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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Galen Lloyd Houser,

Plaintiff,

vs.

Caron Grant-Ellis, et al.,

Defendants.

No. CV 09-0937-PHX-GMS (ECV)

ORDER

Plaintiff Galen Lloyd Houser brought this civil rights action under 42 U.S.C. § 1983 against Nurse Caron Grant-Ellis and Physician’s Assistant Nick Salyer, medical personnel at the Arizona Department of Corrections (ADC) Florence Unit Complex (Doc. 9).¹ Before the Court are Defendants’ Motion for Summary Judgment (Doc. 52) and Plaintiff’s Motion for Appointment of Counsel (Doc. 64).

The Court will grant Defendants’ motion, deny Plaintiff’s motion as moot, and terminate the action.

I. Background

In his First Amended Complaint, Plaintiff alleged that he suffers from severe psoriasis, and that upon his arrival at the Florence South Unit following hospitalization for his condition, he was supposed to be treated pursuant to a specific treatment plan that

¹Upon screening, the Court dismissed Baird and McMorran as Defendants (Doc. 10).

1 required medications, blood tests, and constant monitoring (Doc. 9 at 4).² Plaintiff claimed
2 that Defendants failed to provide the prescribed treatment plan or respond to repeated appeals
3 for treatment. Plaintiff alleged that as a result, he suffered painful infections and was
4 rehospitalized (*id.*).

5 Defendants now move for summary judgment on the grounds that (1) neither
6 Defendant was deliberately indifferent to Plaintiff’s medical needs, (2) Plaintiff did not show
7 a substantial injury, (3) the Eleventh Amendment bars Plaintiff’s official-capacity claims, and
8 (4) Plaintiff’s punitive damages claim is unsupported (Doc. 52). Plaintiff opposes
9 Defendants’ motion (Doc. 56).

10 **II. Legal Standards**

11 **A. Summary Judgment**

12 A court must grant summary judgment “if the movant shows that there is no genuine
13 dispute as to any material fact and the movant is entitled to judgment as a matter of law.”
14 Fed. R. Civ. P. 56(a); see also *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). Under
15 summary judgment practice, the movant bears the initial responsibility of presenting the basis
16 for its motion and identifying those portions of the record, together with affidavits, that it
17 believes demonstrate the absence of a genuine issue of material fact. *Celotex*, 477 U.S.
18 at 323.

19 If the movant meets its initial responsibility, the burden then shifts to the nonmovant
20 to demonstrate the existence of a factual dispute and that the fact in contention is material,
21 i.e., a fact that might affect the outcome of the suit under the governing law, and that the
22 dispute is genuine, i.e., the evidence is such that a reasonable jury could return a verdict for
23 the nonmovant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 250 (1986) ; see *Triton*
24 *Energy Corp. v. Square D. Co.*, 68 F.3d 1216, 1221 (9th Cir. 1995). The nonmovant need
25 not establish a material issue of fact conclusively in its favor, *First Nat’l Bank of Ariz. v.*
26 *Cities Serv. Co.*, 391 U.S. 253, 288-89 (1968); however, it must “come forward with specific
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28 ²Plaintiff is currently housed in the Arizona State Prison Complex-Winchester Unit
in Tucson, Arizona (Doc. 18).

1 facts showing that there is a genuine issue for trial.” Matsushita Elec. Indus. Co., Ltd. v.
2 Zenith Radio Corp., 475 U.S. 574, 587 (1986) (internal citation omitted); see Fed. R. Civ. P.
3 56(c)(1).

4 At summary judgment, the judge’s function is not to weigh the evidence and
5 determine the truth but to determine whether there is a genuine issue for trial. Anderson, 477
6 U.S. at 249. In its analysis, the court must believe the nonmovant’s evidence, and draw all
7 inferences in the nonmovant’s favor. Id. at 255.

