. *Gibson v. County of Washoe*, 290 F.3d 1175, 1188 (9th Cir. 2002).

25 **1. Defendant Lomu**

26 Defendants assert that Plaintiff cannot establish deliberate indifference to serious
27 medical needs against Defendant Lomu because Plaintiff was in fact promptly and
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1 properly treated for his medical complaints on April 11, 2016. Dkt. No. 46 at 9. They
2 assert that Defendant Lomu's declaration, the incident report, as well as subpoenaed
3 Correctional Health Services records confirm that Plaintiff's version of events is simply
4 untrue. Defendants assert that Defendant Lomu's declaration establishes that after Plaintiff
5 complained of stomach pain at 6:24 a.m., Defendant Lomu called for medical attention,
6 and the nurse arrived at 6:53 a.m. to provide treatment. *Id.*; Lomu Decl. ¶ 5. When
7 Plaintiff complained of pain at 7:17 a.m., Defendant Lomu informed the nurse who arrived
8 at 7:24 a.m. and saw him again. Lomu Decl. ¶¶ 6-7. In response to Plaintiff's persistent
9 complaints, Defendant Lomu again summoned the nurse, who arrived at 8:26 a.m. and
10 offered to take him to the on-site doctor. *Id.* Plaintiff refused. *Id.* ¶¶ 8-9. Plaintiff was
11 then processed to go to the Emergency Department and was escorted out of the pod at 9:23
12 a.m. *Id.* ¶¶ 10-12. Defendants assert that the Correctional Health Progress Report from
13 April 19, 2016, corroborates Defendant Lomu's statement. Dkt. No. 46 at 9; Sheng Decl.,
14 Ex. G, Dkt. No. 44-4 at 2. This report shows that Plaintiff was seen at 7:10 a.m. for a
15 complaint of abdominal pain and other symptoms. *Id.* His vital signs were taken, and he
16 was noted to have a steady gait and able to ambulate without any difficulty. *Id.* Plaintiff
17 was given Mylanta (antacid). *Id.* Plaintiff was then seen 20 minutes later at 7:30 a.m.,
18 when he was laying on the floor claiming severe abdominal pain. *Id.* He was found to be
19 alert and oriented times four and was reassured he would be seen soon by a nurse
20 practitioner. *Id.* At 9:00 a.m., it was noted a report was given to the medical doctor, who
21 ordered that Plaintiff be sent to the Emergency Department. *Id.* Plaintiff was then
22 promptly transported to the San Mateo Medical Center Emergency Department, where he
23 was seen at 9:53 a.m. and provided care, including medications and a CT scan. *Id.*, Ex. H,
24 Dkt. No. 44-5.

25 In opposition, Plaintiff recites the allegations from his amended complaint, and
26 asserts there remain genuine issues of material facts that require the denial of Defendants'
27 motion. Dkt. No. 54 at 3, 30. Plaintiff asserts his allegations show that Defendants acted

1 “maliciously and sadistically” in denying him treatment for his serious medical need,
2 “made obvious by [his] severe abdominal pains causing [him] to be immobile on the
3 ground in a fetal position and holding the lefts side of his stomach should have been a red
4 flag[] for officers to call paramedics instead of waiting to complete count inspection as
5 stated in defendants’ declaration.” *Id.* at 5. Plaintiff asserts that there is a factual question
6 “whether defendant checked on plaintiff or opened the door, and defendant moving
7 plaintiff’s cellmate out of the cell quarters which prevented plaintiff from receiving
8 assistance or wait to remove cellmate to call for help, is circumstantial evidence that
9 creates an issue of material fact barring summary judgment.” *Id.* Plaintiff asserts that
10 Defendants waiting to call an ambulance “raises a factual question” and are “issues of
11 material fact barring summary judgment.” *Id.* Plaintiff asserts that his condition was
12 “even obvious to a layperson that plaintiff is in need of hospitalization or other crucial
13 medical care.” *Id.* at 6. Plaintiff asserts that the delay and denial by Defendants’ actions
14 “resulted in further significant injury and unnecessary and wanton infliction of pain.” *Id.*
15 Lastly, Plaintiff asserts that he has not had an adequate chance to contest Defendants’
16 summary judgment motion because he has no access to inmate witnesses. *Id.* at 6-7. He
17 also asserts that inadequacies and deficiencies within the prison law library services means
18 he is unable to provide sworn certified copies of affidavits and therefore he “cannot raise
19 affirmative defense in pro se.” *Id.* In support, he provides his own declaration and that of
20 other CSP inmates who attest to the alleged “inadequacies and deficiencies” of the prison
21 law program. *Id.* at 11-14. Lastly, Plaintiff provides a list “of genuine issues of material
22 fact that require denial of defendants’ motion.” *Id.* at 30.

