

1 lifted, Plaintiff opposed the motion on April 27, 2015. Defendants filed their reply on May 19, 2015.
2 Pursuant to Local Rule 230(l), the motion is deemed submitted.²

3
4 As a threshold matter, the Court notes that Defendants have not moved for summary judgment
5 on the non-medical negligence claim against Defendants Rios and Torres. Although it appears to be
6 an inadvertent mistake, the Court cannot consider granting summary judgment on those claims without
7 a clear motion moving for such relief. Because it appears to be an oversight, the Court will REOPEN
8 the dispositive motion deadline to permit Defendants to move for summary judgment on these claims.
9 Defendants may either move for summary judgment based on the arguments and evidence already
10 submitted, or they may submit new arguments and evidence. Therefore, within thirty (30) days of the
11 date of service of this order, Defendants must either inform the Court that they will stand on the
12 arguments and evidence submitted, or submit any new arguments and/or evidence. If Defendants
13 submit new arguments and/or evidence, Plaintiff may file an opposition within twenty-one (21) days
14 of the date of service of the motion. Plaintiff may only file an opposition if Defendants present new
15 arguments and/or submit new evidence, and his opposition may only address the new issues.

16 **I. LEGAL STANDARD**

17 Any party may move for summary judgment, and the Court shall grant summary judgment if
18 the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to
19 judgment as a matter of law. Fed. R. Civ. P. 56(a) (quotation marks omitted); Washington Mutual Inc.
20 v. U.S., 636 F.3d 1207, 1216 (9th Cir. 2011). Each party's position, whether it be that a fact is
21 disputed or undisputed, must be supported by (1) citing to particular parts of materials in the record,
22 including but not limited to depositions, documents, declarations, or discovery; or (2) showing that the
23 materials cited do not establish the presence or absence of a genuine dispute or that the opposing party
24 cannot produce admissible evidence to support the fact. Fed. R. Civ. P. 56(c)(1) (quotation marks
25

26 ² Defendants' motion for summary judgment was filed prior to the filing of Plaintiff's Third Amended Complaint, which
27 did not alter any allegations against them. The Court granted summary judgment in favor of Defendant Alade on April 24,
28 2015. The motion for summary judgment filed by Defendant Anderson will be addressed by separate Findings and
Recommendations. Additional Defendants have answered, though the Court has not opened discovery for these
Defendants. The newly-answering Defendants have a dispositive motion deadline of September 16, 2015.

1 omitted). The Court may consider other materials in the record not cited to by the parties, but it is not
2 required to do so. Fed. R. Civ. P. 56(c)(3); Carmen v. San Francisco Unified School Dist., 237 F.3d
3 1026, 1031 (9th Cir. 2001); accord Simmons v. Navajo County, Ariz., 609 F.3d 1011, 1017 (9th Cir.
4 2010).

5 Defendants do not bear the burden of proof at trial and in moving for summary judgment, they
6 need only prove an absence of evidence to support Plaintiff’s case. In re Oracle Corp. Securities
7 Litigation, 627 F.3d 376, 387 (9th Cir. 2010) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106
8 S.Ct. 2548 (1986)). If Defendants met their initial burden, the burden then shifts to Plaintiff “to
9 designate specific facts demonstrating the existence of genuine issues for trial.” In re Oracle Corp.,
10 627 F.3d at 387 (citing Celotex Corp., 477 U.S. at 323). This requires Plaintiff to “show more than the
11 mere existence of a scintilla of evidence.” Id. (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242,
12 252, 106 S.Ct. 2505 (1986)).

13 In judging the evidence at the summary judgment stage, the Court may not make credibility
14 determinations or weigh conflicting evidence, Soremekun v. Thrifty Payless, Inc., 509 F.3d 978, 984
15 (9th Cir. 2007) (quotation marks and citation omitted), and it must draw all inferences in the light most
16 favorable to the nonmoving party and determine whether a genuine issue of material fact precludes
17 entry of judgment, Comite de Jornaleros de Redondo Beach v. City of Redondo Beach, 657 F.3d 936,
18 942 (9th Cir. 2011) (quotation marks and citation omitted), cert. denied, 132 S.Ct. 1566 (2012). The
19 Court determines only whether there is a genuine issue for trial, and Plaintiff’s filings must be liberally
20 construed because he is a pro se prisoner. Thomas v. Ponder, 611 F.3d 1144, 1150 (9th Cir. 2010)
21 (quotation marks and citations omitted).
22
23
24
25
26
27
28

1 **II. SUMMARY OF PLAINTIFF’S ALLEGATIONS**³

2 Plaintiff is currently incarcerated at Kern Valley State Prison. The events at issue occurred
3 while Plaintiff was incarcerated at Corcoran State Prison (“CSP”) in Corcoran, California.

4 On January 18, 2011, Dr. Alade performed arthroscopic surgery on Plaintiff’s left knee. He
5 ordered the use of a wheelchair for two weeks, and ordered that the dressing be kept clean and dry
6 until the next appointment. Plaintiff was not informed of these orders and did not receive a copy of
7 the orders until weeks after surgery.

8 When Plaintiff arrived back at CSP, he was taken to the CSP emergency room and examined
9 by Defendant Clark. Defendant Clark ordered a wheelchair for Plaintiff for two weeks. He also wrote
10 and approved a CDC 7410 Chrono for the use of the wheelchair. However, Defendant Clark failed to
11 give Plaintiff a copy of the Chrono. A copy of the wheelchair order and Chrono were faxed to
12 Defendant Borbolla, but Defendant Borbolla did not take any action on the order or Chrono until after
13 they had expired. Plaintiff alleges that Defendant Borbolla was authorized and obligated to provide a
14 wheelchair. The order was also faxed to the 4A Clinic. Since Plaintiff was not given a copy, he was
15 not allowed to use a wheelchair and was forced to walk everywhere, against doctor’s orders.
16

17 During Plaintiff’s January 18, 2011, interview with Defendant Clark, Plaintiff told him of his
18 previous infection. Defendant Clark ordered antibiotics, but failed to order daily, or as needed,
19 bandage changes. Plaintiff alleges that Defendant Clark had authority to issue Plaintiff a wheelchair.

20 On January 18, 2011, after Plaintiff’s examination by Dr. Clark, Plaintiff was returned to the
21 4A Yard. A copy of the wheelchair order and Dr. Alade’s bandage change order were faxed to the 4A
22 Clinic. The orders are supposed to be reviewed by all RNs and LVNs on the 4A yard medical staff,
23 including Defendants Holt, Ceballos, Anderson, Abadia and Ross. Defendants Holt, Ceballos and
24 Anderson were the treating sources in the prison (other than the prison hospital) where wheelchairs
25

26 ³ As noted above, the instant Defendants filed their motion for summary judgment based on Plaintiff’s First Amended
27 Complaint. However, since the filing of the motion, Plaintiff has filed a Second and Third Amended Complaint. The
28 subsequent complaints added Defendants, but did not alter the allegations against the Defendants involved in this motion
for summary judgment. To avoid confusion, the Court will not include the newly named Defendants in this summary of
facts.

1 could have been provided. Each of these Defendants had the authority to either change Plaintiff's
2 dirty bandages and/or to order a bandage change.

3 On January 18, 2011, after he returned to the 4A Yard, Plaintiff submitted a request to see the
4 yard nurse or doctor. On January 20, 2011, Plaintiff was called and escorted to the 4A clinic by
5 Defendant Holt. Plaintiff alleges that Defendant Holt violated the standard of care by (1) refusing to
6 follow up on the wheelchair/walker problem, which she was obligated to do; and (2) using a pair of
7 non-sterile gloves. Defendant Holt put on the gloves, opened up Plaintiff's paper chart, flipped
8 through it, opened the desk drawer, answered the phone and took notes. She then took Plaintiff's
9 vitals and without washing her hands or changing her gloves, she began to remove Plaintiff's bandages
10 to examine the wound. She accidentally pulled out a stitch and when Plaintiff pointed it out,
11 Defendant Holt touched the stitch with her gloved finger and contaminated glove. Without cleaning
12 the wound, Defendant Holt put the old bandage back on and secured it with a new bandage. Plaintiff
13 was taken back to his housing unit.

14 On January 21, 22 and 23, 2011, Plaintiff asked numerous nurses to change his dirty bandage,
15 but they refused, stating that they had no doctor's orders to do so. On January 23, 2011, Plaintiff
16 awoke with yellow drainage running down his leg from the area where the stitch was torn out.

17 On January 24, 2011, nurses again refused to change Plaintiff's bandages without a doctor's
18 order, and refused to send Plaintiff to the prison hospital. The bandage was dirty, wet and smelled,
19 and had not been changed since the 20th. These nurses also refused to give Plaintiff new bandage
20 material.

