

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

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

* * *

MICHAEL FAUSETT,)
)
Plaintiff,)
)
vs.)
)
LEBLANC, *et al.*,)
)
Defendants.)
_____)

Case No.: 2:08-cv-01724-RLH-VPC

ORDER

(Motion for Summary Judgment–#101;
Motion for Summary Judgment–#109;
Motion for Summary Judgment–#110;
Motion for Summary Judgment–#111)

Before the Court is Defendants LeBlanc, Nale, Martinez, Galloway, and Naseer’s **Motion for Summary Judgment** (#101, filed Dec. 20, 2010). The Court has also considered Plaintiff Michael Fausett’s Opposition (#122, filed Feb. 15, 2011), and Defendants’ Reply (#128, filed Feb. 22, 2011).

Also before the Court is Plaintiff Fausett’s **Motion for Summary Judgment** (#109, filed Dec. 22, 2010) against Defendant LeBlanc. The Court has also considered Defendant Leblanc’s Opposition (#120, filed Feb. 14, 2011), and Fausett’s Reply (#133, filed Mar. 17, 2011).

Also before the Court is Plaintiff Fausett’s **Motion for Summary Judgment** (#110, filed Dec. 22, 2010) against Defendant Nale. The Court has also considered Defendant Nale’s Opposition (#118, filed Feb. 10, 2011). Fausett did not reply.

1 **DISCUSSION**

2 **I. Summary Judgment Standard**

3 The purpose of summary judgment is to avoid unnecessary trials when there is no
4 dispute as to the facts before the court. *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18 F.3d
5 1468, 1471 (9th Cir. 1994). Summary judgment is proper when “the movant shows that there is no
6 genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of
7 law.” Fed. R. Civ. P. 56(a). A dispute is “genuine” only if there is a sufficient evidentiary basis
8 on which a reasonable fact finder could find for the nonmovant, and a dispute is “material” only if
9 it could affect the outcome of the suit under the governing law. *Anderson v. Liberty Lobby, Inc.*,
10 477 U.S. 242, 248–49 (1986); *Matsushita Elec. Ind. Co. v. Zenith Radio*, 475 U.S. 574, 587
11 (1986). The movant has the burden of showing the absence of a genuine dispute, and the court
12 must view all facts and draw all inferences in the light most favorable to the nonmovant. *Zoslaw*
13 *v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982), *cert. denied*, 460 U.S. 1085 (1983).

14 Once the movant satisfies the requirements of Rule 56, the burden shifts to the
15 nonmovant to “set forth specific facts showing that there is a genuine issue for trial.” *Anderson*,
16 477 U.S. at 256; *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). The non-moving party “may
17 not rely on denials in the pleadings but must produce specific evidence, through affidavits or
18 admissible discovery material, to show that the dispute exists,” *Bhan v. NME Hosp., Inc.*, 929 F.2d
19 1404 (9th Cir. 1991), and “must do more than simply show that there is some metaphysical doubt
20 as to the material facts.” *Matsushita*, 475 U.S. at 586. “The mere existence of a scintilla of
21 evidence in support of the plaintiff’s position will be insufficient.” *Anderson*, 477 U.S. at 252.

22 **II. Defendants’ Motion for Summary Judgment**

23 Under the Eighth Amendment, a prisoner has the right to be free from “cruel and
24 unusual punishments.” Deliberate indifference to a prisoner’s serious medical needs constitutes a
25 violation of this constitutional guarantee. “In the Ninth Circuit, the test for deliberate indifference
26 consists of two parts.” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006). First, the prisoner

1 must show that he faced a serious medical need. *Id.* In order to satisfy this first part, the prisoner
2 must demonstrate that failure to treat his medical need could result in “further significant injury or
3 the unnecessary and wanton infliction of pain.” *Id.* Second, the prisoner must show that the
4 defendant was deliberately indifferent to that medical need. *Id.* In order to satisfy the second part,
5 the prisoner must demonstrate that the defendant knew of his serious medical need and
6 purposefully disregarded it. *Id.* Mere negligence or medical malpractice in treating a medical
7 condition does not violate the Eighth Amendment. *Broughton v. Cutter Laboratories*, 622 F.2d
8 458, 460 (9th Cir. 1980). Finally, a mere difference of medical opinion between a prisoner and the
9 defendant is insufficient to establish deliberate indifference. *Toguchi v. Chung*, 391 F.3d 1051,
10 1058 (9th Cir. 2004).

11 Fausett alleges that Defendants were deliberately indifferent to his medical needs by
12 ignoring Dr. Muizelaar’s post-surgical orders as demonstrated by the following: removing
13 Fausett’s pain patch (a strong prescription pain medication in the form of a patch that is applied to
14 the skin) when he returned to MCSP after his surgery; refusing to provide Fausett with certain
15 types of pain medication and physical therapy; cancelling Fausett’s follow-up appointments
16 (apparently with Dr. Muizelaar); ignoring Fausett’s activity restrictions; and failing to provide
17 Fausett with a wheelchair or crutches.