8 **B. Eighth Amendment**

9 To prevail on an Eighth Amendment medical care claim, a prisoner must demonstrate
10 “deliberate indifference to serious medical needs.” Jett v. Penner, 439 F.3d 1091, 1096 (9th
11 Cir. 2006) (citing Estelle v. Gamble, 429 U.S. 97, 104 (1976)). There are two prongs to the
12 deliberate-indifference analysis. First, a prisoner must show a “serious medical need.” Jett,
13 439 F.3d at 1096 (citations omitted). A “‘serious’ medical need exists if the failure to treat
14 a prisoner’s condition could result in further significant injury or the ‘unnecessary and
15 wanton infliction of pain.’” McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992),
16 overruled on other grounds, WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir.
17 1997) (en banc) (internal citation omitted). Examples of a serious medical need include
18 “[t]he existence of an injury that a reasonable doctor or patient would find important and
19 worthy of comment or treatment; the presence of a medical condition that significantly
20 affects an individual’s daily activities; or the existence of chronic and substantial pain.”
21 McGuckin, 974 F.2d at 1059-60.

22 Second, a prisoner must show that the defendant’s response to that need was
23 deliberately indifferent. Jett, 439 F.3d at 1096. This second prong is met if the prisoner
24 demonstrates (1) a purposeful act or failure to respond to a prisoner’s medical need and
25 (2) harm caused by the indifference. Id. Prison officials are deliberately indifferent to a
26 prisoner’s serious medical needs if they deny, delay, or intentionally interfere with medical
27 treatment. Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990). But a delay in
28 providing medical treatment does not constitute an Eighth Amendment violation unless the

1 delay was harmful. Hunt v. Dental Dep't, 865 F.2d 198, 200 (9th Cir. 1989) (citing Shapley
2 v. Nevada Bd. of State Prison Comm'rs, 766 F.2d 404, 407 (9th Cir. 1985) (per curiam)).

3 **III. Facts**

4 With their summary judgment briefing, the parties each submit an extensive, separate
5 Statement of Facts, which, together, are supported by approximately 400 pages of exhibits,
6 including numerous Health Needs Requests (HNRs) seeking prescription refills and
7 appointments with physicians, who are referred to as health care providers (HCP);³ medical
8 records, and grievance documents (Doc. 53, Defs.' Statement of Facts (DSOF); Doc. 57, Pl.'s
9 Statement of Facts (PSOF)). The parties do not dispute many of the factual assertions, which
10 document in great detail Plaintiff's healthcare from 2006-2009 (id.).

11 **A. Undisputed Facts**

12 The relevant undisputed factual assertions are summarized as follows:

13 Psoriasis is a chronic, non-curable skin condition that causes rapid skin cell
14 reproduction resulting in red, dry patches of thickened skin (DSOF ¶ 4; PSOF ¶ 4). Psoriasis
15 treatments attempt to interrupt the cycle that causes an increased production of skin cells,
16 thereby reducing inflammation and plaque formation and smoothing the skin. Treatment
17 usually involves a combination of topical medication—such as corticosteroids—and oral
18 medications—commonly methotrexate (DSOF ¶ 5; PSOF ¶ 5). Side effects of long-term
19 methotrexate treatment can include liver damage, cancer, and a reduced white blood cell
20 count (DSOF ¶ 6; PSOF ¶ 6). Regular blood tests are taken to ensure that the drug is safely
21 processed by the liver and blood cells (id.).

22 At the ASPC-Florence South Unit, Salyer was Plaintiff's primary HCP from
23 December 21, 2006 through October 23, 2009, at which time Plaintiff was transferred to
24 another prison complex (DSOF ¶ 16; PSOF ¶ 16). From 2005 until July 2009, Grant-Ellis
25 was assigned to ASPC-Florence and worked as the Correctional Registered Nurse Supervisor
26 (DSOF ¶ 2; PSOF ¶ 2).

28 ³Physician's assistants—like Salyer—and nurse practitioners are also considered
HCPs (Doc. 53, Ex. B, Grant-Ellis Decl. ¶ 2).

