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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARL LEOPOLD,

Plaintiff,

No. 2:11-cv-0846 JFM P

vs.

A. NANGALAMA,

Defendant.

ORDER AND

FINDINGS & RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff claims that his rights under the Eighth Amendment are being violated by defendant Nangalama’s failure to provide him with adequate medical care for severe chronic back pain resulting from three torn discs and curvature of his spine. This matter is before the court on cross-motions for summary judgment and on plaintiff’s motion for temporary restraining order.

SUMMARY JUDGMENT STANDARDS UNDER RULE 56

Summary judgment is appropriate when it is demonstrated that there exists “no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c).

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1 Under summary judgment practice, the moving party
2 always bears the initial responsibility of informing the district court
3 of the basis for its motion, and identifying those portions of “the
4 pleadings, depositions, answers to interrogatories, and admissions
demonstrate the absence of a genuine issue of material fact.

5 Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986) (quoting Fed. R. Civ. P. 56(c)). “[W]here the
6 nonmoving party will bear the burden of proof at trial on a dispositive issue, a summary
7 judgment motion may properly be made in reliance solely on the ‘pleadings, depositions, answers
8 to interrogatories, and admissions on file.’” Id. Indeed, summary judgment should be entered,
9 after adequate time for discovery and upon motion, against a party who fails to make a showing
10 sufficient to establish the existence of an element essential to that party’s case, and on which that
11 party will bear the burden of proof at trial. See id. at 322. “[A] complete failure of proof
12 concerning an essential element of the nonmoving party’s case necessarily renders all other facts
13 immaterial.” Id. In such a circumstance, summary judgment should be granted, “so long as
14 whatever is before the district court demonstrates that the standard for entry of summary
15 judgment, as set forth in Rule 56(c), is satisfied.” Id. at 323.

16 If the moving party meets its initial responsibility, the burden then shifts to the
17 opposing party to establish that a genuine issue as to any material fact actually does exist. See
18 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). In attempting to
19 establish the existence of this factual dispute, the opposing party may not rely upon the
20 allegations or denials of its pleadings but is required to tender evidence of specific facts in the
21 form of affidavits, and/or admissible discovery material, in support of its contention that the
22 dispute exists. See Fed. R. Civ. P. 56(e); Matsushita, 475 U.S. at 586 n.11. The opposing party
23 must demonstrate that the fact in contention is material, i.e., a fact that might affect the outcome
24 of the suit under the governing law, see Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248
25 (1986); T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n, 809 F.2d 626, 630 (9th Cir.
26 1987), and that the dispute is genuine, i.e., the evidence is such that a reasonable jury could

1 return a verdict for the nonmoving party, see Wool v. Tandem Computers, Inc., 818 F.2d 1433,
2 1436 (9th Cir. 1987).

3 In the endeavor to establish the existence of a factual dispute, the opposing party
4 need not establish a material issue of fact conclusively in its favor. It is sufficient that “the
5 claimed factual dispute be shown to require a jury or judge to resolve the parties’ differing
6 versions of the truth at trial.” T.W. Elec. Serv., 809 F.2d at 631. Thus, the “purpose of summary
7 judgment is to ‘pierce the pleadings and to assess the proof in order to see whether there is a
8 genuine need for trial.’” Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e) advisory
9 committee’s note on 1963 amendments).

10 In resolving the summary judgment motion, the court examines the pleadings,
11 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if
12 any. Fed. R. Civ. P. 56(c). The evidence of the opposing party is to be believed. See Anderson,
13 477 U.S. at 255. All reasonable inferences that may be drawn from the facts placed before the
14 court must be drawn in favor of the opposing party. See Matsushita, 475 U.S. at 587.
15 Nevertheless, inferences are not drawn out of the air, and it is the opposing party’s obligation to
16 produce a factual predicate from which the inference may be drawn. See Richards v. Nielsen
17 Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff’d, 810 F.2d 898, 902 (9th Cir.
18 1987). Finally, to demonstrate a genuine issue, the opposing party “must do more than simply
19 show that there is some metaphysical doubt as to the material facts Where the record taken
20 as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no
21 ‘genuine issue for trial.’” Matsushita, 475 U.S. at 587 (citation omitted).

22 On July 31, 2012, the court advised plaintiff of the requirements for opposing a
23 motion pursuant to Rule 56 of the Federal Rules of Civil Procedure. See Woods v. Carey, 684
24 F.3d 934 (9th Cir. 2012), Rand v. Rowland, 154 F.3d 952, 957 (9th Cir. 1998) (en banc), cert.
25 denied, 527 U.S. 1035 (1999), and Klinge v. Eikenberry, 849 F.2d 409 (9th Cir. 1988).