23 In reply, Defendants assert that Plaintiff has only offered his own declaration to
24 oppose their summary judgment, and that his declaration is insufficiently probative to
25 establish a triable issue of material fact in light of the evidence they provided in support of
26 their motion. Dkt. No. 59 at 2. They assert that even if a reasonable factfinder could
27 conclude that Plaintiff’s self-serving declaration creates a factual dispute as to how quickly
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1 he was treated, that is insufficient to save his claim from summary judgment. *Id.* at 3.
2 Defendants assert that Plaintiff's claim is that they delayed treatment in violation of the
3 Eighth Amendment, and that the issue is whether Plaintiff's evidence is sufficient to create
4 a triable issue of material fact on that claim. *Id.* Defendants assert that Plaintiff has the
5 burden of proving that defendants knew of and disregarded an excessive risk to his health
6 and safety, that the delay led to further injury, that the course of treatment chosen was
7 medically unacceptable under the circumstances, and that such treatment was chosen in
8 conscious disregard of an excessive risk to his health and the delay resulted in harm, but
9 that Plaintiff's declaration does not supply any evidence to satisfy these elements of his
10 claim. *Id.* at 3-4.

11 Based on the evidence submitted, the Court finds there are no genuine issues for
12 trial. It is undisputed that Defendant Lomu became aware of Plaintiff's ailments at
13 approximately 6:24 a.m. on April 19, 2016, during "count and inspection." *See supra* at 3.
14 At that time, Plaintiff merely told the officers that he was feeling pains coming from his
15 lower abdomen and requested medical be contacted; there is no evidence that Plaintiff was
16 showing any visible signs of distress. *Id.* Defendant Lomu finished his inspection and
17 then notified the medical floor about Plaintiff's medical complaints. *Id.* According to the
18 evidence, the completion of the inspection must have taken less than thirty minutes since
19 Defendant Lomu first spoke to Plaintiff at 6:24 a.m., and then twenty-nine minutes later,
20 Nurse Martinez came to check on Plaintiff at 6:53 a.m. *Id.* Plaintiff received treatment in
21 the form of Maalox shortly thereafter. *Id.* Defendant Lomu next spoke with Plaintiff
22 twenty minutes later at 7:17 a.m., at which time Plaintiff informed him that the medicine
23 was not working, and he was still in pain. *Id.* In response, Defendant Lomu immediately
24 contacted the nurse who returned and spoke with Plaintiff seven minutes later. *Id.* By this
25 time, Plaintiff was on the ground in a fetal position, holding the left side of his stomach.
26 *Id.* at 3-4. The nurse said she would notify the charge nurse on the medical floor. *Id.* at 4.
27 Defendant Lomu contacted the nurse again at 8:22 a.m., to update her on Plaintiff's new
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1 complaint of throwing up. *Id.* The nurse arrived a few minutes later to evaluate Plaintiff
2 again. *Id.* She returned with a wheelchair to escort Plaintiff to the onsite doctor on the 2nd
3 floor clinic where they could run tests on him, but Plaintiff refused. *Id.* Then at 8:55 a.m.,
4 thirty-three minutes after his last call, Defendant Lomu called the clinic again and was
5 informed that they were preparing Plaintiff’s paperwork to prepare him for transportation
6 to the hospital. *Id.* Plaintiff was escorted out of his cell less than thirty minutes later, at
7 9:23 a.m., and taken to the hospital by paramedics. *Id.* According to this evidence,
8 approximately three hours passed from when Plaintiff first complained of abdominal pain
9 to Defendant Lomu at 6:24 a.m., until he was transported to the hospital at 9:23 a.m.
10 Furthermore, during those three hours, Defendant Lomu did not ignore Plaintiff’s initial
11 complaints but rather reported the matter to the medical floor as soon as he finished count
12 inspection, which was less than thirty minutes from the time he first learned of Plaintiff’s
13 medical issues. Thereafter, Defendant Lomu continuously communicated with Plaintiff
14 regarding the status of his condition, promptly updated the nurse accordingly, and also
15 checked with the nurse on the status of Plaintiff’s care, until it was decided that treatment
16 at the hospital was appropriate. Based on this evidence, it cannot be said that Defendant
17 Lomu acted at any time to deny, delay, or intentionally interfere with Plaintiff’s medical
18 treatment. *See McGuckin*, 974 F.2d at 1062.