1 With respect to medical care at the South Unit, when an inmate needs non-emergency
2 medical care or treatment, he must fill out an HNR, which is reviewed by the nursing staff,
3 who then either (1) respond as appropriate, (2) make an appointment to the nurses' or
4 doctors' schedule, (3) refer the HNR for a chart review, or (4) refer the HNR for review by
5 an HCP (DSOF ¶ 7; PSOF ¶ 7).

6 When an HCP prescribes a medication, the HCP indicates in his or her notes how
7 many refills are needed, if any (DSOF ¶ 12; PSOF ¶ 12 (in part)⁴). Then, a nurse faxes the
8 note to the pharmacy, which is responsible for filling the prescription (DSOF ¶ 12). The
9 pharmacy sends the filled prescription back to the medical unit, and the nursing staff
10 distributes it to the inmate (*id.*). If an inmate needs a refill, he must submit an HNR to the
11 pharmacy (*id.*). If the inmate needs more medication but does not have a refill, he must
12 submit an HNR to request to see an HCP, who may then reorder the medication (*id.*).

13 Plaintiff arrived at the South Unit on December 21, 2006 (Doc. 53, Ex. A at 1 (ADC
14 Inmate Record)). Salyer examined Plaintiff on December 28, 2006; Salyer noted that
15 Plaintiff had been hospitalized for a psoriasis flare prior to his incarceration, but he was now
16 okay (DSOF ¶ 18; PSOF ¶ 18 (in part)). Plaintiff was already taking methotrexate in
17 subsequently lower doses as well as prednisone—a synthetic corticosteroid drug (*id.*). Salyer
18 prescribed methotrexate weekly in subsequently lower doses for four weeks (*id.*). He also
19 prescribed psoriasis shampoo; Lidex cream (a topical adrenocortical steroid); triamcinolone
20 (TAC) cream (a topical steroid); Carmol lotion for six months; Pepcid; Tums; extra-strength
21 Tylenol; and Phenergan (*id.*). Salyer further ordered that blood tests be done in four to six
22 weeks (*id.*).

23 During the next three years, Salyer continued to prescribe these medications to
24 Plaintiff in varying doses, and at different times he also prescribed ointments, Flexeril,
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26 ⁴In his PSOF, Plaintiff states that he disagrees with DSOF ¶ 12 (PSOF ¶ 12). But he
27 does not explicitly dispute the prison's established process for prescribing, filling, and
28 refilling prescriptions. Instead, Plaintiff asserts that if there is a problem related to the
pharmacy, and prison medical staff are aware of the problem but take no corrective action,
it constitutes a denial of treatment (*id.*).

1 Kenalog (a steroid injection), Medrol Dosepack (an oral steroid), prednisone, antibiotics,
2 Prilosec, Meclomen (an anti-inflammatory drug), Inderal (a beta-blocker), and Cafergot (for
3 migraines) (see DSOF ¶¶ 23, 29, 37, 48, 54, 61, 69, 80; PSOF ¶¶ 23 (in part), 29, 37 (in part),
4 48 (in part), 54, 61, 69, 80 (in part)).

5 Plaintiff regularly submitted HNRs requesting prescription refills for these various
6 medications; he averaged 2-5 HNRs for refills per month (DSOF ¶¶ 20, 24, 30, 39, 44, 47,
7 59, 63, 65, 70, 75, 79, 81; PSOF ¶¶ 20, 24, 30, 39, 44, 47, 59, 63, 65, 70, 75 (in part), 79, 81
8 (in part)). Plaintiff also regularly submitted HNRs requesting to see a physician about
9 renewing medications (DSOF ¶¶ 26, 33, 73, 85; PSOF ¶¶ 26 (in part), 33, 73, 85); because
10 his medications were not being filled as ordered (DSOF ¶ 22; PSOF ¶ 22); he was not getting
11 refills (DSOF ¶¶ 38, 42, 44, 88, 90; PSOF ¶¶ 38, 42, 44, 88, 90); and he was not receiving
12 blood tests as ordered (DSOF ¶¶ 34, 36 38, 42, 68; PSOF ¶¶ 34, 36, 38, 42, 68 (in part)).

