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

KEENAN WILKINS,
Plaintiff,
v.
SHERIFF GREG AHERN, et al.,
Defendants.

No. C 08-1084 MMC (PR)
**ORDER GRANTING MOTION TO SEAL
MEDICAL RECORDS; GRANTING
ALAMEDA COUNTY DEFENDANTS'
MOTION FOR SUMMARY
ADJUDICATION; GRANTING PRISON
HEALTH SERVICES DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**
(Docket Nos. 172, 176, 195)

On February 22, 2008, plaintiff, a pretrial detainee then incarcerated at the Santa Rita County Jail ("SRCJ"), filed the above-titled civil rights action under 42 U.S.C. § 1983.¹ Thereafter, plaintiff twice amended his complaint. The Court found the allegations in plaintiff's second amended complaint ("SAC"), when liberally construed, stated the following cognizable claims for relief based on events alleged to have occurred during plaintiff's incarceration at SRCJ: retaliation, unconstitutional conditions of confinement, unlawful use of excessive force, denial of due process, denial of medical care and denial of mental health care. The SAC was ordered served on approximately sixty defendants.

Now before the Court are (1) the motion for summary adjudication filed on behalf of

¹Plaintiff currently is incarcerated at the Glenn Dyer Detention Facility in Oakland.

United States District Court
For the Northern District of California

1 Alameda County employees against whom plaintiff has asserted claims for the denial of
2 medical and mental health care (“Alameda County defendants”), and (2) the motion for
3 summary judgment filed on behalf of Prison Health Services, Inc. and certain of its
4 employees (“PHS defendants”), against whom plaintiff also has asserted claims for the denial
5 of medical care. Plaintiff has opposed the motions, defendants have replied, and plaintiff has
6 filed a sur-reply.

7 **DISCUSSION**

8 I. Legal Standard

9 Summary judgment is proper where the pleadings, discovery, and affidavits show
10 there is “no genuine issue as to any material fact and that the moving party is entitled to
11 judgment as a matter of law.” See Fed. R. Civ. P. 56(c). Material facts are those that may
12 affect the outcome of the case. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248
13 (1986). A dispute as to a material fact is genuine if the evidence is such that a reasonable
14 jury could return a verdict for the nonmoving party. See id.

15 The court will grant summary judgment “against a party who fails to make a showing
16 sufficient to establish the existence of an element essential to that party’s case, and on which
17 that party will bear the burden of proof at trial[,] . . . since a complete failure of proof
18 concerning an essential element of the nonmoving party’s case necessarily renders all other
19 facts immaterial.” See Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); see also
20 Anderson v. Liberty Lobby, 477 U.S. at 248 (holding fact is material if it might affect
21 outcome of suit under governing law; further holding dispute about material fact is genuine
22 “if the evidence is such that a reasonable jury could return a verdict for the nonmoving
23 party”). The moving party bears the initial burden of identifying those portions of the record
24 that demonstrate the absence of a genuine issue of material fact. The burden then shifts to
25 the nonmoving party to “go beyond the pleadings, and by his own affidavits, or by the
26 ‘depositions, answers to interrogatories, or admissions on file,’ designate ‘specific facts
27 showing that there is a genuine issue for trial.’” See Celotex, 477 U.S. at 324 (citing Fed. R.
28 Civ. P. 56(e)).

1 For purposes of summary judgment, the court must view the evidence in the light most
2 favorable to the nonmoving party; if the evidence produced by the moving party conflicts
3 with evidence produced by the nonmoving party, the court must assume the truth of the
4 evidence submitted by the nonmoving party. See Leslie v. Grupo ICA, 198 F.3d 1152, 1158
5 (9th Cir. 1999). The court’s function on a summary judgment motion is not to make
6 credibility determinations or weigh conflicting evidence with respect to a disputed material
7 fact. See T.W. Elec. Serv. v. Pacific Elec. Contractors Ass’n, 809 F.2d 626, 630 (9th Cir.
8 1987).

9 II. Background

10 Plaintiff claims several instances of inadequate medical and mental health care during
11 his incarceration at SRCJ. He names as defendants (1) SRCJ officials and employees;
12 (2) Criminal Justice Mental Health (“CJMH”), a division of Alameda County’s mental health
13 department that provides mental health care in the county jails, and certain of its employees;
14 and (3) Prison Health Services, Inc. (“PHS”), an organization that contracts with the
15 Alameda County Sheriff’s Department to provide medical care in the county jails, and certain
16 of its medical staff.²

17 A. The Provision of Medical Care Services at SRCJ³

18 PHS is a national organization that provides health care in correctional facilities, and it
19 has been doing so at SRCJ since 1987. (Declaration David Sanchas Supp. Alameda Cty.
20 Defs.’ Mot. Summ. J. (“Sanchas Decl.”) ¶ 3.) Alameda County contracts with PHS to
21 provide medical care for all inmates at SRCJ. PHS maintains a staff of nurses, nurse
22 practitioners and physicians onsite at SRCJ, and these medical health professionals, not
23 Sheriff’s officials, make all decisions regarding the course of an inmate’s medical treatment.

