1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 EUGENIO PEJI, No. 2:13-cv-2647 KJM KJN P 12 Plaintiff, 13 v. **ORDER** 14 CDCR, et al., 15 Defendants. 16 17 Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant 18 to 42 U.S.C. § 1983. Pending before the court is defendants' summary judgment motion. (ECF 19 No. 37.) For the following reasons, further briefing is ordered. 20 Defendants' summary judgment motion states that plaintiff's complaint raises two claims 21 alleging inadequate medical care in violation of the Eighth Amendment: 1) defendants allegedly 22 failed to provide adequate pain management; and 2) defendants refused plaintiff's request to be placed in an Outpatient Housing Unit ("OHU"). (Id. at 6.) 23 24 Plaintiff's complaint raises a claim alleging that defendants failed to provide adequate pain medication. In his second claim for relief, plaintiff alleges that defendants transferred him 25 26 to California State Prison-Solano ("Solano"), which was "ill equipped" to provide the care 27 plaintiff required. (ECF No. 1 at 8.) Plaintiff alleges that he suffered a number of medical 28 emergencies after being transferred to Solano. (Id. at 9.) While plaintiff alleges that he suffered

the life threatening episodes due to the lack of OHU care (<u>id.</u> at 9), the gravamen of claim two is that defendants improperly transferred plaintiff to Solano.

The September 17, 2014 findings and recommendations addressing defendants' motion requesting that plaintiff be required to file an amended complaint containing numbered paragraphs identified the two claims raised in the complaint. (ECF No. 30.) Accordingly, defendants are directed to file supplemental briefing addressing plaintiff's claim that defendants transferred him to Solano in violation of his Eighth Amendment right to adequate medical care, including the adequacy of the medical care at Solano for plaintiff.

For the reasons stated herein, defendants are also directed to file supplemental briefing addressing plaintiff's claim alleging inadequate pain medication.

In his declaration addressing plaintiff's claim that he did not receive adequate pain medication, defendant Dhillon states,

At all relevant times, I observed plaintiff to be stable and functional. I generally observed plaintiff to be fairly comfortable, alert, awake, oriented, ambulatory, and able to perform activities of daily living without support. On multiple occasions, I observed plaintiff happily walking, talking, smiling and laughing when coming to Insulin line and ACC. I never observed plaintiff with significant pain or discomfort.

(ECF No. 37-3 at 2.)

In his verified declaration filed in support of his opposition, plaintiff states that during the relevant time period, he was housed in administrative segregation ("ad seg"). (ECF No. 39 at 23.) Plaintiff states that while he was in ad seg, all medications were brought to his cell. (<u>Id.</u>) Based on his placement in ad seg, plaintiff states that defendant Dhillon could not have observed him coming to the Insulin line. (<u>Id.</u>)

Defendants are directed to file further briefing addressing plaintiff's claim that he was in ad seg during the relevant time period and his insulin was brought to his cell. Defendants shall also address how defendant Dhillon was able to observe plaintiff perform the activities of daily living if plaintiff was housed in ad seg during the relevant time period.

In his complaint, plaintiff alleges that he is wheelchair bound. (ECF No. 1 at 7.) In the further briefing, defendants shall clarify how defendant Dhillon was able to observe plaintiff

walking if he is wheelchair bound.

Accordingly, IT IS HEREBY ORDERED that defendants shall file the supplemental briefing described above within twenty-one days of the date of this order; plaintiff may file a supplemental opposition within fourteen days thereafter; defendants may file a reply to plaintiff's supplemental opposition within seven days thereafter.

Dated: May 22, 2015

KENDALL J. NEWMAN

UNITED STATES MAGISTRATE JUDGE

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