13 On December 27, 2007, Plaintiff was admitted to St. Mary's Hospital (DSOF ¶ 52;
14 PSOF ¶ 52). He was discharged three days later after treatment for a suspected migraine,
15 abdominal pain, psoriasis, and anemia (id.).

16 **B. Disputed Issues**

17 The parties dispute whether Grant-Ellis was responsible for determining which
18 inmates were approved for the one-day-a-week doctors' schedule and whether she was aware
19 of the allegedly inadequate supply of medications and treatment for Plaintiff but disregarded
20 the problem (Doc. 56 at 2). They also dispute whether Salyer was aware of the allegedly
21 inadequate supply of medications and treatment for Plaintiff, whether he failed to take any
22 corrective action to address the situation or establish a new drug treatment, and whether
23 Salyer maintained Plaintiff's treatment plan or took any action to address the lack of blood
24 testing (id.).

25 26 **IV. Analysis**

27 The Court notes that Defendants make no argument that Plaintiff did not suffer from
28 a serious medical need. See Jett, 439 F.3d at 1096. Indeed, Defendants' own evidence

1 reflects that Plaintiff's condition warranted ongoing treatment, including prescription
2 medication and regular blood testing. Thus, the deliberate-indifference analysis turns on
3 whether Grant-Ellis and Salyer were deliberately indifferent to Plaintiff's serious medical
4 need.

5 **A. Grant-Ellis**

6 In her declaration, Grant-Ellis states that as the Correctional Registered Nurse
7 Supervisor, she was responsible for staffing and overseeing subordinate nursing staff and she
8 performed health assessments and triage of patients (Doc. 53, Ex. B, Grant-Ellis Decl. ¶ 2).
9 Her duties included referring inmates to be seen by HCPs; however, she did not actually
10 schedule inmates to be seen by an HCP (*id.*). But if an inmate had an emergency or a critical
11 medical need, Grant-Ellis could add the inmate to the doctors' schedule for immediate
12 treatment depending on the severity and urgency of the need (*id.* ¶ 5). In her position, she
13 did not dictate inmate medical care, order lab work, or prescribe medications (*id.* ¶ 3).

14 As to her involvement with Plaintiff's care, Grant-Ellis declares that it was limited.
15 She reviewed Plaintiff's HNR for refills in December 2006, and reviewed his chart a few
16 days later, at which time she sent his prescriptions to the pharmacy and sent the blood work
17 order to the lab (*id.* ¶¶ 9-10). In August 2007, she noted in Plaintiff's medical record that he
18 requested a renewal of two medications, and she placed his chart for review by an HCP (*id.*
19 ¶ 11). Grant-Ellis states that she saw Plaintiff on December 6, 2007, and he complained
20 about his deteriorating psoriasis and improper methotrexate regimen; she referred him for an
21 HCP appointment (*id.* ¶ 12). Around that same time, in early December 2007, Grant-Ellis
22 responded to a CO III who was investigating an inmate letter/grievance that Plaintiff filed
23 about medication; she told the CO III that she tried to call the pharmacy and got no answer
24 but she would contact the pharmacy again (*id.* ¶ 13). On December 12, 2007, following
25 Plaintiff's appointment with an HCP, Grant-Ellis reviewed Plaintiff's chart and confirmed
26 that his prescriptions were sent to the pharmacy (*id.* ¶ 14). She also responded to Plaintiff's
27 inmate letter regarding the lack of TAC for two weeks in late December 2007 (*id.* ¶ 15).
28 Finally, once in March 2008 and once in February 2009, Grant-Ellis received HNRs from

1 Plaintiff for refills; she faxed them both to the pharmacy (id. ¶¶ 16-17).

2 Defendants argue that this evidence precludes any finding of deliberate indifference
3 by Grant-Ellis (Doc. 52 at 6).

4 In response, Plaintiff cites to his First Amended Complaint and reiterates his claim
5 against Grant-Ellis; specifically, that he complained to her about his medication
6 approximately 10 times and that she scheduled inmates to see HCPs for emergencies and
7 general care (Doc. 56 at 8-9). According to Plaintiff, the evidence shows that Grant-Ellis
8 controlled who saw physicians and that she scheduled inmates “as it pleased her” (id. at 9).
9 He further contends that she ignored the problems with blood work lab orders and
10 prescription medication (id.). Lastly, he asserts that Grant-Ellis had more than limited
11 contact with Plaintiff; he states that she regularly handled his medical records and
12 prescription orders and failed to correct the problems that she knew existed with his
13 treatment (id.).