21 On January 25, 2011, Plaintiff saw Defendant Ceballos at the clinic. Defendant Ceballos
22 changed Plaintiff's dirty bandage and said that the drainage was normal. Defendant Ceballos also said
23 that she would check on the wheelchair. Plaintiff told Defendant Ceballos that the wound hurt more
24 than it should and that the drainage was not normal. He requested that he be sent to the prison hospital
25 and receive more bandages. Defendant Ceballos did not order more bandages despite the drainage and
26 refused to send Plaintiff to the prison hospital even though she had authority to do so. Defendant
27 Ceballos was also authorized to issue Plaintiff a wheelchair, but she refused to do so without an order.
28

1 On January 26, 2011, Defendants Rios and Torres escorted Plaintiff to the 4A clinic to see the
2 dentist. He told both officers that he needed a wheelchair, but they told Plaintiff that they didn't bring
3 one with him and did not know of any orders. Plaintiff was again told that he would walk or refuse the
4 appointment. After the appointment, Defendants Rios and Torres escorted Plaintiff back to his unit.
5 During the escort, Plaintiff fell down and hurt both knees on a dirt path. The wet bandage got dirty
6 and Plaintiff requested that he be taken back to the clinic to see Defendant Ceballos for a bandage
7 change. Defendants Rios and Torres refused because they were too busy.

8 After this incident, Plaintiff asked the second and third watch LVNs to change his bandage,
9 and they refused. One told Plaintiff that it was not her job to change it and the other told him that the
10 bandage had already been changed. They also refused to send Plaintiff to the prison hospital and
11 would not give Plaintiff bandage material to change his own bandage.

12 On January 27, 2011, Defendant Borbolla came to Plaintiff's cell to examine Plaintiff's cell
13 mate. Plaintiff asked her about the wheelchair and she said that he didn't need one. Defendant
14 Borbolla told Plaintiff that if he did need one, he could use the one in the unit.

15 On the evening of January 27, 2011, Plaintiff asked the third watch nurse to send him to the
16 prison hospital because he had started vomiting and having chills. The nurse said that she couldn't
17 send him to the hospital but could get him an appointment with an RN.

18 On January 28, 2011, Plaintiff was again escorted to the clinic without a wheelchair or walker
19 because the unit wheelchair could not be located. Plaintiff saw Defendant Anderson, who changed
20 Plaintiff's bandage and told him that the drainage was not normal. Plaintiff told Defendant Anderson
21 that he was supposed to have a wheelchair and that he received the Chrono the night before, but the
22 unit wheelchair could not be located. Plaintiff asked Defendant Anderson to issue him a wheelchair
23 and to send him to the prison hospital doctor. She refused to do either and told Plaintiff that he would
24 be seeing a doctor in three days.

25 Although Defendant Anderson changed Plaintiff's bandages, she did not order more frequent
26 changes. She also failed to send Plaintiff to the prison doctor for his infection in spite of the LVN's
27 January 27, 2011, referral and Dr. Alade's orders to keep the dressing dry.
28

1 Plaintiff alleges that when he saw Defendants Holt, Ceballos and Anderson, they had his chart
2 and therefore had the orders for the bandages and wheelchair.

3 From January 28, 2011, through February 1, 2011, Plaintiff requested assistance from every
4 nurse who came to his cell door on second and third watch. Each refused to help Plaintiff, change his
5 bandage, send him to the prison hospital or give him his own bandage material. Plaintiff had no other
6 way to obtain bandage material.

7 On February 2, 2011, Plaintiff was examined by Defendant Holt. Defendant Holt had a doctor
8 look at Plaintiff's knee, and the doctor ordered that Plaintiff be taken to the prison hospital emergency
9 room. This was the first time he had seen a doctor since the surgery.

10 On February 4, 2011, Plaintiff was admitted to Mercy Hospital. Over the next week, Plaintiff
11 was treated with antibiotics and underwent other testing. He was diagnosed with MSSA, septic/emesis
12 arthritis and mild anemia.

13 On February 11, 2011, Dr. Alade performed a second surgery to clean out the infection caused
14 by "poor wound care." Instead of three small holes in his knee, Plaintiff now had a ten inch scar down
15 the middle of his knee.

16 On February 19 and 20, 2011, Defendant Ross refused to change Plaintiff's bandage following
17 the second surgery, per doctor's orders.

18 **III. UNDIPSUTED MATERIAL FACTS**

19 Plaintiff has been an inmate incarcerated within the California Department of Corrections and
20 Rehabilitation ("CDCR") since 1999. He was housed at California State Prison-Corcoran ("CSP")
21 from February 19, 2010, through August 2011. Pl.'s Dep. 10:1-2; 11:13-21 (Mathison Decl., Ex A).

22 Defendant Dr. Clark has been working as a staff physician at CSP since 2008 and served as
23 Chief Medical Officer at CSP in January and February 2011. Clark Decl. ¶ 1.

24 Defendants Abadia, Ceballos, Borbolla, Holt and Ross were nurses working at CSP in 2011.
25 Defendants Abadia, Ceballos, Borbolla and Holt have been licensed registered nurse since prior to
26 2011, and Defendant Ross has been a licensed vocational nurse since 2009. Abadia Decl. ¶¶ 1-2;
27 Ceballos Decl. ¶¶ 1-2; Borbolla Decl. ¶ 1; Holt Decl. ¶¶ 1-2; Ross Decl. ¶¶ 1-2.
28

1 Defendants Rios and Torres are correctional officers who have been working at CSP since
2 prior to 2011. Rios Decl. ¶ 1; Torres Decl. ¶ 1.

3 Dr. Alade performed arthroscopic knee surgery on Plaintiff's left knee on January 18, 2011, at
4 San Joaquin Community Hospital. Pl.'s Dep. 16:13-21; Clark Decl. ¶ 9.

5 Plaintiff returned to CSP on January 18, 2011, and was seen by Defendant Clark at the prison's
6 hospital. Plaintiff's condition was stable and he was scheduled to return to Dr. Alade for follow-up
7 care in two weeks. Defendant Clark prescribed augmentin and morphine, but he did not write an order
8 for dressing changes. Defendant Clark did not write an order for dressing changes because it is his
9 experience that orthopedic surgeons do not want to have the dressing changed or altered where the
10 patient is to return to see the orthopedic surgeon for further follow-up care.⁴ Clark Decl. ¶10;
11 Mathison Decl., Ex. B, at 1-2.

12 Defendant Clark also wrote out and approved a Chrono for Plaintiff's use of a wheelchair until
13 February 2, 2011. Clark Decl. ¶ 10. As is relevant to this action, Plaintiff saw Defendant Clark only
14 once, on January 18, 2011. Clark Decl. ¶ 11.

15 On January 20, 2011, Plaintiff was escorted to the 4A Clinic by Defendants Rios and Torres.
16 Plaintiff told them that Defendant Clark had ordered a wheelchair, but it had not yet been issued.
17 Plaintiff asked Defendants to use a wheelchair for the escort. Defendants Rios and Torres told
18 Plaintiff that he could not use a wheelchair because he did not have a copy of his Chrono. Pl.'s Dep.
19 37:11-38:9, 43:3-25.

20 Defendants Rios and Torres have received training on the appropriate procedures and
21 requirements for escorting inmates within CSP. In order for an inmate to use a wheelchair during an
22 escort, the inmate is required to have a valid Chrono. Chronos or copies of Chronos are provided to
23 inmates by medical staff in a process that is outside of the scope of Rios' and Torres' duties and
24

25
26
27 ⁴ Plaintiff attempts to dispute this by arguing that Defendant Clark said that he would order bandage changes, but failed to
28 so do. This does not dispute Defendant Clark's explanation. Indeed, Plaintiff specifically states that he does not know
why Defendant Clark did not order bandage changes.

1 responsibilities as correctional officers. If an inmate had a Chrono, but did not actually have a
2 wheelchair at his cell, then the inmate was authorized to be escorted by wheelchair and Rios or Torres
3 would go to the clinic or another location to locate a wheelchair for use during the escort.⁵ Rios Decl.
4 ¶¶ 2-4; Torres Decl. ¶¶ 2-4.

5
6 When Defendants Rios and Torres arrive at an inmate's cell for an escort, they are ready to
7 proceed with moving the inmate. If an inmate did not have a Chrono for a wheelchair but requested to
8 use one, whether or not Defendants Rios or Torres would attempt to locate one depended on the
9 particular circumstances existing at the time of the escort. Defendants' attempting to locate a
10 wheelchair and/or verify a Chrono necessarily delays the escort. Rios Decl. ¶5; Torres Decl. ¶5.
11 Defendants state that this delay may jeopardize the time for Defendants to complete other required
12 tasks, or the timing for the event to which the inmate is being escorted, which in turn may raise safety
13 or security issues for Defendants, inmates and staff.⁶ Rios Decl. ¶ 5; Torres Decl. ¶ 5. If the
14 circumstances were such that Defendants believed it would be appropriate to attempt to locate a
15 wheelchair, they would do so.⁷ If an inmate refused to be escorted because he did not have a
16 wheelchair, then the inmate was permitted to remain in his cell. Inmates were never forced to walk to
17 an appointment if they chose not to do so. Rios Decl. ¶ 5; Torres Decl. ¶5.