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1 ANALYSIS

2 I. Undisputed Facts¹

3 At all times relevant to this action, plaintiff has been an inmate at California State
4 Prison-Sacramento, and defendant Dr. Nangalama has been a physician. On January 5, 2007,
5 defendant Nangalama examined plaintiff for complaints of lower back pain. At that time,
6 plaintiff's chart showed that he was taking 500 mg of naproxen for chronic lower back pain.
7 Defendant Nangalama reviewed an MRI of plaintiff's lumbar spine taken on November 28, 2006,
8 which showed plaintiff's lumbar spine in normal alignment and "“intervertebral disc spaces were
9 preserved at all lumbar levels.”" Declaration of Nangalama in Support of Motion for Summary
10 Judgment, filed July 25, 2012 (Nangalama Decl.), at ¶ 8 (internal citation omitted). Plaintiff
11 showed no sign of pain or acute distress during the January 5, 2007 examination. Defendant
12 Nangalama continued the course of naproxen and ordered another MRI. He also approved
13 plaintiff's request for physical therapy. Plaintiff had eight sessions of physical therapy between
14 March 23, 2007 and May 3, 2007.

15 On February 23, 2007, defendant Nangalama approved a refill of the naproxen
16 prescription for sixty days. Defendant Nangalama saw plaintiff again on May 27, 2007 for lower
17 back pain. At that time, plaintiff was taking roboxain and naproxen and he reported that the
18 medications were not working. After the examination, defendant Nangalama prescribed 800 mg
19 of ibuprofen and 50 mg of tramadol for plaintiff's lower back pain. On June 4, 2007, plaintiff
20 had a lumbar spine MRI which showed that plaintiff "“had a minimal L4-5 degenerative disc
21 disease with a tiny posterior annular tear.”" Nangalama Decl. at ¶ 18. Dr. Nangalama did not

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24 ¹ All of the facts in this section are taken from statements 1 through 46 of defendant's
25 Statement of Undisputed Material Facts, filed July 25, 2012, which plaintiff acknowledges are
26 true, see Plaintiff's Opposition to Defendant's Motion for Summary Judgment, filed September
20, 2012, at 9, and Defendant's Evidence of Medical Care for Plaintiff's Lower Back Pain from
April 1, 2009 Until Transfer to California State Prison-Solano, filed February 6, 2013 in response
to this court's January 25, 2013 order.

1 recommend surgery because “[s]urgery is not usually recommended for degenerative disc disease
2 because it could damage the spine and result in paralysis.” Id. at ¶ 21.

3 “There is no cure for degenerative disc disease.” Id. at 20. The normal course of
4 treatment for degenerative disc disease is pain medication and physical therapy. Defendant
5 Nangalama and other staff continued plaintiff on this course of treatment.

6 In January 2008, plaintiff was seen by another physician who noted that he was
7 taking morphine for his back pain. On May 13, 2008, that physician prescribed 10 mg of
8 methadone for plaintiff as “part of the process of getting all patients off morphine.” Ex. A to
9 Declaration of Myers in Support of Defendant’s Motion for Summary Judgment, filed July 25,
10 2012 (Myers Decl.), at 15. In June 2008, plaintiff suffered a seizure and requested reduction of
11 the methadone from 10 mg to 5 mg. On October 2, 2008, defendant Nangalama saw plaintiff for
12 his lower back pain. At that time, plaintiff was taking 5 mg of methadone and 500 mg of
13 naproxen for the lower back pain. Plaintiff wanted to increase the dosage of methadone. On
14 examination, defendant Nangalama found no sign that plaintiff was in acute distress with the
15 lower back pain and his vital signs were normal. Defendant Nangalama was also concerned that
16 since plaintiff had been taking 10 mg of methadone when he suffered a seizure, increasing the
17 dose without further examination could trigger more seizures. Defendant Nangalama concluded
18 that plaintiff’s lower back pain was being well treated and he did not increase the methadone.
19 After plaintiff filed an appeal, defendant Nangalama examined him again and drew the same
20 conclusion. He also requested a lumbar spine MRI.

21 On April 1, 2009, plaintiff had another MRI of his lumbar spine. The MRI
22 showed that his spine and body alignment were normal but he had “subtle fissure and mild facet
23 arthropathy in his lower back.” Nangalama Decl. at ¶ 40. Following another examination and
24 plaintiff and review of that MRI, defendant Nangalama increased plaintiff’s methadone to 10 mg.
25 Plaintiff has not had another lumbar spine MRI since April 2009.