19 Plaintiff asserts in opposition that Defendant should have promptly called the
20 paramedics instead of waiting to complete count inspection, and that his being “immobile
21 on the ground in a fetal position and holding the left side of this stomach should have been
22 a red flag.” Dkt. No. 54 at 5. Plaintiff does not dispute, however, the medical records in
23 support of Defendant Lomu’s declaration showing the interim measures he took to call in-
24 house medical staff on several occasions before Plaintiff was sent to the hospital. As
25 discussed above, the evidence shows that when Defendant Lomu first came to Plaintiff’s
26 cell at 6:24 a.m. Plaintiff merely told him that he was feeling pains from his lower left side
27 of the stomach and requested that medical be called. *See supra* at 3, 9. There is no
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1 allegation or evidence that Defendant Lomu witnessed Plaintiff exhibiting physical signs
2 of distress at that time by which he inferred that Plaintiff’s medical needs were emergent.
3 *Id.* Accordingly, Plaintiff has failed to establish the existence of disputed issues of
4 material fact that Defendant Lomu knew of a risk of serious harm to Plaintiff if he waited
5 to contact medical until after completing count inspection and that he waited anyway.
6 Plaintiff also asserts that there is a factual question “whether defendant checked on
7 plaintiff or opened the door” but fails to explain the relevancy or probative value of this
8 question. If Plaintiff is referring to whether Defendant Lomu checked on him during count
9 inspection, Defendants’ evidence shows that Plaintiff communicated his need for medical
10 attention and Defendant Lomu responded to that request. Thereafter, the nurse checked on
11 Plaintiff several times and Defendant Lomu was present at each of these encounters. Dkt.
12 No. 44-3. Accordingly, whether Defendant Lomu actually opened the door and checked
13 on Plaintiff is immaterial. Plaintiff also asserts that the removal of his cellmate “is
14 circumstantial evidence that creates an issue of material fact.” *See supra* at 10. It is
15 undisputed that Plaintiff’s cellmate was moved, but the reason why is disputed. Plaintiff
16 asserts that his cellmate was moved in order to deny him further assistance to call for help,
17 while Defendants assert it was because the inmate could not sleep due to Plaintiff making
18 so much noise. *Id.* at 4. But the evidence submitted by Defendants shows that even after
19 the cellmate was moved, Defendant Lomu continued to communicate with Plaintiff and the
20 nurse regarding his condition. *Id.* at 4. Accordingly, the dispute over why his cellmate
21 was moved is ultimately immaterial. Lastly, Plaintiff asserts that Defendants waiting to
22 call an ambulance is an issue of material fact. *Id.* at 10. However, the submitted evidence
23 shows that Defendant Lomu informed the medical floor about Plaintiff’s condition and that
24 medical personnel made the decisions with respect to Plaintiff’s treatment. There is no
25 allegation or evidence that Defendant Lomu had the authority to call the paramedics but
26 chose not to, or that he had any inkling that medical personnel’s response was inadequate.
27 In other words, there is no evidence that Defendant Lomu knew that Plaintiff was facing a
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1 substantial risk of serious harm and disregarded that risk by failing to take reasonable steps
2 to abate it. *See Farmer*, 511 U.S. at 837. What the evidence does show is that Defendant
3 Lomu was aware that each time he alerted the medical floor of Plaintiff's condition, the
4 nurse came and evaluated Plaintiff. *See supra* at 3-4. Defendant Lomu was present during
5 each of the encounters between the nurse and Plaintiff. *Id.* at 3. Accordingly, Defendant
6 Lomu was aware of the following: (1) the nurse initially provided Plaintiff with medicine,
7 and that when the medicine was ineffective, the nurse offered to take Plaintiff to the on-site
8 doctor, which he refused; (2) when Plaintiff's condition worsened, the nurse consulted
9 with the charge nurse and doctor; and (3) Plaintiff's paperwork was being prepared to
10 transport him to the hospital. *Id.* at 3-4. It cannot be said, based on his knowledge that
11 medical personnel were providing ongoing care to Plaintiff during the three hours that
12 passed, that Defendant Lomu was aware that an excessive risk of harm to Plaintiff existed
13 and he chose to disregard it. Plaintiff has provided no evidence showing the existence of a
14 genuine issue of material fact in this respect.