18 Defendants Rios and Torres followed this practice at all times relevant during their 2011
19 escorts. Rios Decl. ¶ 4; Torres Decl. ¶ 4.

20 Plaintiff was examined by Defendant Holt at the 4A Clinic on January 20, 2011.⁸ He arrived
21 to the appointment in a wheelchair, and left the appointment in a wheelchair. Pl.'s Decl. ¶ 9; Pl.'s
22

23 ⁵ Plaintiff states that he is unable to admit or deny portions of this fact without additional discovery, but he has not made a
24 proper request for discovery under Rule 56(d). These facts are therefore undisputed.

25 ⁶ Plaintiff denies this fact, but he does not provide evidence to support his denial.

26 ⁷ Plaintiff denies this, simply stating that they did not have any discretion when Plaintiff informed them that he had an
approved Chrono. Again, he does not have evidence to support his denial.

27 ⁸ Defendant Ceballos references an Exhibit A in her declaration, though no such exhibit is attached. The exhibit is
28 described as Plaintiff's Health Care Services Request Form. The omission is harmless as both parties have provided the
document elsewhere. Defendant Holt also references an Exhibit A, described by her as the Health Care Request Form and

1 Dep. 52:23-53:17. Plaintiff was in stable condition post-surgery and complained of tingling sensations
2 in his left knee. Holt Decl. ¶ 4; Mathison Decl., Ex. B, at 3.⁹ Defendant Holt examined the incision
3 site and noted that the sutures were intact.

4 Defendant Holt noted that there were no signs redness or drainage at the site, and no signs or
5 symptoms of an infection. She referred Plaintiff to see a physician, with an appointment of January
6 31, 2011. She also instructed Plaintiff on the use of his medications and told him to submit another
7 Health Care Request to return for further evaluation if he experienced swelling, pain, decreased range
8 of motion or signs or symptoms of an infection. Holt Decl. ¶ 4; Mathison Decl., Ex. B at 4.

9 Defendant Holt wore non-sterile disposable gloves during her examination of Plaintiff on
10 January 20, 2011. It was her practice, and a standard practice for nurses working as the clinic triage
11 nurse, to wear these gloves at all times during an examination. The gloves were intended to protect
12 the wearer from having direct skin contact with the patient's body or bodily fluids, and were not
13 intended to provide sterility as a protection to the patient from contamination. Holt Decl. ¶ 7.

14 Plaintiff did not ask Defendant Holt to let him see a doctor on January 21, 2011, or say
15 anything to her about how she handled his bandaging. Pl.'s Dep. 52:23-53:17. Plaintiff was escorted
16 back to his housing unit in a wheelchair. Pl.'s Dep. 53:15-17.

17 At the time of the examination, Plaintiff did not see any problem with the care and treatment
18 Defendant Holt provided. Pl.'s Dep. 53:6-10. Plaintiff named Defendant Holt as a defendant in this
19 action because he believes that her actions contaminated his wound. Pl.'s Dep. 143:2-17.

20 Plaintiff was examined by Defendant Ceballos at the 4A Clinic on January 25, 2011. He
21 complained that the incision site was draining. Ceballos Decl. ¶ 4; Mathison Decl., Ex. B, at 5.

22
23
24 a January 20, 2011, Musculoskeletal Encounter Form. Although the exhibit was not attached to her original declaration,
25 she provided the exhibit in her resubmitted declaration, filed on July 17, 2015. Again, as the Court already had the
document, any omission was harmless.

26 ⁹ Plaintiff objects to Exhibit B, attached to Mathison's Declaration. The document is the Musculoskeletal Encounter form
27 completed by Defendant Holt on January 20, 2011, which is also attached as Exhibit A to Defendant Holt's declaration.
28 Plaintiff objects because there is a fax date stamp of December 21, 2010, at the top of the document. However, Defendant
Holt declares that the form is a true and correct copy of the form she completed. Holt Decl. ¶ 4. Plaintiff's objection is
therefore overruled.

1 Plaintiff also told her that he had increased pain and decreased range of motion. Pl.'s Second Decl. ¶
2 13.¹⁰ Defendant Ceballos noted that Plaintiff was alert, sensory oriented, his skin was warm and dry,
3 he had no shortness of breath and was not in distress. She also noted that he had minor drainage, and
4 that he had a doctor's appointment scheduled for January 31, 2011, for removal of the stitches.
5 Ceballos Decl. ¶ 4; Mathison Decl., Ex. B, at 5. Defendant Ceballos performed a triage examination
6 and changed Plaintiff's bandage. She told Plaintiff that he was at risk for infection and instructed him
7 to return for further evaluation if he experienced worsening drainage or signs or symptoms of
8 infection, such as increased redness, increased swelling or the wound being hot to the touch. Ceballos
9 Decl. ¶ 4; Mathison Decl., Ex. B, at 5.

11 Defendant Ceballos telephoned Defendant Borbolla on January 25, 2011, inquiring about
12 getting a wheelchair for Plaintiff.¹¹ Ceballos Decl. ¶ 5; Borbolla Decl. ¶ 4. Defendant Borbolla did
13 not receive or process the Chrono and she was not aware of its existence.¹² Borbolla Decl. ¶¶ 3-5.

14 On January 26, 2011, while being escorted from a dental appointment at the 4A Clinic by
15 Defendants Torres and Rios, Plaintiff stumbled and fell to his knees. As he started to go forward, one
16 of the Defendants held him and stopped him from falling all the way down to the ground. Defendants
17

18 ¹⁰ Defendant Holt argues that there is no documentary evidence to support this contention. However, Plaintiff's
19 declaration is sufficient to support his statement as to what he told Defendant Ceballos.

20 ¹¹ In attempting to create a dispute as to whether the telephone call occurred, Plaintiff argues that Defendant Ceballos'
21 statement is inconsistent with her responses to discovery, when she stated that she "did not recall" whether she had any
22 conversations with other CSP officials about Plaintiff's need for a wheelchair. Pl.'s Decl., Ex. 10. However, in her
23 declaration, Defendant Ceballos states that she had been informed and believes that she made the call to Defendant
24 Borbolla. Ceballos Decl. ¶ 5. Indeed, Defendant Borbolla remembers receiving the call from Defendant Ceballos.
25 Borbolla Decl. ¶ 4. Defendant Ceballos' statements are not inconsistent and Plaintiff incorrectly characterizes her
26 discovery responses as denying that she made the call. Plaintiff's argument fails to dispute the fact.

27 ¹² Plaintiff disputes Defendant Borbolla's statement that she did not receive or process the Chrono. He states that when he
28 filed an inmate appeal on the issue, "it was determined at that time that the Chrono was sent to Borbolla the ADA nurse at
the time, who did not process it until after January 28, 2011." ECF No. 244, at 17. In support, he cites Exhibit B to his
TAC, which is comprised of the decisions on his health care appeal. At the Second Level, the reviewer determined that the
Chrono "was sent to the ADA nurse, who processed it after the above noted dates." ECF No. 207, at 61. The document,
however, does not state that Defendant Borbolla was the ADA nurse at the time, and Plaintiff cannot make such a
conclusion based on the statement. The fact is therefore undisputed. The Court also notes that Defendants object to
Exhibit B as being without foundation by personal knowledge or otherwise, unauthenticated and containing hearsay. The
Court need not rule on the objection because it is not relying on the document.

1 lifted Plaintiff back up. Plaintiff's knee was sore and his left leg was dirty. At the time, Plaintiff did
2 not notice that anything else was different about his bandage or knee condition. Plaintiff asked
3 Defendants Torres and Rios to take him back to the clinic to change his bandage, but they said they
4 were busy and did not have time. Twenty minutes later, after returning to his cell, Plaintiff noticed
5 blood on his bandage. There was no blood at the time that he fell. Pl.'s Dep. 97:10-101:25.
6

7 Defendant Abadia encountered Plaintiff in his cell on one or more occasions in early 2011
8 while making medication rounds. Abadia Decl. ¶ 5. The primary purpose of medication rounds was
9 to distribute scheduled medication to inmates.¹³ Abadia Decl. ¶ 4. Defendant Abadia's practice during
10 rounds was to address all matters presented to her by an inmate that appeared to require medical
11 attention. If Plaintiff had requested Abadia to send him to the prison hospital or change his bandage,
12 then she would have done so if the circumstances presented an immediate need for medical attention.
13 If Plaintiff made these requests and Defendant Abadia refused them, it would have been because the
14 circumstances did not require immediate medical attention. Abadia Decl. ¶¶ 4-5.

15 On February 1, 2011, Defendant Abadia changed Plaintiff's bandage during medication
16 rounds. On other occasions, Defendant Abadia gave Plaintiff bandage materials.¹⁴ Plaintiff has sued
17 Defendant Abadia because he believes that she should have done more for him during the encounters.
18 Pl.'s Dep. 121:14-24 and 146:21-147:16.

19 A culture was taken from Plaintiff's left knee on February 2, 2011. As of February 4, 2011,
20 the culture came back positive for staph aureus. Clark Decl. ¶ 12(e); Mathison Decl., Ex. B at 7-11.
21

22
23 ¹³ Plaintiff attempts to dispute this by arguing that the LVNs also perform other tasks during medication rounds. While this
24 may be true, it does not contradict Defendant Abadia's statement that the *primary* purpose of rounds was to distribute
medication.