14 Plaintiff does not point to any specific documents within the hundreds of pages in the
15 record to support these contentions. On summary judgment, the Court is “not required to
16 comb the record to find some reason to deny a motion for summary judgment.” Carmen v.
17 San Francisco Unified Sch. Dist., 237 F.3d 1026, 1029 (9th Cir. 2001) (citation omitted);
18 Fed. R. Civ. P. 56(c)(3); see Huey v. UPS, Inc., 165 F.3d 1084, 1085 (7th Cir. 1999) (“judges
19 need not paw over the files without assistance from the parties”). Nonetheless, in giving
20 Plaintiff the benefit of any doubt, the Court has reviewed the documents Plaintiff submitted
21 and finds that copies of HNRs show that on a number of occasions, he did not receive timely
22 refills; that sometimes he had to make repeated written requests for the same medication
23 refills; and that sometimes he went days or weeks without some medications due to delays
24 (see e.g., Doc. 57, Attachs. 11, 13-16). Defendants do not refute Plaintiff’s claims regarding
25 these delays (see Doc. 61), and none of their evidence appears to show when prescription
26 medication was distributed to Plaintiff after it was filled by the pharmacy and sent to the
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1 medical unit (see Doc. 53, DSOF ¶7).⁵

2 Plaintiff's evidence also includes a number of grievance documents. In a February
3 2008 grievance response, the Facility Health Administrator acknowledged Plaintiff's
4 concerns about staff conduct and demeanor and informed Plaintiff that he will remind staff
5 "of the need to conduct themselves in a professional manner regarding patient care and
6 interactions" (*id.*, Attach. 25). In an April 2008 grievance response, prison staff
7 acknowledged that there was a previous mistake with Plaintiff's medication order (*id.*,
8 Attach. 21). There are a number of documents that specifically refer to Grant-Ellis: (1) in
9 a December 4, 2007 grievance, Plaintiff complained that Grant-Ellis permitted delays and
10 interruptions in the receipt of his prescription medications (*id.*, Attach. 11); (2) in an April 1,
11 2008 grievance document about failure to receive prescribed methotrexate and the lack of
12 blood testing, Plaintiff wrote that he discussed the issue with Grant-Ellis (*id.*, Attach. 14);
13 (3) in a February 2009 grievance, Plaintiff complained that dosages were incorrect and he
14 had not received methotrexate, and he wrote that he discussed these problems with Grant-
15 Ellis (*id.*, Attach. 20); (4) in a March 9, 2009 grievance, Plaintiff wrote that Grant-Ellis
16 confirmed that refill orders were handled improperly (*id.*); and (5) in a August 31, 2009
17 grievance, Plaintiff wrote that Grant-Ellis failed to order his prescription cream (*id.*, Attach.
18 24).

19 Viewing this evidence in the light most favorable to Plaintiff, Grant-Ellis was aware
20 or should have been aware of some of the problems Plaintiff encountered when trying to
21 obtain medication refills. But there is no evidence that Grant-Ellis was aware of every
22 delayed refill and blood test or that she should have been aware of these problems but refused
23 to acknowledge them. Moreover, the evidence shows that, at least on some occasions, she
24 responded to Plaintiff's concerns. In response to the December 2007 grievance, Grant-Ellis
25 contacted the pharmacy twice to follow-up on Plaintiff's refill (*id.*, Attach. 11; Doc. 53, Ex.
26 B, Grant-Ellis Decl. ¶ 13). To the extent that Grant-Ellis may not have timely responded to
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28 ⁵The HNR forms show only the date that a request for refill was faxed to the pharmacy
(see e.g., Doc. 53, Attachs. 11, 19).