15 To the extent that Plaintiff is claiming that there was unreasonable delay in
16 transporting him to the hospital, there is no evidence showing that Defendant Lomu was
17 responsible for that delay. Rather, the evidence shows that Defendant Lomu deferred to
18 medical staff with respect to the appropriate course of treatment. Medical staff decided
19 that the first course of treatment was to prescribe Mylanta, and when the medicine was not
20 effective, to then consult with the on-site doctor for tests. *See supra* at 4. Plaintiff refused
21 and demanded to be transferred to the hospital. *Id.* The issue then comes down to a
22 difference of opinion about the course of treatment. However, "[a] difference of opinion
23 between a prisoner-patient and prison medical authorities regarding treatment does not
24 give rise to a § 1983 claim." *Franklin v. Oregon*, 662 F.2d 1337, 1344 (9th Cir. 1981).
25 Similarly, a showing of nothing more than a difference of medical opinion as to the need to
26 pursue one course of treatment over another is insufficient, as a matter of law, to establish
27 deliberate indifference. *Toguchi*, 391 F.3d at 1058; *Sanchez v. Vild*, 891 F.2d 240, 242

1 (9th Cir. 1989). Plaintiff fails to submit any evidence showing that there is a genuine
2 dispute of material fact in this regard.

3 Plaintiff also asserts in opposition that he is unable to sufficiently oppose
4 Defendants' motion because of inadequacies and deficiencies in the prison law program.
5 Defendants assert in reply that his declarations and documents in support do not raise a
6 triable issue of material fact. Dkt No. 59 at 6. They assert none of these offered papers
7 have any impact on the elements of Plaintiff's deliberate indifference claim. *Id.*

8 The Court notes that at no time during these proceedings did Plaintiff claim he was
9 unable to conduct discovery or obtain witness statements due to inadequacies and
10 deficiencies in the prison law program, nor did he ever seek an extension of time to
11 conduct further discovery, claiming it was necessary for him to oppose Defendants'
12 summary judgment. The Court also notes that notwithstanding his assertion that he was
13 unable to obtain witness statements, Plaintiff still managed to obtain affidavits from
14 several inmates to submit with his opposition to support this very argument. Furthermore,
15 Plaintiff fails to identify the potential witnesses or explain what kind of testimony they
16 would have provided that would raise a genuine issue of material fact. With respect to his
17 cellmate, the Court has already discussed that the fact of his removal is undisputed, and the
18 reason for it is ultimately immaterial. *See supra* at 13. With respect to the testimony of
19 neighboring inmates, Plaintiff provides no description as to what sort of evidence these
20 inmates would have provided and how their testimony would point to genuine issues of
21 material facts. According to his version of events, he alerted inmates in neighboring cells
22 to push their emergency intercom buttons to get officers to help him and that Defendant
23 Lomu ignored their requests. *See supra* at 2. Even if this were true, Plaintiff does not
24 dispute the evidence submitted by Defendants showing that Defendant Lomu took steps to
25 obtain medical treatment for Plaintiff by contacting the medical floor. *Id.* at 3. Therefore,
26 Plaintiff has failed to show that any potential witness testimony would raise triable issues
27 of fact to defeat Defendants' summary judgment motion. Plaintiff ultimately fails to show