25 ¹⁴ In a Request for Judicial Notice, Plaintiff asks that the Court take judicial notice of Defendant Anderson's statement in
26 her declaration supporting her motion for summary judgment that if she had provided Plaintiff with bandages, she would
27 have breached the standard of care. Plaintiff states that while he "appreciates the fact that [Defendant Abadia] provided
28 him with bandage material," her actions (1) violated the standard of care; and (2) acknowledged that his bandage needed
changing. ECF No. 250, at 3. Plaintiff is using various briefing methods to present new arguments to the Court. While
the Court can take judicial notice of its own records, Defendant Anderson's statement is an opinion, not a fact, and is not
subject to judicial notice under Federal Rule of Evidence 201. Plaintiff's request is therefore denied.

1 Staph aureus is a common bacteria that is part of the normal flora of many person's skin.
2 Staph aureus is a known risk with any type of surgery. Clark Decl. ¶ 13.

3 Plaintiff was admitted to San Joaquin Community Hospital and received treatment for his
4 infection from February 2, 2011, to February 15, 2011. This treatment included a second surgery to
5 the left knee, performed by Dr. Alade on February 11, 2011. Pl.'s Dep. 126:12-129:15.

6 Plaintiff's bandage was changed on February 18, 2011. Pl.'s Dep. 133:3-6.

7 Defendant Ross encountered Plaintiff at his cell on February 19 and 20, 2011, while making
8 medication rounds. Ross Decl. ¶ 5. On the first day, Plaintiff asked Defendant Ross to change his
9 bandage. Defendant Ross told Plaintiff that he would check as to whether there were any doctor's
10 orders for bandage changes and get back to him. Ross Decl. ¶ 5.

11 On February 21, 2011, Plaintiff's bandage was changed. Plaintiff alleges that because
12 Defendant Ross did not change the bandage the day before, the bandage had become more adhered to
13 his wound and was therefore more painful when it was changed. This is the only reason Defendant
14 Ross is named as a Defendant. Pl.'s Dep. 131:24-135:2.

15 On a couple of other occasions afterwards, Defendant Ross changed Plaintiff's bandage. Pl.'s
16 Dep. 131:24-135:2.

17 **IV. DISCUSSION**

18 **A. Eighth Amendment**

19 For claims arising out of medical care in prison, Plaintiff "must show (1) a serious medical
20 need by demonstrating that failure to treat [his] condition could result in further significant injury or
21 the unnecessary and wanton infliction of pain," and (2) that "the defendant's response to the need was
22 deliberately indifferent." Wilhelm v. Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012) (citing Jett v.
23 Penner, 439 F.3d 1091, 1096 (9th Cir. 2006)).

24 The existence of an injury that a reasonable doctor would find important and worthy of
25 comment or treatment, the presence of a medical condition that significantly affects an individual's
26

1 daily activities, and/or the existence of chronic or substantial pain are indications of a serious medical
2 need. Lopez v. Smith, 203 F.3d 1122, 1131 (9th Cir. 2000) (citation omitted).

3 Deliberate indifference is shown by “(a) a purposeful act or failure to respond to a prisoner’s
4 pain or possible medical need, and (b) harm caused by the indifference.” Wilhelm, 680 F.3d at 1122
5 (citing Jett, 439 F.3d at 1096). The requisite state of mind is one of subjective recklessness, which
6 entails more than ordinary lack of due care. Snow v. McDaniel, 681 F.3d 978, 985 (9th Cir. 2012)
7 (citation and quotation marks omitted); Wilhelm, 680 F.3d at 1122. Deliberate indifference may be
8 shown “when prison officials deny, delay or intentionally interfere with medical treatment, or it may
9 be shown by the way in which prison physicians provide medical care.” Wilhelm, 680 F.3d at 1122
10 (citing Jett, 439 F.3d at 1096) (internal quotation marks omitted).

11
12 1. *Bandage Changes*

13 a. Defendant Clark

14 It is undisputed that after Plaintiff’s knee surgery on January 18, 2011, Dr. Alade wrote an
15 order that Plaintiff’s dressing be “kept clean and dry.” Third Amended Complaint, Ex. E. Plaintiff
16 returned to CSP on January 18, 2011, and was seen by Defendant Clark at the prison’s hospital.
17 Plaintiff’s condition was stable and he was scheduled to return to Dr. Alade in two weeks. Defendant
18 Clark wrote an order for medication, but he did not write an order for bandage changes. Defendant
19 Clark did not order a bandage change because it is his experience that orthopedic surgeons do not want
20 to have the dressing changed or altered where the patient is to return to see the orthopedic surgeon for
21 further follow-up care.

22 Plaintiff alleges that Defendant Clark told him that he was going to issue an order for bandage
23 changes and that he doesn’t know why he didn’t do so. Even viewing the evidence in the light most
24 favorable to Plaintiff, however, there is no evidence of deliberate indifference. Plaintiff’s claim is that
25 Defendant Clark failed to order bandage *changes*, but ordering bandage changes is different than
26 recognizing that the dressing needs to be kept clean and dry, as ordered by Dr. Alade. Plaintiff does
27 not dispute Defendant Clark’s explanation as to why he didn’t order bandage changes, he simply
28

1 argues that Defendant Clark failed to do something that he allegedly said he would do. Without more,
2 this does not rise to the level of deliberate indifference.

3
4 b. Defendant Ceballos

5 It is undisputed that Defendant Ceballos examined Plaintiff on January 25, 2011, and that he
6 complained that (1) his incision site was draining, and (2) he had increased pain and decreased range
7 of motion. Defendant Ceballos noted that Plaintiff was alert, sensory oriented, his skin was warm and
8 dry, he had no shortness of breath and was not in distress. She also noted that he had minor drainage,
9 and that he had a doctor's appointment scheduled for January 31, 2011. Defendant Ceballos changed
10 Plaintiff's bandage. She also told him that he was at risk for infection and instructed him to return for
11 further evaluation if he experienced worsening drainage or signs or symptoms of infection, such as
12 increased redness, increased swelling or the wound being hot to the touch.

13 The parties dispute whether Plaintiff requested additional bandage changes and/or complained
14 that other nurses were not changing his bandage when it was not clean or dry. Defendant Ceballos
15 states that under her practice, she would have noted the matter if Plaintiff had requested or raised the
16 issue of further bandage changes. Ceballos Decl. ¶ 6. Plaintiff contends that he asked her to "direct,
17 instruct, or order the LVN defendants to change [his] bandage if it was wet or dirty. . ." or schedule
18 more frequent bandage changes. Pl.'s Second Decl. ¶ 15. Defendant Ceballos believes that since
19 Plaintiff was scheduled to have his stitches removed on January 31, 2011, no further bandage changes
20 were necessary or indicated before such time. Ceballos Decl. ¶ 6.

21 The parties also dispute whether Plaintiff had signs or symptoms of an infection. Defendant
22 Ceballos did not note any signs or symptoms of an infection, but Plaintiff states that he had swelling
23 and redness, in addition to the drainage. Mathison Decl., Ex. B, at 5; Pl.'s Second Decl. ¶13.

24 Even if these facts are disputed, Plaintiff cannot demonstrate the existence of a material factual
25 dispute. Viewing the evidence in the light most favorable to Plaintiff, Defendant Ceballos examined
26 Plaintiff, *changed his bandage*, and knew that he would be returning for suture removal in six days.
27 Therefore, even if Plaintiff complained that other nurses were not changing his bandage or he had
28

1 signs of an infection, Defendant Ceballos changed his bandage with the knowledge that Plaintiff
2 would be returning for additional care in six days. She also instructed Plaintiff to return if he had
3 signs and symptoms of an infection. Under these facts, there is no evidence to support a finding that
4 Defendant Ceballos “[knew] of and disregard[ed] an excessive risk to [plaintiff’s] health or safety.”
5 Farmer, 511 U.S. at 837.

6
7 To the extent that Plaintiff argues that Defendant Ceballos should have ordered other nursing
8 staff to take action, and assuming that she had the authority to do so, the fact that she changed
9 Plaintiff’s bandage and knew that he would be seen in follow-up negates a finding that her failure to
10 do so constituted deliberately indifference.

11 c. Defendant Abadia

12 The parties do not dispute that Defendant Abadia encountered Plaintiff in his cell on one or
13 more occasion in early 2011 while making medication rounds. The primary purpose of medication
14 rounds was to distribute scheduled medication to inmates, though LVNs also perform other activities
15 during their rounds. On February 1, 2011, Defendant Abadia changed Plaintiff’s bandage during
16 medication rounds. On other occasions, Defendant Abadia gave Plaintiff bandage materials. If
17 Plaintiff requested that Defendant Abadia change his bandage, she would have done so if the
18 circumstances presented a need for immediate medical attention.