1 some of the other refill delays, Plaintiff proffers no evidence that her conduct was more than
2 negligent, which is not actionable under § 1983. Toguchi v. Chung, 391 F.3d 1051, 1060-61
3 (9th Cir. 2004) (neither medical malpractice nor negligence is sufficient to establish a
4 constitutional violation); O’Loughlin v. Doe, 920 F.2d 614, 617 (9th Cir. 1990) (isolated
5 occurrences of neglect may constitute grounds for malpractice but they do not amount to a
6 constitutional violation).

7 Plaintiff alleges that he suffered infections on his leg due to delays in and interruption
8 of medication treatment, and he claims that had Grant-Ellis taken proper action and had he
9 received medications without interruption, he would not have been hospitalized in late
10 December 2007 (Doc. 56 at 12). But, again, Plaintiff does not cite to any specific evidence
11 in the record to support this claim. The records show that Grant-Ellis saw Plaintiff on
12 December 6, 2007; she states that she referred Plaintiff for an appointment with an HCP,
13 which occurred on December 12, 2007 (Doc. 53, DSOF ¶¶ 45, 48). Plaintiff disputes that
14 the HCP appointment resulted from Grant-Ellis’ referral; he claims that it occurred in
15 response to his grievance (Doc. 57, PSOF ¶¶ 45, 48). Even assuming that Grant-Ellis did not
16 set up the appointment with the HCP, it is immaterial because Plaintiff did see the HCP, and
17 Plaintiff does not dispute that Grant-Ellis reviewed Plaintiff’s chart following that
18 appointment and sent his prescriptions to the pharmacy (Doc. 53, DSOF ¶ 49; Doc. 57, PSOF
19 ¶ 49). Further, the hospital medical records do not include any information suggesting that
20 a disruption of medication or other delays in care led to the need for hospitalization (Doc. 57,
21 Attach. 12). Plaintiff’s sweeping, conclusory allegations that Grant-Ellis’ conduct led to his
22 hospitalization are insufficient to defeat summary judgment. See Rizzo v. Goode, 423 U.S.
23 362, 371, 377 (1976) (there must be an affirmative link between a defendant’s action and the
24 claimed deprivation); Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988) (to establish
25 deliberate indifference, the prisoner must establish individual fault).

26 On the record before the Court, there is no competent evidence to support Plaintiff’s
27 general allegation that Grant-Ellis “knowingly and deliberately limit[ed] [Plaintiff’s] access
28 to health care and failed to correct problems which she did know existed” (Doc. 56 at 9).

1 Carmen, 237 F.3d at 1028 (“a plaintiff’s belief that a defendant acted from an unlawful
2 motive, without evidence supporting that belief, is no more than speculation or unfounded
3 accusation about whether the defendant really did act from an unlawful motive”). The
4 summary judgment determination cannot be based on unsupported allegations and
5 speculation. See id.; Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). Accordingly,
6 although the Court is troubled by the difficulties that Plaintiff encountered when seeking
7 medication refills, there is no probative evidence to establish a genuine issue of material fact
8 that Grant-Ellis was deliberately indifferent to Plaintiff’s medical needs.

9 **B. Salyer**

10 During his time as Plaintiff’s primary HCP from December 2006 through October
11 2009, Salyer examined Plaintiff seven times (Doc. 53, DSOF ¶¶ 18, 23, 29, 37, 48, 69, 80;
12 Ex. C, Salyer Decl. ¶ 10).⁶ The parties dispute whether some of these examinations were set
13 up in response to Plaintiff’s HNRs requesting to see an HCP—as Defendants suggest, or in
14 response to Plaintiff’s initiation of the grievance process regarding his inability to get
15 medical care—as Plaintiff claims (Doc 57, PSOF ¶¶ 23, 37, 48). The Court agrees with
16 Defendants that this dispute is immaterial (see Doc. 61 at 2). And, notably, Plaintiff does not
17 dispute Defendants’ description of the HNR process for inmates seeking medical care nor
18 does he set forth any allegations challenging that process as unconstitutional (see Doc. 53,
19 DSOF ¶ 7; Doc. 57, PSOF ¶ 7).