1 that the limited lack of access to the library or the described inadequacies thereof hindered
2 his efforts to prepare an adequate opposition, and his assertions in that regard are general
3 and conclusory. Dkt. No. 54 at 11. Lastly, Plaintiff’s asserted “list of genuine issues of
4 material fact” does not actually identify any disputed facts, only issues. Dkt. No. 54 at 30.
5 Furthermore, Plaintiff made no factual allegations in his amended complaint with respect
6 to some of the issues raised in this list, e.g., the issue of whether he suffered “a tangible
7 residual injury as a result of the defendants conduct” or whether the “referral of medical
8 treatment produced a different outcome in plaintiff’s medical treatment.” *Id.* Accordingly,
9 it cannot be said that Plaintiff has established the existence of any genuine issues of
10 material facts in this list where no facts were alleged.

11 Based on the foregoing, Defendants have established the absence of a genuine issue
12 of material fact with regard to the Eighth Amendment claim against Defendant Lomu. *See*
13 *Celotex Corp.*, 477 U.S. at 323. Plaintiff has failed in response to identify with reasonable
14 particularity the evidence that precludes summary judgment. *Id.* at 324; *Keenan*, 91 F.3d
15 at 1279. Accordingly, Defendant Lomu is entitled to summary judgment on this claim. *Id.*

16 **2. Defendant Copeland**

17 Defendants assert that Plaintiff cannot establish deliberate indifference to serious
18 medical needs against Defendant Copeland because Plaintiff was promptly and properly
19 treated for his medical complaints in June 2016. Dkt. No. 46 at 10. They assert that the
20 Correctional Health Services records demonstrate that Plaintiff’s narrative is false, and
21 they completely undermine the basis for his claim. *Id.* Specifically, Defendants rely on
22 the Correctional Health Services Progress Report dated June 11, 2016, showing that
23 Plaintiff was seen on 9:00 a.m. that day, when an unnamed deputy called a nurse
24 practitioner to assess Plaintiff. *Id.*; Sheng Decl., Ex. I, Dkt. No. 44-6. The nurse
25 practitioner was called by an unnamed deputy to assess Plaintiff for his complaints of a
26 stomach ulcer, nausea and vomiting, severe abdominal pain, and constipation. Dkt. No. 46
27 at 11; Sheng Decl., Ex. I. The nurse noted that Plaintiff was alert and oriented times three,
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1 and not in acute distress. *Id.* Plaintiff’s vital signs were taken, and he was found to have
2 positive bowel sounds and a soft abdomen and tenderness. *Id.* The nurse noted that
3 Plaintiff was currently on Tylenol-Codeine #3 (pain reliever, Docusate (stool softener),
4 and Zofran (anti-nausea). *Id.* Plaintiff was provided with 30 mL of Milk of Magnesia
5 (laxative) and was encouraged to intake fluids. *Id.* Plaintiff was seen again later that day.
6 *Id.* At 12:15 that day, the nurse made a note stating the Emergency Department doctor was
7 called regarding ongoing constipation, and laxative medication (Bisacodyl) was ordered
8 and given per doctor’s orders. *Id.*; Sheng Decl., Ex. J, Dkt. No. 44-7. Defendants also
9 assert that although Plaintiff claims he “submitted multiple health care request and
10 grievance complaints and medical personnel continued the same course [*sic*] of treatment
11 determined to be the actual cause of Saddozai’s chronic constipation and abdominal pain,”
12 Dkt. No. 15 at 6, Plaintiff only submitted two inmate request forms on June 14, 2016,
13 neither of which involved the course of treatment of his chronic constipation and
14 abdominal pain. Dkt. No. 46 at 11; Sheng Decl., Exs. K, L, Dkt. Nos. 44-8, 44-9.
15 Furthermore, Defendants assert that the next time Plaintiff was seen by Correctional
16 Health on June 23, 2016, it was noted that he refused his Tamulosin (medication to
17 facilitate urination) for eight consecutive nights and also refused his Docusate (stool
18 softener) for seven nights, with no reason given for the refusal. Dkt. No. 46 at 11; Sheng
19 Decl., Ex. M, Dkt. No. 44-10. Based on this sequence of events, Defendants assert that
20 Plaintiff cannot prove deliberate indifference to his medical needs arising from his June 11,
21 2016 complaints. Dkt. No. 46 at 11.