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1 Defendant Nangalama next saw plaintiff on August 9, 2009, when he examined
2 plaintiff for lower back pain. Ex. A to Declaration of Myers Regarding Plaintiff's Medical
3 Records (Myers Decl.), filed February 6, 2013, at 4. He prescribed 10 mg of methadone for
4 plaintiff's lower back pain. Id. He next saw plaintiff on February 1, 2011, for complaints of
5 lower back pain, shoulder pain, and asthma. Ex. A to Myers Decl. at 5. The notes show that
6 plaintiff was clinically stable and in no acute distress. Id. The notes also show that plaintiff was
7 taking 10 mg. of methadone for lower back pain. Id. Plaintiff was seen by another physician on
8 August 5, 2011 and October 26, 2011. Id. at 6-7. Plaintiff was taking 10 mg of methadone twice
9 a day for back pain. Id.

10 Plaintiff next saw defendant Nangalama on March 19, 2012. Id. at 9-10. The
11 examination notes show that plaintiff was taking 10 mg of methadone twice a day, had normal
12 range of motion in his extremities, and normal motor strength. Id. at 9. The notes also show that
13 plaintiff was obese and said he would increase his exercise. Id. Plaintiff next saw defendant
14 Nangalama on March 21, 2012. Id. at 10. Plaintiff wanted more methadone. Id. Defendant
15 Nangalama assessed plaintiff's pain as stable, continued the methadone, and prescribed 500 mg
16 of Salsalate. Id. Plaintiff was seen by a staff nurse on May 29, 2012, a physician on June 6,
17 2012 and July 3, 2012, and medical staff on August 27, 2012. Id. at 10-14.

18 Plaintiff saw defendant Nangalama on October 10, 2012 and requested that his
19 methadone be increased from 5 mg to 10 mg. Id. at 15. It is not clear from the record when
20 plaintiff's methadone was decreased to 5 mg. Defendant Nangalama ordered x-rays for lower
21 back and foot pain, and continued plaintiff on 5 mg of methadone and 500 mg of salsalate. Id. at
22 16. On October 12, 2012, plaintiff had a lumbar spine x-ray that showed partial sacralization at
23 L5, no acute compression of his five lumbar vertebrae, well maintained disc spaces, and "[t]iny
24 ventral spurring" at L4. Id. at 18. Plaintiff transferred to CSP-Solano on November 27, 2012.

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1 II. Cross-Motions for Summary Judgment

2 Defendant Nangalama seeks summary judgment on the grounds that the
3 undisputed facts show that defendant Nangalama did not act with deliberate indifference to
4 plaintiff's medical needs and that plaintiff suffered no harm as a result of the care he received.
5 Defendant Nangalama also contends that he is entitled to qualified immunity. Plaintiff seeks
6 summary judgment on the grounds that he had not had an MRI since April 1, 2009 and he is not
7 receiving appropriate pain medication.

8 A. Legal Standards

9 In order to prevail on his Eighth Amendment claim, plaintiff must prove that he
10 had a "serious medical need" and that defendants acted with "deliberate indifference" to that
11 need. Estelle v. Gamble, 429 U.S. 97, 105 (1976). A medical need is serious if "the failure to
12 treat a prisoner's condition could result in further significant injury or the 'unnecessary and
13 wanton infliction of pain'." McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir.1992) (quoting
14 Estelle, 429 U.S. at 104, 97 S.Ct. 285). Deliberate indifference is proved by evidence that a
15 prison official "knows of and disregards an excessive risk to inmate health or safety; the official
16 must both be aware of the facts from which the inference could be drawn that a substantial risk of
17 serious harm exists, and he must also draw the inference." Farmer v. Brennan, 511 825, 837
18 (1994). "Prison officials are deliberately indifferent to a prisoner's serious medical needs when
19 they deny, delay, or intentionally interfere with medical treatment." Hallett v. Morgan, 296 F.3d
20 732, 744 (9th Cir. 2002) (internal citations and quotation marks omitted).

21 Mere negligence is insufficient for Eighth Amendment liability. Frost v. Agnos,
22 152 F.3d 1124, 1128 (9th Cir. 1998). In addition, "[a] difference of opinion between a physician
23 and the prisoner – or between medical professionals – concerning what medical care is
24 appropriate does not amount to deliberate indifference." Snow v. McDaniel, 681 F.3d 978, 987
25 (9th Cir. 2012) (citing Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989)).