20 At issue is whether Salyer was aware of the difficulties and repeated delays in
21 obtaining medication refills and blood tests and whether he failed to respond to those
22 problems. First, as to Plaintiff’s blood tests, the evidence shows that there were just a few
23 times when he did not receive regular testing. Defendants submit copies of all the lab reports
24 during the relevant time, which show that through 2007, there were just two gaps between
25 blood tests that exceeded one month; otherwise, Plaintiff had testing done every month (Doc.
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27 ⁶Those examination dates were December 28, 2006; January 29, 2007; March 22,
28 2007; September 10, 2007; December 12, 2007; July 9, 2008; and March 2, 2009 (Doc. 53,
DSOF ¶¶ 18, 23, 29, 37, 48, 69, 80).

1 53, Ex. B, Attachs. 3, 7, 10, 12, 20-21, 23, 27 (gaps were from April 24 to July 21, 2007, and
2 from July 21, to September 15, 2007)). In 2008 and 2009, blood tests were administered
3 approximately every 2-3 months (id., Attachs. 31, 40, 47-48, 53, 57, 63). Salyer declares that
4 he reviewed the lab reports for each of Plaintiff's blood tests (id., Ex. C, Salyer Decl. ¶¶ 13,
5 17, 20, 23, 28, 31, 34, 43, 50-51, 58-59, 64, 68, 75). Plaintiff does not dispute any of this
6 evidence (see Doc. 57, PSOF ¶¶ 21, 25, 28, 31, 40-41, 43, 55, 62, 71-72, 77, 82, 89).
7 Plaintiff asserts that, at times, to get his blood tests done, he had to initiate the grievance
8 process (Doc. 56 at 1; Doc. 57, Attachs. 10-11, 14, 16, 17). While that may have been the
9 case, Plaintiff nonetheless received regular blood tests to monitor whether methotrexate was
10 affecting his liver or blood cells, and Salyer reviewed those test results. Notably, there is no
11 evidence that Plaintiff experienced liver damage or a reduced white blood cell count in
12 response to the methotrexate treatment and that these symptoms were missed or ignored due
13 to inadequate blood testing.

14 As mentioned, Plaintiff's evidence reflects that he regularly encountered delays in
15 obtaining refills of his medication. Plaintiff asserts that at each appointment with Salyer,
16 they reviewed the HNRs together, and Plaintiff complained about the delays and inadequate
17 supply of medication. Plaintiff states that Salyer simply rewrote new prescriptions and
18 avoided addressing the medication problem with Grant-Ellis (Doc. 56 at 9-10). Plaintiff
19 further alleges that Salyer responded to Plaintiff's concerns by stating that he was sorry but
20 he had done his job and "after its out of my office, its not my problem" (id. at 10).

21 In his declaration, Salyer acknowledges that when he examined Plaintiff, Plaintiff
22 often expressed his concerns about the pharmacy's failure to renew prescriptions and that he
23 was not getting some medications (Doc. 53, Ex. C, Salyer Decl. ¶¶ 15, 21, 56, 66). Salyer
24 also refers to all of Plaintiff's HNRs requesting refills, some of which complain about late
25 refills and/or the lack of medication due to delays (see e.g., id. ¶¶ 14, 22, 29, 37, 62). The
26 inference from this evidence is that Salyer was aware of Plaintiff's recurrent difficulties in
27 obtaining refills of his prescription medication. There is no indication that Salyer followed-
28 up with the pharmacy or confronted Grant-Ellis about the refill delays, as Plaintiff felt he

1 should have done. The record appears to support Plaintiff's claim that in response to his
2 concerns, Salyer often just wrote new prescriptions for medication (id. & Attachs. 5, 9, 45,
3 55).