22 Defendants also assert that Plaintiff was served with basic written discovery in
23 order to develop facts beyond the vague allegations of the amended complaint, but that as
24 of the date of the filing of their motion, Plaintiff failed to respond to any of the discovery
25 requests. Dkt. No. 46 at 12; Sheng Decl., Exs. A through F, Dkt. Nos. 46-2 through 46-7.
26 Defendants’ discovery included Requests for Admissions on all elements of Plaintiff’s
27 liability and damages claims. Sheng Decl., Ex. E, F. Defendants assert that for example,
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1 Plaintiff was asked to admit facts such as that Deputies Lomu and Copeland did not act
2 with deliberate indifference to Plaintiff’s serious medical needs, that Plaintiff’s Eighth
3 Amendment rights were not violated, and that Plaintiff has not sustained any damages.
4 Dkt. No. 46 at 12. Defendants assert that because Plaintiff failed to respond to these
5 requests at all, they have been automatically deemed admitted. *Id.*, citing Fed. R. Civ. P.
6 36(a)(3); *O’Bryant v. Allstate Ins. Co.* (D CT 1985) 107 FRD 45, 48; *Federal Trade*
7 *Comm’n v. Medicor, LLC* (CD CA 2002) 217 F.Supp.2d 1048, 1053.

8 In opposition, Plaintiff asserts that Defendant Copeland failed to provide a
9 declaration. Dkt. No. 54 at 3. He asserts that a reasonable jury could find for him based
10 on the facts in his declaration. *Id.* at 7. Defendants assert in reply that the evidence
11 provided by Plaintiff in his declaration is insufficiently probative to raise a triable issue of
12 material fact for his Eighth Amendment claim of deliberate indifference. Dkt. No. 59 at 4.
13 At best, Defendants assert, his evidence sets forth a difference of opinion regarding the
14 course of his treatment, and that a mere difference of medical opinion regarding the ideal
15 course of treatment is insufficient, as a matter of law, to establish deliberate indifference in
16 violation of the Eighth Amendment. *Id.* at 5.

17 The Court first addresses the issue of Defendant’s Request for Admissions.
18 Plaintiff’s opposition is silent with respect to Defendants’ argument that his failure to
19 respond to their request for admissions means those admissions are deemed admitted under
20 Rule 36(a)(3). Dkt. No. 54. Plaintiff does not deny that he received Defendants’ request
21 for admissions along with other discovery requests. *Id.* Rather, he merely repeats the
22 allegations from his amended complaint and rests on his declaration.

