

1 irreparable harm if he does not receive Linzess, and because he has not shown that he is likely to
2 succeed on the merits of his leg or foot issues.

3 Santacruz also requests the defendants provide him with medical care that “conforms
4 with the actual free world standards” and is “compatible with the concept(s) of human dignity.”
5 ECF No. 2-2 at 5-6. I deny these requests because they are not narrowly tailored. Lastly,
6 Santacruz requests that the defendants “stop their overt discrimination(s) against plaintiff” based
7 on his disabilities. I deny this request because his FAC does not have a claim based on the
8 Americans with Disabilities Act (ADA), so he is unlikely to succeed on the merits of this claim.

9 **I. LEGAL STANDARDS**

10 **A. Injunctive Relief**

11 The legal standard for a temporary restraining order is substantially identical to the
12 standard for a preliminary injunction. *Stuhlbarg Int’l Sales Co., Inc. v. John D. Brush & Co.,*
13 *Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). To obtain a preliminary injunction, a plaintiff must
14 demonstrate: (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm,
15 (3) the balance of hardships favors the plaintiff, and (4) an injunction is in the public interest.
16 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Alternatively, under the sliding
17 scale approach, the plaintiff must demonstrate (1) serious questions on the merits, (2) a
18 likelihood of irreparable harm, (3) the balance of hardships tips sharply in the plaintiff’s favor,
19 and (4) an injunction is in the public interest. *All. For the Wild Rockies v. Cottrell*, 632 F.3d
20 1127, 1135 (9th Cir. 2011). Under either test, a preliminary injunction is “an extraordinary and
21 drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the
22 burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (simplified).
23 Mandatory injunctions that order a party to take specific action are “particularly disfavored, and

1 should not be issued unless the facts and law clearly favor the moving party.” *Anderson v. United*
2 *States*, 612 F.2d 1112, 1114 (9th Cir. 1979) (simplified).

3 The Prison Litigation Reform Act of 1995 (PLRA) further restricts the availability of
4 injunctive relief concerning prison conditions. *Armstrong v. Newsom*, 58 F.4th 1283, 1293 (9th
5 Cir. 2023). I cannot grant injunctive relief unless I find “that such relief is narrowly drawn,
6 extends no further than necessary to correct the violation of the Federal right, and is the least
7 intrusive means necessary to correct the violation of the Federal right.” *Id.* (quoting 18 U.S.C.
8 § 3626(a)(1)(A)).

9 **B. Eighth Amendment**

10 The Eighth Amendment prohibits the imposition of cruel and unusual punishment and
11 “embodies broad and idealistic concepts of dignity, civilized standards, humanity, and decency.”
12 *Estelle v. Gamble*, 429 U.S. 97, 102 (1976) (quotation omitted). “It is settled law that deliberate
13 indifference to serious medical needs of prisoners violates the Eighth Amendment.” *Jackson v.*
14 *McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996) (citing *Estelle*, 429 U.S. at 104). “First, the plaintiff
15 must show a serious medical need by demonstrating that failure to treat a prisoner’s condition
16 could result in further significant injury or the unnecessary and wanton infliction of pain.” *Jett v.*
17 *Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (quotation omitted). “Second, the plaintiff must
18 show the defendant’s response to the need was deliberately indifferent” by showing “(a) a
19 purposeful act or failure to respond to a prisoner’s pain or possible medical need and (b) harm
20 caused by the indifference.” *Id.*
21 “Indifference may appear when prison officials deny, delay or intentionally interfere with
22 medical treatment, or it may be shown by the way in which prison physicians provide medical
23 care.” *Id.* (quotation omitted). When a prisoner alleges that deliberate indifference is shown by

1 the delay of medical treatment, the prisoner must show that the delay led to further injury. *See*
2 *Shapley v. Nevada Bd. of State Prison Comm'rs*, 766 F.2d 404, 407 (9th Cir. 1985) (holding that
3 “mere delay of surgery, without more, is insufficient to state a claim of deliberate medical
4 indifference”). If the prison’s medical staff is not competent to examine, diagnose, and treat
5 inmates’ medical problems, they must “refer prisoners to others who can.” *Hoptowit v. Ray*, 682
6 F.2d 1237, 1253 (9th Cir. 1982), *abrogated on other grounds by Sandin v. Conner*, 515 U.S. 472
7 (1995). “A mere difference of medical opinion is insufficient, as a matter of law, to establish
8 deliberate indifference.” *Toguchi v. Chung*, 391 F.3d 1051, 1058 (9th Cir. 2004) (simplified).
9 “Rather, to prevail on a claim involving choices between alternative courses of treatment, a
10 prisoner must show that the chosen course of treatment was medically unacceptable under the
11 circumstances, and was chosen in conscious disregard of an excessive risk to the prisoner’s
12 health.” *Id.* (simplified).