18 However, Defendants were not deliberately indifferent to Fausett’s medical needs
19 even though the evidence provided shows that they did not follow Dr. Muizelaar’s post-surgical
20 orders with exactness,. For example, it is true that Defendants did not provide Fausett with the
21 type of pain medication that Dr. Muizelaar prescribed. But the evidence also shows that
22 Defendants did provide Fausett with other pain medications. Additionally, Defendants have
23 provided evidence showing that Fausett’s other allegations fail as a matter of law. To illustrate,
24 Dr. Muizelaar’s pain patch prescription indicates that Fausett was only to wear the patch from 2:00
25 p.m. to 5:45 p.m. on July 20, 2007, while he was traveling from U.C. Davis to MCSP. Thus, when
26 Fausett arrived at MCSP the Defendants simply followed Dr. Muizelaar’s orders and removed the

1 patch. Furthermore, Fausett has provided no evidence—aside from his own claims and personal
2 opinion—that his condition required a wheelchair or crutches and, to the contrary, the evidence
3 produced demonstrates that Fausett was able to ambulate without a walker while still at U.C.
4 Davis. Therefore, Defendants have met their burden of establishing that they were not deliberately
5 indifferent to Fausett’s medical needs with respect to Fausett’s post-surgical treatment.

6 Fausett also alleges that Defendants were deliberately indifferent by not adequately
7 addressing his continued medical needs. Specifically, Fausett argues that he consistently
8 complained to Defendants about his back pain, numbness in his legs, and urinary problems.
9 However, as discussed above, the evidence provided by Defendants shows that they were
10 responsive to his complaints and prescribed medications accordingly, in addition to providing him
11 with a lower bunk and extra lunches for two months. Therefore, Defendants have also met their
12 burden of establishing that they were not deliberately indifferent to Fausett’s continued medical
13 needs.

14 Furthermore, Fausett has provided insufficient evidence to show that there is a
15 genuine dispute for trial. Fausett’s evidence certainly shows, as mentioned above, that Defendants
16 did not follow Dr. Muizelaar’s post-surgical orders with exactness. However, noticeably lacking
17 is evidence that the Defendants course of treatment went beyond negligence or even medical
18 malpractice and was medically unacceptable. *Chung*, 391 F.3d at 1058 (holding that physician is
19 not deliberately indifferent unless prisoner shows that course of treatment was medically
20 unacceptable under the circumstances). For example, Fausett has not provided an affidavit or
21 other statement from a physician stating that his treatment was medically unacceptable. The mere
22 fact that Fausett disagrees with the course of treatment he received is insufficient to show
23 deliberate indifference. *Id.* Therefore, viewing all facts and drawing all inferences in the light
24 most favorable to Fausett, the Court finds that there is an insufficient evidentiary basis on which a
25 reasonable fact finder could find for Fausett. As such, there is not a genuine dispute of material
26 fact for trial and the Court grants Defendants’ motion for summary judgment.

1 **III. Fausett's Motions for Summary Judgment**

2 Because the Court has granted Defendants' motion for summary judgment, it need
3 not analyze Fausett's motions for summary judgment against Defendants LeBlanc, Nale, and
4 Martinez. Accordingly, the Court denies Fausett's motions.

5 **IV. Supplemental Jurisdiction**

6 In his complaint, Fausett asks the Court to exercise supplemental jurisdiction
7 pursuant to 28 U.S.C. § 1367. However, Fausett's only claim is one for deliberate indifference.
8 Construing the complaint extremely broadly, it is possible for the Court to surmise that Fausett
9 intended to assert a claim for intentional infliction of emotional distress. However, the facts
10 alleged fail to state such a claim as a matter of law. Therefore, if Fausett did intend to assert a
11 claim for intentional infliction of emotional distress it must be dismissed along with his deliberate
12 indifference claim.

13 **CONCLUSION**

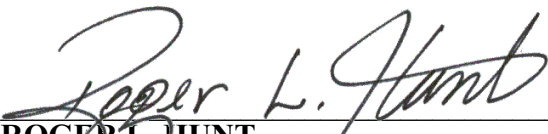
14 Accordingly, and for good cause appearing,

15 IT IS HEREBY ORDERED that Defendants' Motion for Summary Judgment
16 (#101) is GRANTED.

17 IT IS FURTHER ORDERED that Fausett's Motions for Summary Judgment
18 (##109, 110, 111) are DENIED.

19 The Clerk of Court is instructed to close the case.

20 Dated: April 12, 2011

21 
22 **ROGER L. HUNT**
23 Chief United States District Judge
24
25
26