19 Based on these undisputed facts, there is no evidence that Defendant Abadia was deliberately
20 indifferent to Plaintiff’s medical needs by refusing to change his bandages. While Plaintiff believes
21 she should have changed his bandages, Defendant Abadia states that she would have done so had the
22 situation required immediate medication attention. Even though Plaintiff may have wanted his
23 bandage changed, her failure to do so does not mean that she was deliberately indifferent. Indeed,
24 Plaintiff testified during his deposition that he sued Defendant Abadia because he believes that she
25 should have done more for him during their encounters. Pl.’s Dep. 121:14-24 and 146:21-147:16. “A
26 difference of opinion between a physician and the prisoner - or between medical professionals -
27
28

1 concerning what medical care is appropriate does not amount to deliberate indifference.” Snow v.
2 McDaniel, 681 F.3d 978, 987 (9th Cir. 2012) (internal citations omitted).

3 Plaintiff’s belief that Defendant Abadia should have provided additional treatment, alone, is
4 not sufficient to demonstrate that she knew of a serious risk of harm and failed to prevent it.

5 d. Defendant Ross

6 The following facts are not disputed. Defendant Ross encountered Plaintiff at his cell on
7 February 19 and 20, 2011, while making medication rounds. On the first day, Plaintiff asked
8 Defendant Ross to change his bandage. Defendant Ross told Plaintiff that he would check as to
9 whether there were any doctor’s orders for bandage changes and get back to him. On a couple of other
10 occasions after the February 19 and 20, encounters, Defendant Ross changed Plaintiff’s bandage.
11

12 It is also undisputed that Plaintiff had his bandage changed on February 18, 2011, and then
13 again on February 21, 2011. Plaintiff alleges that during the February 21, 2011, bandage change, the
14 bandage had become “more adhered” to his wound because Defendant Ross did not change the
15 bandage on February 20, 2011. This is the only reason that Plaintiff named Defendant Ross as a
16 Defendant.

17 The parties dispute the extent of the injuries that can be attributed to Defendant Ross, with
18 Plaintiff arguing that in addition to the bandage becoming more adhered to his wound, he also suffered
19 pain, stress, psychological damage and fear of getting another infection.

20 The parties also dispute whether Defendant Ross actually checked for the bandage order.
21 Defendant Ross states that he checked at the yard clinic, did not locate any bandage orders and called
22 the prison hospital to request that they fax any orders to the clinic. Ross Decl. ¶ 5. Plaintiff, however,
23 states that Defendant Ross told him that he had forgotten to check.

24 These disputes, however, are not dispositive of his claim. While the Court agrees that his
25 injuries appear minimal, the undisputed evidence negates a finding that Defendant Ross acted with
26 deliberate indifference when he did not change Plaintiff’s bandage on February 20, 2011. Plaintiff
27 told Defendant Ross that he needed to have his bandage changed, and in response, Defendant Ross
28

1 told him that he would check to see if there were any orders for a bandage change and get back to him.
2 Even if Defendant Ross forgot, as Plaintiff alleges he did, “forgetting” to do something does not rise to
3 the level an Eighth Amendment violation. Deliberate indifference requires a *purposeful* act, or failure
4 to act. Wilhelm, 680 F.3d at 1122 (citing Jett, 439 F.3d at 1096). The requisite state of mind is one of
5 subjective recklessness, which entails more than ordinary lack of due care. Snow, 681 F.3d at 985
6 (citation and quotation marks omitted); Wilhelm, 680 F.3d at 1122.

7
8 2. *Wheelchair Chrono*

9 a. Defendant Holt¹⁵

10 It is undisputed that Plaintiff arrived to his appointment with Defendant Holt in a wheelchair,
11 and left the appointment in a wheelchair.

12 The parties dispute, however, whether Plaintiff asked Defendant Holt to issue him a wheelchair
13 from the 4A Clinic. Plaintiff states that he told her that he needed a wheelchair and that custody made
14 him walk to the clinic, but Defendant Holt told him that he did not need one. Pl.’s Second Decl. ¶ 9.
15 Defendant Holt denies this, stating that if he had asked her for a wheelchair, she would have noted it.
16 Holt Decl. ¶5; Mathison Decl., Ex B, at 4.

17 The parties also dispute whether Defendant Holt had a duty or responsibility to issue the
18 wheelchair. Defendant Holt states that as the triage nurse, it was not her duty to provide Plaintiff with
19 a wheelchair. She also states that it was her practice to refer wheelchair issues to the ADA Office.
20 Holt Decl. ¶ 5. Plaintiff believes that Defendant Holt had a duty to either issue a wheelchair or make
21 sure that one was issued because, as a clinic nurse, she was responsible for the 4A nursing operations
22 and the activities of the 4A Plata LVN. Pl.’s Decl. ¶ 9. Plaintiff also cites Defendant Holt’s discovery
23

24
25
26
27
28

¹⁵ To the extent that Plaintiff argues that Defendant Holt’s bandage change or failure to send him for further treatment violates the Eighth Amendment, the Court’s screening order found that these contentions did not state a claim under the Eighth Amendment. ECF No. 15, at 12. Plaintiff may not expand the scope of his claim in opposing summary judgment. E.g., Fossen v. Blue Cross and Blue Shield of Montana, Inc., 660 F.3d 1102, 1115 (9th Cir. 2011); Navajo Nation v. U.S. Forest Serv., 535 F.3d 1058, 1079-80 (9th Cir. 2008).

1 response, which states that she “had the authority to issue a wheelchair to Plaintiff to the extent there
2 was a physician’s order for a wheelchair that was made known to her.” ECF No. 243-1, at 31.

3 Even assuming that Plaintiff asked Defendant Holt for a wheelchair, and that she had a duty
4 and the authority to issue one, the undisputed evidence does not support a finding that Defendant Holt
5 acted with deliberate indifference. It is undisputed that Plaintiff both arrived to the appointment in a
6 wheelchair, and left in a wheelchair. It is also undisputed that Defendant Holt did not ask about the
7 wheelchair that Plaintiff had at the time. Defendant Holt therefore knew that Plaintiff had a
8 wheelchair at the time that he requested one. While Plaintiff may have liked her to take additional
9 actions, the fact that he had the very item he requested eliminates the possibility that Defendant Holt
10 acted with deliberate indifference in allegedly denying his request.

11
12 b. Defendants Ceballos and Borbolla

13 It is undisputed that Defendant Ceballos examined Plaintiff on January 25, 2011. It is also
14 undisputed that on January 25, 2011, Defendant Ceballos telephoned Defendant Borbolla to inquire
15 about a wheelchair for Plaintiff. Defendant Borbolla did not provide care to Plaintiff.

16 The remaining factual issues related to their involvement in the wheelchair request are
17 disputed. Defendant Borbolla states that shortly after the telephone call on January 25, 2011, she
18 located a wheelchair and brought it to Plaintiff’s cell. Borbolla Decl. ¶ 4. Defendant Borbolla states
19 that she told Plaintiff that she was providing the wheelchair for Plaintiff to use as long as he needed it.
20 Borbolla Decl. ¶ 4. Plaintiff denies that Defendant Borbolla came to his cell on January 25, 2011,
21 citing the log for his housing unit for January 25, 2011, that shows that she did not sign in on that date.
22 Pl.’s Decl., Ex. 12. Plaintiff also cites Defendant Borbolla’s responses to discovery, in which she
23 states that (1) she recalls going to Plaintiff’s cell for the purpose of giving him a wheelchair, but
24 doesn’t remember the date or whether it was in January 2011; and (2) that it was her usual practice as
25 the ADA nurse to have an inmate complete and sign a form when providing an inmate with a
26 wheelchair, but she doesn’t remember having Plaintiff do so in this instance. Pl.’s Decl., Ex. 6. She
27
28

1 continued, however, that it was possible that she provided him with a wheelchair without having him
2 sign the form. Pl.'s Decl., Ex. 6.

3 As to Defendant Ceballos, it is undisputed that she made a phone call in an attempt to help
4 Plaintiff, which negates a finding that she acted with deliberate indifference.

5 Turning to Defendant Borbolla, whether or not she actually went to Plaintiff's cell, Plaintiff
6 provides no evidence to dispute her contention that she located a wheelchair for Plaintiff after her
7 conversation with Defendant Ceballos. So, even if she failed to ultimately provide Plaintiff with the
8 wheelchair, the evidence shows that she located a wheelchair, and there is no evidence to suggest that
9 her failure to provide it to Plaintiff was done with the required state of mind. It is also undisputed that
10 Defendant Borbolla did not know about the Chrono, which also precludes a finding that she acted with
11 deliberate indifference.
12

13 c. Defendants Rios and Torres

14 Plaintiff's claim against Defendants Rios and Torres is based on his allegation that they knew
15 he needed a wheelchair during his January 26, 2011, escort, but they told Plaintiff that they didn't
16 bring one with them and they did not know of any orders. During the escort, he fell and allegedly
17 injured his knee.