23 Rule 36 serves two vital purpose: “first to facilitate proof with respect to issues that
24 cannot be eliminated from the case, and secondly, to narrow the issues by eliminating that
25 that can be.” Fed. R. Civ. P. 36, advisory committee note; *Conlon v. U.S.*, 474 F.3d 616,
26 622 (9th Cir. 2007). Rule 36 provides several ways to respond to a request for admissions,
27 including making a specific denial, providing a detailed explanation why the answering
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1 party cannot truthfully admit or deny a request, or objecting to a request. Fed. R. Civ. P.
2 36(a)(4). Lastly, if the time for responding has passed, a party can move for withdrawal or
3 amendment under Rule 36(b). Plaintiff made none of the appropriate responses under Rule
4 36(a), and there is no indication that he had insufficient opportunity to do so. Nor has
5 Plaintiff moved for withdrawal or amendment under Rule 36(b), even after having notice
6 of this issue in Defendants’ summary judgment motion. Accordingly, Defendant
7 Copeland’s request for admissions, Dkt. No. 46-7, is deemed admitted under Rule
8 36(a)(3), and may be relied on as the basis for granting summary judgment. *Conlon*, 474
9 F.3d at 621 (citing *O’Campo v. Hardisty*, 262 F.2d 621, 624 (9th Cir. 1958)).

10 Based on the evidence submitted and viewing it in the light most favorable to
11 Plaintiff, the Court finds there is an absence of a genuine issue of material fact. In
12 response to Defendants’ motion, Plaintiff must show more than the mere existence of a
13 “scintilla of evidence” or some “metaphysical doubt” as to the material facts at issue. *In*
14 *Re Oracle Corporation Securities Litigation*, 627 F.3d at 387. He must come forth with
15 evidence from which a jury could reasonably render a verdict in his favor. *Id.* In
16 opposition, Plaintiff asserts the following allegations in his declaration: (1) on or about
17 June 11, 2016, Defendant Copeland refused to call medical to treat his complaints of
18 abdominal pain and chronic constipation; (2) Defendant Copeland “followed the same
19 course of inaction the following day,” causing his condition to worsen; (3) Plaintiff filed
20 medical slips and complaints against Defendant Copeland which went unanswered; (4)
21 there were no full time physicians available at the facility; and (5) Defendant Copeland
22 would not call paramedics in response to Plaintiff’s requests for “emergency help” for his
23 severe abdominal pain and chronic constipation. Dkt. No. 54 at 35-36. The Court
24 discusses any existing disputes and the materiality of each allegation.

25 With respect to the first allegation, Plaintiff is vague as to exactly when during June
26 11, 2016, Defendant Copeland allegedly refused to call medical. At the same time,
27 Plaintiff does not dispute Defendants’ evidence showing that he received medical
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1 treatment at the request of an unnamed deputy at 9:00 a.m. on June 11, 2016, and then
2 another follow-up visit at around noon. *See supra* at 5. Even if the Court assumes
3 Defendant Copeland refused to call medical at some point on June 11, 2016, either before
4 9:00 a.m. or at some time after 12:15 p.m., Plaintiff has admitted that Defendant Copeland
5 promptly forwarded his request for medical attention to the appropriate personnel and that
6 Defendant Copeland’s response to his request for medical attention was not deliberately
7 indifferent. Dkt. No. 46-7 at 3-4, Request for Admission Nos. 3, 9. Plaintiff also admitted
8 that he did not have a serious medical need when he complained to Defendant Copeland
9 about his symptoms, as alleged in his complaint. *Id.*, Request for Admission No. 2.
10 Accordingly, the first allegation, even if true, is immaterial. Plaintiff has failed to establish
11 a genuine dispute of material fact because when he asked Defendant Copeland for medical
12 attention, he did not have a serious medical need, and even if Defendant Copeland refused
13 to contact medical at one time, there is no dispute that he did contact medical at some time
14 during the day and was not deliberately indifferent.