13 **C. Equal Protection**

14 The Equal Protection Clause of the Fourteenth Amendment is essentially a direction that
15 all similarly situated persons be treated equally under the law. *City of Cleburne, Tex. v. Cleburne*
16 *Living Ctr.*, 473 U.S. 432, 439 (1985). To state an equal protection claim, a plaintiff must allege
17 facts demonstrating that the defendants acted with the intent and purpose to discriminate against
18 him based upon membership in a protected class, or that the defendants purposefully treated him
19 differently than similarly situated individuals without any rational basis for the disparate
20 treatment. *Lee v. City of Los Angeles*, 250 F.3d 668, 686 (9th Cir. 2001); *see also Vill. of*
21 *Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). A plaintiff may assert an equal protection
22 claims under a “class of one” theory, where the plaintiff alleges that he “has been intentionally
23 treated differently from others similarly situated and that there is no rational basis for the

1 difference in treatment.” *Olech*, 528 U.S. at 564. A “class-of-one plaintiff must be similarly
2 situated to the proposed comparator in all material respects.” *SmileDirectClub, LLC v. Tippins*,
3 31 F.4th 1110, 1123 (9th Cir. 2022).

4 **II. DISCUSSION**

5 Santacruz contends the defendants have been deliberately indifferent to his serious
6 medical needs. He argues that his medical conditions and suffering were known to the
7 defendants because he reported his conditions upon entering NDOC custody and because he has
8 written numerous kites to the defendants. He argues that the lack of adequate treatment has
9 caused him extreme pain and that he could suffer the “complete loss of his foot or leg” if
10 professional care is not provided immediately. ECF No. 2-2 at 4. He alleges that he “was
11 prescribed a [sic] special surgeries/medical diets, and several medications to treat his numerous
12 illnesses after being diagnosed several years ago” but had “little to [no] success with receiving
13 any of the afore-stated” care. *Id.*

14 The defendants respond that Santacruz cannot establish a likelihood of success on the
15 merits for either of his claims. They argue his claims are barred by the two-year statute of
16 limitations; he has not shown deliberate indifference because his medical records show that he
17 receives extensive care; and he has not shown that the other inmates who allegedly received a
18 procedure that he was denied are similarly situated to him. They provide an exhibit containing
19 Santacruz’s “Relevant Medical Records” but do not provide any medical records after June 24,
20 2022.¹ See ECF Nos. 19-1; 17 at 11.

21
22 ¹ The defendants provided over 600 pages of medical records in no discernable order.
23 Unexplained, unorganized exhibits do not assist me in resolving issues. The defendants also do
not explain why they did not provide records from after June 24, 2022, even though Santacruz
filed his complaint in this case in February 2023. See ECF Nos. 2, 4.

1 **A. Request for Medical Care Prescribed by Outside Doctors and Specialist**

2 Santacruz first requests that the defendants provide him with the care prescribed by “the
3 outside doctors” and “specialist.” ECF No. 2-2 at 5. He alleges that he was “prescribed specific
4 treatments and surgeries by medical doctors whom are specialist[s] in their [respective] fields,”
5 that this medical care is “necessary,” and defendants “have failed and or refused to provide” this
6 care. *Id.* at 7-8. He alleges that he could “suffer the complete loss of his foot or leg” if the
7 defendants fail to “take corrective medical measure[s] now.” *Id.* at 4. His motion does not name
8 the allegedly prescribed treatments, but based on the allegations in his FAC I infer that he wants
9 to receive 1) Linzess, a prescription drug, and 2) corrective procedures for the leg length
10 difference or foot drop.² *See* ECF No. 6 at 3, 5.

11 ***1. Linzess***

12 Santacruz alleges that a specialist prescribed him Linzess “for his stomach problems,” but
13 defendant Betty Omandac denied him that drug “because ‘the state does not provide that.’” ECF
14 No. 6 at 3. The defendants argue that Santacruz has not been prescribed Linzess recently, and
15 that he has requested and taken other constipation remedies. ECF No. 17 at 8.

16 Santacruz’s medical records show that he kited about stomach pain and chronic
17 constipation in September 2017 and March 2018, and specifically noted that his current
18 medication, including milk of magnesia, does not always help. ECF No. 19-1 at 174, 138. In
19 May 2018, he had a diagnostic exam for his constipation and the result was an “[u]nremarkable
20 abdomen radiograph.” *Id.* at 601. In March 2019, he was referred to a “GI specialist” after

21 _____
22 ² Because Santacruz was pro se at the time he filed his motion and FAC, I construe his
23 documents liberally. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007). This rule is “particularly
important in civil rights cases.” *Pouncil v. Tilton*, 704 F.3d 568, 575 (9th Cir. 2012) (quotation
omitted).

1 complaints of diarrhea and constipation. The specialist diagnosed him with altered bowel
2 function and ordered a colonoscopy, which he received in August 2019. *Id.* at 397, 400, 405,
3 491. At the follow up appointment after the colonoscopy on September 3, 2019, the outside
4 gastroenterology doctor prescribed Linzess for 30 days to treat the altered bowel function. *Id.* at
5 474-75, 477, 480. Although the medical record is not entirely clear, it appears that an NDOC
6 doctor requested Linzess for Santacruz as a non-formulary drug request, but a committee denied
7 it and an NDOC doctor prescribed him “MOM” instead. *See id.* at 476, 544. He continued to
8 receive milk of magnesia prescriptions through 2020 and 2021. *See, e.g., id.* at 289, 296, 385,
9 387.