18 The following facts are undisputed. On January 20, 2011, Plaintiff was escorted to the 4A
19 Clinic by Defendants Rios and Torres. Plaintiff told them that Defendant Clark had ordered a
20 wheelchair, but it had not yet been issued. Plaintiff asked Defendants to use a wheelchair for the
21 escort. Defendants Rios and Torres told Plaintiff that he could not use a wheelchair because he did not
22 have a copy of his Chrono.

23 It is also undisputed that on January 26, 2011, while being escorted from a dental appointment
24 at the 4A Clinic by Defendants Torres and Rios, Plaintiff stumbled and fell to his knees. As he started
25 to go forward, one of the Defendants held him and stopped him from falling all the way down to the
26 ground. Defendants lifted Plaintiff back up. Plaintiff's knee was sore and his left leg was dirty. At
27 the time, Plaintiff did not notice that anything else was different about his bandage or knee condition.
28

1 Plaintiff asked Defendants Torres and Rios to take him back to the clinic to change his bandage, but
2 they said they were busy and did not have time. Twenty minutes later, after returning to his cell,
3 Plaintiff noticed blood on his bandage. There was no blood at the time that he fell.

4 Finally, it is undisputed that Defendants Rios and Torres have received training on the
5 appropriate procedures and requirements for escorting inmates within CSP. In order for an inmate to
6 use a wheelchair during an escort, the inmate is required to have a valid Chrono. Chronos or copies of
7 Chronos are provided to inmates by medical staff in a process that is outside of the scope of Rios' and
8 Torres' duties and responsibilities as correctional officers. If an inmate had a Chrono, but did not
9 actually have a wheelchair at his cell, then the inmate was authorized to be escorted by wheelchair and
10 Rios or Torres would go to the clinic or another location to locate a wheelchair for use during the
11 escort.¹⁶

12
13 When Defendants Rios and Torres arrive at an inmate's cell for an escort, they are ready to
14 proceed with moving the inmate. If an inmate did not have a Chrono for a wheelchair but requested to
15 use one, whether or not Defendants Rios or Torres would attempt to locate one depended on the
16 particular circumstances existing at the time of the escort. The escort would be delayed if Defendants
17 attempted to locate a wheelchair and/or verify a Chrono. Defendants state that this delay may
18 jeopardize the time for Defendants to complete other required tasks, or the timing for the event to
19 which the inmate is being escorted, which in turn may raise safety or security issues for Defendants,
20 inmates and staff. If the circumstances were such that Defendants believed it would be appropriate to
21 attempt to locate a wheelchair, they would do so. If an inmate refused to be escorted because he did
22 not have a wheelchair, then the inmate was permitted to remain in his cell. Inmates were never forced
23 to walk to an appointment if they chose not to do so.

24 Given these undisputed facts, Defendants argue that Plaintiff cannot show that they acted with
25 deliberate indifference in refusing a wheelchair because they simply implemented the relevant policies
26

27
28 ¹⁶ Plaintiff states that he is unable to admit or deny portions of this fact without additional discovery, but he has not made a proper request for discovery under Rule 56(d). These facts are therefore undisputed.

1 and procedures. They also argue that they actually assisted Plaintiff when he fell, and that any injuries
2 were de minimis.

3 In response, Plaintiff argues that Defendants could have called to confirm whether or not
4 Plaintiff had a wheelchair. However, what they *could have done* does not have any bearing on
5 whether their actions constituted deliberate indifference. There is no dispute that Defendants could
6 have attempted to locate a wheelchair even where Plaintiff did not have a Chrono, but it is also
7 undisputed that whether they did depended on the particular circumstances. While Defendants are
8 unable to state what particular circumstances existed during the escort, it is undisputed that they
9 followed the policy and practice in place at the time. Plaintiff has not provided any evidence to the
10 contrary.

11 Plaintiff also argues that he was made to decide between an escort without a wheelchair, or
12 remaining in his cell and refusing his appointment, and that this choice in and of itself was
13 unconstitutional. That Plaintiff may have had to make this choice is not relevant to Defendants'
14 actions.

15 Therefore, the Court finds that the undisputed evidence precludes a finding that Defendants
16 Rios and Torres acted with deliberate difference.

17 3. *Further Treatment*

18 a. Defendant Ceballos

19 In analyzing Plaintiff's claim that Defendant Ceballos failed to order bandage changes, the
20 Court found that even viewing the evidence in the light most favorable to Plaintiff, there was no
21 evidence to create a dispute of material fact. For this claim, the undisputed evidence remains the
22 same. Defendant Ceballos examined Plaintiff, changed his bandage, and knew that he would be
23 returning for suture removal in six days. She also instructed Plaintiff to return if he had signs and
24 symptoms of an infection.

25 In his opposition, Plaintiff suggests that his wound was not healing and that even if it was not
26 infected when Defendant Ceballos examined him, "it was obvious that something was wrong." ECF
27
28

1 No. 244, at 20. This is Plaintiff’s opinion, and it has no bearing upon whether Defendant Ceballo’s
2 failure to send him to the hospital was deliberately indifferent. “A difference of opinion between a
3 physician and the prisoner - or between medical professionals - concerning what medical care is
4 appropriate does not amount to deliberate indifference.” Snow v. McDaniel, 681 F.3d 978, 987 (9th
5 Cir. 2012) (citing Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989)), overruled in part on other
6 grounds, Peralta v. Dillard, 744 F.3d 1076, 1082-83 (9th Cir. 2014); Wilhelm v. Rotman, 680 F.3d
7 1113, 1122-23 (9th Cir. 2012) (citing Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1986)).

8
9 Based on the undisputed facts, there is no evidence to support a finding that Defendant
10 Ceballos “[knew] of and disregard[ed] an excessive risk to [plaintiff’s] health or safety.” Farmer, 511
11 U.S. at 837.

12 b. Defendant Abadia

13 As the Court has noted above, the undisputed facts show that Defendant Abadia encountered
14 Plaintiff in his cell on one or more occasion in early 2011 while making medication rounds. The
15 primary purpose of medication rounds was to distribute scheduled medication to inmates, though
16 LVNs also perform other activities during their rounds. If Plaintiff requested that Defendant Abadia
17 send him for further treatment, she would have done so if the circumstances presented a need for
18 immediate medical attention.

19 Plaintiff contends that Defendant Abadia refused to send Plaintiff for further treatment several
20 times, including on January 27, 2011, when he complained of increased pain, decreased range of
21 motion, vomiting and chills. Pl.’s Second Decl. ¶ 19. However, his belief that he required more
22 treatment is not dispositive. Defendant Abadia states that she would have sent Plaintiff for further
23 treatment had the situation required immediate medical attention. Plaintiff’s disagreement with her
24 decision is nothing more than a difference of opinion and it is not sufficient to demonstrate that she
25 knew of a serious risk of harm and failed to prevent it. Snow v. McDaniel, 681 F.3d 978, 987 (9th Cir.
26 2012) (internal citations omitted).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4. *Causation*

In a section 1983 action, a plaintiff must also establish that the defendant's conduct was the actionable cause of the claimed injury. Harper v. City of Los Angeles, 533 F.3d 1010, 1026 (9th Cir. 2008). Defendants argue that Plaintiff cannot establish causation on two basis: (1) the development of his infection based on timing; and (2) the fact that it is a common infection and can occur even with proper care and treatment.

As to the former, Defendants argue that Plaintiff did not have any signs or symptoms of an infection prior to January 28, 2011, and given that a staph aureus infection takes 48 to 72 hours to develop, Defendants' acts or omissions could not have led to the February 4, 2011, positive culture. However, whether Plaintiff had signs and symptoms of an infection is disputed, and this argument therefore fails.

With regard to Defendants' argument that Plaintiff's infection can occur even with proper treatment, Defendants present the opinion of Defendant Clark. He explains that a staph aureus infection can occur notwithstanding proper treatment during and after surgery. Therefore, Plaintiff's development of a staph aureus infection in no way establishes that his care and treatment was below the standard of care. Clark Decl. ¶ 13.

Plaintiff attempts to deny this, but he also admits that his infection can occur even with proper care and treatment. Plaintiff presents no evidence to dispute Defendant Clark's statement.

Based on the above analysis, the Court finds that summary judgment should be granted in favor of Defendants Holt, Borbolla, Ceballos, Rios, Torres, Clark, Abadia and Ross on Plaintiff's Eighth Amendment claim.

B. Medical Negligence

Under California law, the elements of a claim for professional negligence, also referred to as medical malpractice, are: "(1) the duty of the professional to use such skill, prudence, and diligence as other members of his profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the negligent conduct and the resulting injury; and (4) actual

1 loss or damage resulting from the professional’s negligence.” Johnson v. Superior Court, 143
2 Cal.App.4th 297, 305 (2006).