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1 B. Analysis

2 Plaintiff claims that defendant Nangalama violated his rights under the Eighth
3 Amendment by denying him necessary diagnostic procedures and adequate pain medication for
4 his degenerative disc disease and associated back pain. The undisputed evidence shows that
5 plaintiff had an MRI on April 1, 2009, which showed “persistent, subtle annular fissure at the L4-
6 L5 level”, “[m]ild facet arthropathy at the L3-4 and L4-5 levels” and “[n]o central canal or neural
7 foraminal stenosis.” Ex. A to Myers Decl. at 2. Thereafter, plaintiff was examined by
8 physicians, including defendant Nangalama, or other medical staff in August 2009, February
9 2011, August 2011, October 2011, March 2012, May 2012, June 2012, July 2012, and August
10 2012. In October 2012, defendant Nangalama ordered a lumbar spine x-ray which showed, as
11 noted above, partial sacralization at L5, no acute compression of his five lumbar vertebrae, well
12 maintained disc spaces, and “[t]iny ventral spurring” at L4. Id. at 18. Plaintiff has presented no
13 evidence that the denial of a second MRI caused him harm or affected the course of his treatment
14 adversely.

15 The undisputed evidence shows that defendant Nangalama consistently prescribed
16 pain medication for plaintiff. Plaintiff’s challenge to the course of pain medication is based
17 solely on a difference of opinion with defendant Nangalama and is an insufficient ground on
18 which to predicate liability under the Eighth Amendment.

19 For all of the foregoing reasons, defendant Nangalama is entitled to summary
20 judgment on the merits of plaintiff’s Eighth Amendment claims.²

21 III. Plaintiff’s Motion for Temporary Restraining Order

22 On November 19, 2012, plaintiff filed a motion for temporary restraining order.
23 Plaintiff seeks an order requiring that he been seen by an orthopedic doctor and that he be

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25 ² Because the undisputed evidence shows that defendant Nangalama did not violate
26 plaintiff’s rights under the Eighth Amendment, the court need not reach the defense of qualified
immunity. See Saucier v. Katz, 533 U.S. 194, 201 (2001) (where no constitutional right violated,
“there is no necessity for further inquiries concerning qualified immunity.”)

1 attended to by a physician other than defendant Nangalama. Defendant opposes the motion on
2 the ground that it has been mooted by plaintiff's transfer to CSP-Solano.

3 The legal principles applicable to a request for injunctive relief are well
4 established. To prevail, the moving party must show either a likelihood of success on the merits
5 and the possibility of irreparable injury, or that serious questions are raised and the balance of
6 hardships tips sharply in the movant's favor. See Coalition for Economic Equity v. Wilson, 122
7 F.3d 692, 700 (9th Cir. 1997); Oakland Tribune, Inc. v. Chronicle Publ'g Co., 762 F.2d 1374,
8 1376 (9th Cir. 1985). The two formulations represent two points on a sliding scale with the focal
9 point being the degree of irreparable injury shown. Oakland Tribune, 762 F.2d at 1376. "Under
10 any formulation of the test, plaintiff must demonstrate that there exists a significant threat of
11 irreparable injury." Id. In the absence of a significant showing of possible irreparable harm, the
12 court need not reach the issue of likelihood of success on the merits. Id.

13 In cases brought by prisoners involving conditions of confinement, any
14 preliminary injunction "must be narrowly drawn, extend no further than necessary to correct the
15 harm the court finds requires preliminary relief, and be the least intrusive means necessary to
16 correct the harm." 18 U.S.C. § 3626(a)(2).

17 For the reasons set forth supra, defendant Nangalama is entitled to summary
18 judgment on the merits of plaintiff's Eighth Amendment claim. A fortiori, plaintiff cannot
19 prevail on the merits of that claim and his motion for temporary restraining order should be
20 denied.

21 In accordance with the above, IT IS HEREBY ORDERED that the Clerk of the
22 Court is directed to assign this action to a United States District Judge; and

23 IT IS HEREBY RECOMMENDED that:

24 1. Defendant's July 25, 2012 motion for summary judgment (Doc. No. 21) be
25 granted;

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1 2. Plaintiff's October 19, 2012 cross-motion for summary judgment (Doc. No.
2 28) be denied; and

3 3. Plaintiff's November 19, 2012 motion for temporary restraining order (Doc.
4 No. 32) be denied.

5 These findings and recommendations are submitted to the United States District
6 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
7 days after being served with these findings and recommendations, any party may file written
8 objections with the court and serve a copy on all parties. Such a document should be captioned
9 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
10 objections shall be filed and served within fourteen days after service of the objections. The
11 parties are advised that failure to file objections within the specified time may waive the right to
12 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

13 DATED: February 20, 2013.

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16 UNITED STATES MAGISTRATE JUDGE

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