4 Arguably, Salyer may have been able to do more to address apparent problems with
5 the medication refills; however, there is no evidence that Salyer disregarded Plaintiff's
6 medical needs. Plaintiff's medical records reflect that Salyer re-issued prescriptions when
7 necessary; that he monitored Plaintiff's condition, noting when his psoriasis started to flare
8 (id., Salyer Decl. ¶¶ 15, 66, Attachs. 5, 55) and when it was greatly improved (id. ¶¶ 21, 65,
9 Attachs. 9, 45); and that he adjusted Plaintiff's treatment accordingly (see id. ¶¶ 15, 66, 21,
10 65).

11 Assuming, arguendo, that Salyer's failure to do more to address the medication delays
12 raised a question as to deliberate indifference, Plaintiff must still show that harm resulted
13 from Salyer's failure to act. See Jett, 439 F.3d at 1096. He does not have to demonstrate that
14 his harm was substantial, as Defendants argue (see Doc. 52 at 7). See id.; McGuckin, 974
15 F.2d at 1059 ("a finding that the defendant's activities resulted in 'substantial' harm to the
16 prisoner is not necessary"). But he must establish that the harm suffered was not an "isolated
17 exception" to the overall treatment he received during the time Salyer was treating him. Jett,
18 439 F.3d at 1096 (if harm "is an 'isolated exception' to the defendant's 'overall treatment of
19 the prisoner [it] ordinarily militates against a finding of deliberate indifference") (internal
20 citation omitted).

21 Plaintiff's general allegations that he suffered "pain and suffering" and harm as a
22 result of the medication interruptions and delays are insufficient to establish a genuine issue
23 of material fact (see Doc. 9 at 4; Doc. 56 at 12). See Celotex, 477 U.S. at 324 (nonmovant
24 must "go beyond the pleadings . . . and designate specific facts showing" a material factual
25 dispute). The only specific harm Plaintiff identifies is his hospitalization in December 2007.
26 With respect to his assertion that delays in medication resulted in the hospitalization, the
27 HNRs that Plaintiff filed in the last few months of 2007 show that the only medication he did
28 not consistently receive was TAC cream and that he went three weeks without it in

1 November (Doc. 53, Ex. C, Attachs. 19 (HNRs dated Sept. 11, Oct. 20, Nov. 6, 13), 26 (HNR
2 dated Dec. 5)). Plaintiff specifically asserts that when he saw Salyer on December 12, 2007,
3 Salyer responded by prescribing various medications to try to bring the psoriasis under
4 control (Doc. 56 at 12).

5 As discussed above, the hospital medical records do not indicate that a lack of TAC
6 cream or any other medication led to the need for hospitalization (Doc. 57, Attach. 12), and
7 there is no other evidence in the record that suggests any such connection. See Hutchinson
8 v. United States, 838 F.2d 390, 393 (9th Cir. 1988) (in medical cases where the plaintiff
9 contests the type of treatment he received, an expert opinion will almost always be necessary
10 to establish deliberate indifference). Plaintiff's conclusory allegations cannot create a
11 material factual dispute, and the fact that Salyer responded to Plaintiff's needs precludes a
12 finding of deliberate indifference. See Farmer, 511 U.S. at 837; Leer, 844 F.2d at 634. The
13 Court will therefore grant Defendants' Motion for Summary Judgment.

14 Defendants' arguments pertaining to the Eleventh Amendment and damages need not
15 be addressed, and Plaintiff's motion for counsel will be denied as moot.

16 **IT IS ORDERED:**

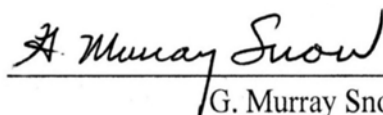
17 (1) The reference to the Magistrate Judge is **withdrawn** as to Defendants' Motion for
18 Summary Judgment (Doc. 52) and Plaintiff's Motion for Appointment of Counsel (Doc. 64).

19 (2) Defendants' Motion for Summary Judgment (Doc. 52) is **granted**.

20 (3) Plaintiff's Motion for Appointment of Counsel (Doc. 64) is **denied** as moot.

21 (4) The Clerk of Court must terminate this action and enter judgment accordingly.

22 DATED this 27th day of May, 2011.

23
24 

25 _____
26 G. Murray Snow
27 United States District Judge
28