3 The general rule applicable in negligence cases arising out of the rendering of professional
4 services is that the applicable standard of care is a matter “peculiarly within the knowledge of
5 experts . . .” Flowers v. Torrance Mem’l Hosp. Med. Ctr., 8 Cal.4th 992, 1001 (1994); see also
6 Johnson, 143 Cal.App.4th at 305. Therefore, in order to prevail, a plaintiff must offer an expert’s
7 opinion to prove a duty owed, breach of that duty, or to show that the defendant’s alleged negligence
8 was the proximate cause of the plaintiff’s alleged injury. See Bushling v. Fremont Med. Ctr., 117
9 Cal.App.4th 493, 510, 11 Cal.Rptr.3d 653 (2004); Jennings v. Palomar Pomerado Health Systems,
10 Inc., 114 Cal.App. 4th 1108, 1118 (2003); see also Johnson v. United States, 2012 WL 1094322, *12
11 (N.D.Cal. 2012) (granting summary judgment to defendant on malpractice claim because plaintiff
12 failed to provide expert testimony or evidence to establish that defendant’s alleged breach of
13 applicable standard of care caused his injuries).

14 Plaintiff argues first that expert testimony is not required because neither the jury nor the Court
15 would need assistance in deciding the issues. The Court disagrees. Expert testimony is not required if
16 “the conduct required by the particular circumstances is within the common knowledge of the
17 layman.” Flowers, 8 Cal.4th at 1001. The “common knowledge” exception is “principally limited to
18 situations in which the plaintiff can invoke the doctrine of res ipsa loquitor, i.e., when a layperson ‘is
19 able to say as a matter of common knowledge and observation that the consequences of professional
20 treatment were not such as ordinarily would have followed if due care had been exercised.’” Id.
21 (internal citations omitted).

22 Plaintiff argues that the issues are more related to prison policies than medical care standards,
23 but his characterization is not persuasive. Defendants acknowledge that prison policies may be a
24 factor in certain claims, but they argue that this does not change the nature of the claims. Indeed, this
25 is an action involving Plaintiff’s care after surgery, and while there may have been orders for certain
26 care, it does not change the fact that the decisions were made by medical professionals and involved
27
28

1 medical judgments. Here, a layperson would not, as a matter of common knowledge, know whether
2 Defendants should have changed Plaintiff's bandages, sent Plaintiff immediately to the prison hospital,
3 or provided him with a wheelchair. These questions are purely medical issues for which expert
4 testimony is necessary.¹⁷

5
6 1. *Bandage Changes*

7 a. Defendant Clark

8 It is undisputed that after Plaintiff's knee surgery on January 18, 2011, Dr. Alade wrote an
9 order that Plaintiff's dressing be "kept clean and dry." Third Amended Complaint, Ex. E. Plaintiff
10 returned to CSP on January 18, 2011, and was seen by Defendant Clark at the prison's hospital.
11 Plaintiff's condition was stable and he was scheduled to return to Dr. Alade in two weeks. Defendant
12 Clark wrote an order for medication, but he did not write an order for bandage changes. Defendant
13 Clark did not order a bandage change because it is his experience that orthopedic surgeons do not want
14 to have the dressing changed or altered where the patient is to return to see the orthopedic surgeon for
15 further follow-up care.

16 In Defendant Clark's opinion, his treatment complied with the professional standard of care at
17 all times. Clark Decl. ¶ 11. Plaintiff disputes this, arguing that Defendant Clark was negligent in
18 ignoring the orders of Dr. Alade. However, as the Court noted earlier, ordering bandage changes is
19 different than recognizing that the dressing needs to be kept clean and dry, as ordered by Dr. Alade.

20 As noted above, Defendant Clark also explains that a staph aureus infection can occur
21 notwithstanding proper treatment during and after surgery. Therefore, Plaintiff's development of a
22 staph aureus infection in no way establishes that his care and treatment were below the standard of
23 care. Clark Decl. ¶ 13.

24
25
26

¹⁷ In support of his argument, Plaintiff cites Chacon v. Gallion, 2008 WL 5391050 (N.D. Cal, 2008), a case which
27 involved nurses' handling of very clear discharge requirements, i.e., provision of medication and gauze pads. Chacon
28 involved a total breakdown of procedures, staff who had not informed themselves of the applicable procedures, and a total
lack of medical care for two days post-surgery. This Court is not bound by the decision in Chacon. Regardless, Plaintiff's
case is distinguishable, as he was properly processed and received medical treatment upon his return from surgery.

1 Plaintiff attempts to dispute this, arguing that even if it can occur with proper treatment, “that
2 is not an excuse to provide bad care and treatment which arguably would increase a person’s chances
3 of developing” the infection. Plaintiff’s statement is an unsupported opinion, however, and does not
4 render Defendant Clark’s statement disputed. In fact, Plaintiff admits that the fact that he developed
5 the infection in and of itself, in no way establishes that the care and treatment were below the standard
6 of care.

7
8 Plaintiff has not provided expert testimony to dispute Defendant Clark’s statement that his
9 treatment complied with the professional standard of care. He has also failed to dispute Defendant
10 Clark’s statement that the infection can occur even with proper care and treatment, which negates a
11 finding of causation.

12 b. Defendant Ceballos

13 It is undisputed that Defendant Ceballos examined Plaintiff on January 25, 2011, and that
14 Plaintiff complained that his incision site was draining, and that he had increased pain and decreased
15 range of motion. Defendant Ceballos noted that Plaintiff was alert, sensory oriented, his skin was
16 warm and dry, he had no shortness of breath and was not in distress. She also noted that he had minor
17 drainage, and that he had a doctor’s appointment scheduled for January 31, 2011. Defendant Ceballos
18 changed Plaintiff’s bandage. She also told him that he was at risk for infection and instructed him to
19 return for further evaluation if he experienced worsening drainage or signs or symptoms of infection,
20 such as increased redness, increased swelling or the wound being hot to the touch.

21 Defendant Ceballos opined that she provided an appropriate triage examination on January 25,
22 2011, and met the standard of care. Ceballos Decl. ¶¶7-8. Plaintiff denies this, but does not support
23 his opinion with proper evidence. Therefore, even if it is disputed whether Plaintiff requested
24 additional bandage changes, or had signs or symptoms of an infection, Plaintiff has not provided
25 sufficient evidence to dispute her statement that her treatment met the standard of care. Plaintiff also
26 fails to dispute Defendant Clark’s expert opinion that the infection can occur even with proper
27 treatment, which negates a finding of causation.
28

1
2 c. Defendant Abadia

3 The parties do not dispute that Defendant Abadia encountered Plaintiff in his cell on one or
4 more occasions in early 2011 while making medication rounds. On February 1, 2011, Defendant
5 Abadia changed Plaintiff's bandage during medication rounds. On other occasions, Defendant Abadia
6 gave Plaintiff bandage materials. If Plaintiff requested that Defendant Abadia change his bandage, she
7 would have done so if the circumstances presented a need for immediate medical attention.

8 Defendant Abadia opines that her conduct and decisions met the standard of care. Abadia
9 Decl. ¶¶ 4-5. Plaintiff denies this, but his own lay opinion is insufficient to create a dispute.

10 Plaintiff also fails to dispute Defendant Clark's opinion that the infection can occur even with
11 the proper treatment, which negates a finding of causation.

12 d. Defendant Ross

13 Defendant Ross encountered Plaintiff at his cell on February 19 and 20, 2011, while making
14 medication rounds. Plaintiff had his bandage changed on February 18, 2011, and then again on
15 February 21, 2011. Plaintiff alleges that during the February 21, 2011, bandage change, the bandage
16 had become "more adhered" to his wound because Defendant Ross did not change the bandage on
17 February 20, 2011.

18 Defendant Ross opines that his actions during his encounters with Plaintiff met the
19 professional standard of care. Ross Decl. ¶¶4-5. Plaintiff attempts to dispute this by arguing that
20 Defendant Ross refused to change his bandage on February 19 and 20, 2011, and even if he changed it
21 on February 19, he would have still have had to change it on February 20 because the order was for
22 daily bandage changes. First, Plaintiff is incorrect that the order was for daily bandage changes- the
23 order directed that his bandage be kept clean and dry. Second, Plaintiff's lay opinion is insufficient to
24 create a dispute of fact.

25 Finally, Plaintiff fails to dispute Defendant Clark's opinion that the infection can occur even
26 with the proper treatment, which negates a finding of causation.
27
28

1 e. Defendant Holt

2 On January 20, 2011, Defendant Holt examined the incision site, and wore non-sterile,
3 disposable gloves during her examination. It was her practice, and a standard practice for nurses
4 working as the clinic triage nurse, to wear these gloves at all times during an examination. The gloves
5 were intended to protect the wearer from having direct skin contact with the patient's body or bodily
6 fluids, and were not intended to provide sterility as a protection to the patient from contamination.
7 Holt Decl. ¶ 7. At the time of the examination, Plaintiff did not see any problem with the care and
8 treatment Defendant Holt provided. Pl.'s Dep. 53:6-10.

9
10 The parties dispute whether Defendant Holt pulled out a stitch during her examination. She
11 argues that had she done so, she would have noted it in the progress notes. Holt Decl. ¶ 6. Plaintiff
12 argues that while the stitches were initially intact, Defendant Holt pulled one out accidentally when
13 unwrapping the dressing.¹⁸ Pl.'s Second Decl. ¶ 8. He also contends that she did not put on a fresh
14 bandage, but rather reapplied the same old bandage to the wound. Pl.'s Second Decl. ¶ 11.