10 I am concerned by the fact that NDOC referred Santacruz to an outside specialist but then
11 denied him the treatment prescribed by that specialist. The defendants have not explained why
12 the alternative drug is medically acceptable under the circumstances. However, I deny injunctive
13 relief as to receiving Linzess because Santacruz has not alleged or shown that he will suffer
14 irreparable harm if he does not receive it. He alleged only extreme back and neck pain and that
15 he could suffer the loss of his foot or leg, whereas Linzess was prescribed by a gastroenterologist
16 to treat altered bowel function.

17 **2. Leg Length Difference or Foot Drop**

18 Santacruz alleges that he has written many kites since 2017 to “correct [the] difference
19 between [his] two legs, to no avail” but “6 years later . . . [he] was finally referred to [a]
20 specialist who is doing the minimum.” ECF No. 6 at 5. He knows of “two people with
21 neurological foot drop like [him]” who “were treated at a reasonable time.” *Id.* Santacruz alleges
22 that “[t]hey received their shoes, etc.” *Id.* He alleges that defendant Omandac “denied [him] . . .
23 for this procedure while she approved” another inmate’s procedure. *Id.* Santacruz does not

1 “understand why [he’s] being denied treatment afforded to other inmates.” *Id.* He claims that if
2 he was afforded that treatment, “it would have corrected the length issue and the foot drop issue,
3 therefore preventing back and neck damage” and other pain. *Id.* The defendants argue that
4 though they cannot disclose the health information of other inmates, it is likely that Santacruz’s
5 medical circumstances are different than those of the other inmates. ECF No. 17 at 9. The
6 defendants also argue that Santacruz’s neurological foot drop is “self-diagnosed.” *Id.* at 2, 8.

7 It is unclear why the defendants refer to Santacruz’s foot drop as self-diagnosed. His
8 medical records show that many NDOC medical providers have recognized that Santacruz has a
9 foot drop and nerve damage. *See, e.g.*, ECF No. 19-1 at 399, 444, 462, 465, 466, 485. At a
10 previous NDOC facility, doctors prescribed and Santacruz received ankle braces and special
11 shoes from an outside vendor for his foot drop. *Id.* at 443, 465, 466. When Santacruz was
12 transferred to SDCC in January 2017, he had a brace, special shoes, and “foot/ankle support” as
13 medical devices. *Id.* at 462. At SDCC, in April 2017, a doctor again prescribed him an ankle
14 brace and specialty shoes for his foot drop. *Id.* at 444. Santacruz received outside-vendor shoes
15 in July 2017. *Id.* at 154, 460. In February 2018, a doctor prescribed and Santacruz received a
16 cane in response to his complaints of pain and difficulty walking due to his leg length difference.
17 *Id.* at 461, 525. In September 2020, a doctor conducted a diagnostic exam of his spine and found
18 that “alignment is within normal limits.” *Id.* at 599. In December 2021, a doctor ordered that it
19 was “medically approved [for Santacruz] to obtain outside vendor shoes” because “RLE is
20 shorter than LLE” and “foot drop.” *Id.* at 450. Santacruz received another pair of outside-vendor
21 shoes in December 2021. *Id.* at 449, 514. In addition, between 2017 and 2020 Santacruz
22 regularly received “IBU pain pack” prescriptions. *Id.* at 289, 297, 333, 338.

23

1 Nevertheless, it is unlikely that Santacruz can show deliberate indifference as to his leg
2 length difference or foot drop. Multiple medical providers have seen Santacruz for this condition
3 and have prescribed him foot and ankle braces, special shoes, and a cane, but not a surgical
4 procedure. He has not pointed to any evidence that these treatment methods are medically
5 unacceptable under the circumstances. Therefore, Santacruz is unlikely to show that the
6 defendants failing to provide a corrective procedure is medically unacceptable, rather than a
7 mere difference of medical opinion.³

8 Santacruz has also not shown a likelihood of success on his equal protection claim.
9 Because Santacruz does not allege that he is part of a protected class, I apply the “class of one”
10 rule. Santacruz does not allege what treatments or procedures the other inmates received except
11 that they “received their shoes, etc.” ECF No. 6 at 5. However, Santacruz also received outside-
12 vendor shoes, as well as braces, a cane, a diagnostic study of his neck and back, and IBU pain
13 packs. Santacruz does not allege with specificity how long it took the other inmates to be treated
14 compared to how long it took him to be treated. Nor does he allege that the other two inmates
15 have a leg length issue. Thus, Santacruz has not shown that he is likely to succeed in showing
16 that the other inmates are similarly situated to him in all material respects or that he was treated
17 differently.

18 It appears unlikely for Santacruz to succeed on either his Eighth Amendment or equal
19 protection claims, so I deny his request for injunctive relief as to receiving corrective procedures
20 for his leg length issue or foot drop.

21 _____
22 ³ The medical records submitted by the defendants may not be complete because they have not
23 provided any records after June 24, 2022. If evidence exists that supports Santacruz’s allegation
that he was prescribed specific procedures that have been denied or delayed, he may file another
properly supported motion for injunctive relief.