15 With respect to the second allegation that Defendant Copeland’s “same course of
16 inaction the following day” caused his condition to worsen, Plaintiff again fails to establish
17 the existence of a genuine dispute of material fact. As discussed in the previous paragraph,
18 Plaintiff has failed to establish the existence of a genuine dispute of material fact that
19 Defendant Copeland acted with deliberate indifference on the day of June 11, 2016.
20 Accordingly, Plaintiff cannot establish Defendant Copeland acted with deliberate
21 indifference based on conduct from the day before when that conduct was not deliberately
22 indifferent. Furthermore, Plaintiff admitted that he did not suffer: 1) a tangible residual
23 injury, 2) further significant injury, or 3) further unnecessary and wanton infliction of pain
24 as a result of Defendant Copeland’s conduct. *Id.*, Request for Admission Nos. 4, 5, 6. He
25 also admits that the alleged delay in medical treatment that he attributed to Defendant
26 Copeland did not lead to further injury. *Id.*, Request for Admission No. 8. Accordingly,
27 the allegation that Defendant Copeland’s conduct on the following day caused Plaintiff’s
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1 condition to worsen does not raise a genuine issue of material fact.

2 With respect to the third allegation that Plaintiff filed complaints and medical slips
3 that went unanswered, it is immaterial. That factual allegation would only be evidence that
4 Plaintiff made such allegations at or near the time, not that Defendant Copeland acted with
5 deliberate indifference. The fourth allegation that there is no full-time physician available
6 at the facility is also immaterial. Plaintiff admitted that Defendant Copeland promptly
7 forwarded Plaintiff's request for medical attention to the appropriate personnel. Dkt. No.
8 46-7 at 4, Request for Admission No. 9. Furthermore, the undisputed evidence shows that
9 there was on-site medical staff available, and that a nurse saw Plaintiff twice on the day at
10 issue and provided medical treatment. *See supra* at 5-6. Accordingly, the lack of a full-
11 time physician is immaterial on the issue of whether Defendant Copeland acted with
12 deliberate indifference for failing to call an ambulance when there was medical treatment
13 available at the prison.

14 Lastly, the fifth allegation that Defendant Copeland would not call paramedics in
15 response to Plaintiff's requests for "emergency help" for his severe abdominal pain and
16 chronic constipation does not raise a genuine dispute of material fact. Firstly, this
17 allegation is vague as Plaintiff makes no explanation as to when this refusal to call the
18 paramedics occurred. In addition, Plaintiff admits that Defendant Copeland promptly
19 forwarded his request for medical attention to the appropriate personnel. Dkt. No. 46-7 at
20 4, Request for Admission No. 9. As such, the fact that Defendant Copeland brought
21 Plaintiff's medical complaints to the attention of "appropriate personnel," e.g., onsite
22 medical staff instead of calling the paramedics does not render his actions deliberately
23 indifferent. Rather, as Defendants assert, Plaintiff's evidence sets forth a difference of
24 opinion about the course of treatment, Dkt. No. 59 at 5, which does not give rise to a §
25 1983 claim. *See Franklin*, 662 F.2d at 1344.

26 Based on the foregoing, Defendants have established the absence of a genuine issue
27 of material fact with regard to the Eighth Amendment claim against Defendant Copeland.

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1 See *Celotex Corp.*, 477 U.S. at 323. In response, Plaintiff has failed to identify with
2 reasonable particularity the evidence that precludes summary judgment, *id.* at 324;
3 *Keenan*, 91 F.3d at 1279, or to come forth with evidence from which a jury could
4 reasonably render a verdict in his favor, *In re Oracle Corporation Securities Litigation*,
5 627 F.3d at 387; *Liberty Lobby*, 477 U.S. at 25. Accordingly, Defendant Copeland is
6 entitled to summary judgment on this claim. *Celotex Corp.*, 477 U.S. at 323.
7


8 **CONCLUSION**

9 For the reasons stated above, Defendants David Lomu and Zachary Copeland's
10 motion for summary judgment is **GRANTED**. Dkt. No. 46. The Eighth Amendment
11 claims against them are **DISMISSED with prejudice**.⁸

12 This order terminates Docket No. 46.

13 **IT IS SO ORDERED.**

14 **Dated: __August 21, 2020__**


BETH LABSON FREEMAN
United States District Judge

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25 Order Granting MSJ
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27 ⁸ Because the Court finds no constitutional violation occurred, it is not necessary to discuss
28 Defendants' qualified immunity argument.