15 The parties also dispute whether Defendant Holt touched his wound with her gloves. Plaintiff
16 contends that she made notes, flipped through Plaintiff's chart and answered the phone. He also
17 contends that she touched his incision when Plaintiff pointed out to her that she pulled out a stitch.
18 Pl.'s Second Decl. ¶ 11. Defendant Holt, however, states that it was not her standard practice to use
19 the phone, make notes or touch desk items during an examination, and she has no reason to believe
20 that she did so during Plaintiff's examination. She does not recall touching Plaintiff's incision site
21 with her gloved fingers, and there would have been no reason for her to have done so. Holt Decl. ¶ 7.

22 Even viewing this dispute in the light most favorable to Plaintiff, he has failed to provide
23 expert evidence to contradict Defendant Holt's opinion that she provided an appropriate triage
24 examination on January 20, 2011, and that her examination met the professional standard of care.
25 Holt Decl. ¶ 8. Plaintiff denies that her treatment met the standard of care and believes that her actions
26

27
28 ¹⁸ Contentions set forth in verified pro se pleadings, motions, and/or oppositions constitute evidence where the contentions are based on personal knowledge of facts admissible in evidence. Jones v. Blanas, 393 F.3d 918, 922-23 (9th Cir. 2004).

1 may have contaminated his bandage and wound. Pl.'s Second Decl. ¶ 11. However, Plaintiff's lay
2 opinion is insufficient to dispute Defendant Holt's contention. It is also insufficient to dispute
3 Defendant Clark's statement that this infection can occur despite proper care and treatment, which
4 negates a finding of causation.

5
6 2. *Wheelchair Chrono*

7 a. Defendant Holt

8 It is undisputed that Plaintiff arrived to his appointment with Defendant Holt in a wheelchair,
9 and left the appointment in a wheelchair. It is also undisputed that Defendant Holt did not ask about
10 the wheelchair that he was using.

11 The parties dispute, however, whether Plaintiff asked Defendant Holt to issue him a
12 wheelchair, and whether she had a duty and responsibility to issue one. However, even given these
13 disputes, the undisputed evidence shows that Plaintiff had a wheelchair when he asked Defendant Holt
14 for one. Plaintiff is also unable to dispute Defendant Clark's opinion that the infection can occur even
15 with proper care and treatment, which negates a finding of causation.

16 b. Defendants Ceballos and Borbolla

17 It is undisputed that Defendant Ceballos examined Plaintiff on January 25, 2011. It is also
18 undisputed that on January 25, 2011, Defendant Ceballos telephoned Defendant Borbolla to inquire
19 about a wheelchair for Plaintiff. Defendant Borbolla did not provide care to Plaintiff.

20 As to Defendant Ceballos, it is undisputed that she followed-up on Plaintiff's request. She also
21 opines that her treatment met the standard of care. Ceballos Decl. ¶¶7-8. Plaintiff fails to provide
22 testimony to dispute this. He also fails to dispute Defendant Clark's opinion that the infection can
23 occur even with proper care and treatment, which negates a finding of causation.

24 As to Defendant Borbolla, the parties dispute whether Defendant Borbolla actually brought the
25 wheelchair to Plaintiff's cell. It is undisputed, however, that she located a wheelchair for Plaintiff
26 after her conversation with Defendant Ceballos. If she failed to get the wheelchair to Plaintiff, there is
27 still no evidence that her failure to do so caused any of Plaintiff's injuries.
28

1
2 c. Defendant Clark

3 It is undisputed that when Plaintiff saw Defendant Clark on January 18, 2011, he wrote out and
4 approved a Chrono for Plaintiff's use of a wheelchair until February 2, 2011.

5 It is also undisputed that Defendant Clark did not give Plaintiff a copy of the Chrono.
6 However, whether or not he had a duty to do so is disputed. Defendant Clark states that it was not his
7 duty or responsibility to provide Plaintiff with a wheelchair for future use or to provide Plaintiff with a
8 copy of the Chrono. Clark Decl. ¶ 10. Plaintiff denies this and believes that it was the CMO's
9 responsibility to ensure that Plaintiff was provided with the items prior to being released back to his
10 housing. In his second declaration, he states that he filed an appeal and Dr. Theil's response "states or
11 indicates that Dr. Clark should have provided Plaintiff with a copy of the Chrono." Pl.'s Second Decl.
12 ¶ 3.¹⁹

13 Again, even assuming that Defendant Clark should have given Plaintiff a copy of the Chrono,
14 Plaintiff fails to provide any evidence that his failure to do so caused any injuries.

15 3. *Failure to Provide Treatment*

16 a. Defendant Ceballos

17 Defendant Ceballos examined Plaintiff on January 25, 2011, and changed his bandage. She
18 noted that Plaintiff was alert, sensory oriented, his skin was warm and dry, he had no shortness of
19 breath and was not in distress. She also noted that he had minor drainage, and that he had a doctor's
20 appointment scheduled for January 31, 2011. Defendant Ceballos also told him that he was at risk for
21 infection and instructed him to return for further evaluation if he experienced worsening drainage or
22 signs or symptoms of infection, such as increased redness, increased swelling or the wound being hot
23 to the touch.

24 Defendant Ceballos opined that she provided an appropriate triage examination on January 25,
25 2011, and met the standard of care. Ceballos Decl. ¶¶7-8. Plaintiff denies this, arguing that she
26

27 _____
28 ¹⁹ Defendants object to the appeal response, attached to Plaintiff's TAC as Ex. B. The Court is not relying on the document, however.

1 should have sent him to the prison doctor where she was aware of Plaintiff's symptoms and admitted
2 he was at risk of an infection. Again, however, Plaintiff's testimony is insufficient to establish the
3 standard of care and it does not render Defendant Ceballo's opinion disputed. Plaintiff also fails to
4 dispute Defendant Clark's expert opinion that the infection can occur even with proper treatment,
5 which negates a finding of causation.

6
7 b. Defendant Abadia

8 Defendant Abadia encountered Plaintiff in his cell on one or more occasions in early 2011
9 while making medication rounds. If Plaintiff requested that Defendant Abadia send him for further
10 treatment, she would have done so if the circumstances presented a need for immediate medical
11 attention.

12 Defendant Abadia opines that her conduct and decisions met the standard of care. Abadia
13 Decl. ¶¶ 4-5. Plaintiff denies this, but he does not support his denial with any evidence. As the Court
14 noted in the analysis of the Eighth Amendment claim, Plaintiff's claim against Defendant Abadia is
15 based on his belief that she should have done more. His belief, however, is insufficient to establish a
16 standard of care to dispute Defendant Abadia's opinion. Plaintiff also fails to dispute Defendant
17 Clark's expert opinion that the infection can occur even with proper treatment, which negates a finding
18 of causation.

19 Based on the above, the Court finds that summary judgment should be granted in favor of
20 Defendants Holt, Borbolla, Ceballos, Clark, Abadia and Ross on Plaintiff's medical negligence claim.

21 D. QUALIFIED IMMUNITY

22 Qualified immunity shields government officials from civil damages unless their conduct
23 violates "clearly established statutory or constitutional rights of which a reasonable person would have
24 known." Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727 (1982).

25 In ruling upon the issue of qualified immunity, the initial inquiry is whether, taken in the light
26 most favorable to the party asserting the injury, the facts alleged show the defendant's conduct
27 violated a constitutional right. Saucier v. Katz, 533 U.S. 194, 201 (2001). If, and only if, a violation
28

1 can be made out, the next step is to ask whether the right was clearly established. Id. In resolving
2 these issues, the court must view the evidence in the light most favorable to plaintiff and resolve all
3 material factual disputes in favor of plaintiff. Martinez v. Stanford, 323 F.3d 1178, 1184 (9th Cir.
4 2003).

5 As the Court has found that Defendants did not violate a constitutional right, it need not further
6 discuss the issue of qualified immunity.

7 **V. FINDINGS AND RECOMMENDATIONS**

8 For the reasons set forth above, the Court HEREBY RECOMMENDS that summary
9 adjudication be GRANTED in favor of Defendants Abadia, Ceballos, Borbolla, Holt, Rios, Ross,
10 Clark and Torres on the Eighth Amendment claim, and in favor of Defendants Adabia, Ceballos,
11 Borbolla, Holt, Ross and Clark on the medical negligence claims.

12 These Findings and Recommendations will be submitted to the United States District Judge
13 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30) days
14 after being served with these Findings and Recommendations, the parties may file written objections
15 with the Court. Local Rule 304(b). The document should be captioned “Objections to Magistrate
16 Judge’s Findings and Recommendations.” Any response to the objections must be filed within
17 fourteen (14) days from the date of service of the objections. The parties are advised that failure to file
18 objections within the specified time may waive the right to appeal the District Court’s order. Martinez
19 v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

20
21 IT IS SO ORDERED.

22
23 Dated: July 1, 2015

/s/ Dennis L. Beck
24 UNITED STATES MAGISTRATE JUDGE