24
25
26 ²The SRCJ and CJMH defendants have filed a joint motion for summary adjudication
27 of plaintiff’s medical and mental health care claims against them. The PHS defendants have
28 filed a separate motion for summary judgment addressing plaintiff’s medical claims against
them.

³The following facts are undisputed.

1 (Declaration of Mark Foster Supp. Alameda Cty. Defs.’ Mot. Summ. J. (“Foster Decl.”) ¶¶
2 4-6.)

3 B. The Procedure for Inmates to Obtain Medical Care at SRCJ

4 Prior to admission to SRCJ, inmates are screened by PHS personnel to ensure they are
5 medically cleared for admittance and that medical issues are identified and scheduled for
6 follow-up care. Thereafter, if an inmate needs medical treatment, he submits a medical
7 request slip, also referred to as a sick call request slip, to PHS directly, either by personally
8 handing it to PHS medical personnel or by placing it in a medical/sick call box. Deputies and
9 other SRCJ employees are not involved in this request process. They do not review the
10 medical request slips and are not privy to the confidential information contained therein.
11 (Foster Decl. ¶¶ 7-9.)

12 PHS staff receive the sick call request slips and prepare a list of inmates to be seen.
13 The list is given to deputies who escort the inmates to the nurse’s station maintained in each
14 housing unit. The decision to refer an inmate to a doctor is made based on the nurse’s
15 assessment and the inmate’s medical symptoms. Deputies and other SRCJ employees are not
16 involved in deciding whether a particular inmate should be seen by a physician. (Foster
17 Decl. ¶¶ 10-11.)

18 In the event of a medical emergency observed by a deputy or other jail official, the
19 deputy or official will immediately call a nurse and advise such individual of the medical
20 situation. Such a call requires a response by the nurse on call, as individual deputies do not
21 assess whether an inmate requires medical care. In addition, each cell is equipped with an
22 intercom, which permits the inmate direct contact with Jail Housing Control personnel, in
23 order that medical care can be summoned in the case of a medical emergency. (Foster Decl.
24 ¶¶ 12-15 13-15.)

25 C. Mental Health Services at SRCJ

26 CJMH is a division of Behavioral Health Care Services, Alameda County’s mental
27 health department. CJMH staffs a clinic with mental health care professionals within SRCJ
28 and provides inmates with mental health assessment, treatment and suicide prevention care.

1 ((Declaration of Mildred Swafford Supp. Alameda Cty. Defs.’ Mot. Summ. J. (“Swafford
2 Decl.”) ¶ 5.)

3 When inmates arrive at SRCJ, they must complete a screening form, which includes
4 questions relating to psychiatric issues. If an inmate identifies psychiatric problems on the
5 screening form, a medical nurse will refer the inmate to CJMH for follow-up. A CJMH
6 mental health professional will then see the inmate for a more thorough mental health
7 assessment, which includes obtaining a past psychiatric history, a medication history, a
8 suicide risk assessment and a mental status examination. The initial goal is to determine the
9 most likely diagnosis, identify the most pressing mental health issue, and decide how soon
10 the inmate needs to be seen again and whether he needs to be seen by a psychiatrist for
11 medication. (Swafford Decl. ¶¶ 6-7.)

12 Patients may be seen for follow-up in the clinic area of the jail or in the inmate’s
13 housing unit. CJMH logs inmate appointments at the clinic into a computer and provides an
14 appointment list to deputies, who are dispatched to bring inmates into the clinic. If an inmate
15 is seen in the housing unit, mental health workers visit the inmate where he is housed.
16 CJMH also makes mental health care workers available twice a week in the mental health
17 housing unit, Unit 9, to deal with emergent situations. (Swafford Decl. ¶ 8.)

18 In addition to being referred for mental health care by the screening nurse as described
19 above, an inmate can self-refer by presenting a sick call slip to the nurses, who then pass it on
20 to CJMH. Further, deputies or medical nurses can refer an inmate for evaluation even absent
21 an inmate’s request, although CJMH cannot compel an inmate to accept treatment absent a
22 court order. While deputies can refer an inmate to CJMH, they play no role in the clinical
23 assessment of that inmate. (Swafford Decl. ¶ 9.)

24 CJMH staff psychiatrists can prescribe psychiatric medication to inmates as medically
25 appropriate. (Declaration of Fred Rosenthal Supp. Alameda Cty. Defs.’ Mot. Summ. J.
26 (“Rosenthal Decl.”) ¶ 2, Declaration of Brian Thomas Supp. Alameda Cty. Defs.’ Mot.
27 Summ. J. (“Thomas Decl.”) Thomas Decl. ¶ 2.) Neither the Director of CJMH nor licensed
28 therapists who work for CJMH are legally authorized to prescribe medication. (Swafford

1 Decl. ¶ 13; Declaration of Thomas Resburg Supp. Alameda Cty. Defs.’ Mot. Summ. J.
2 (“Resburg Decl.”) Resburg Decl. ¶ 3.)

3 III. Deliberate Indifference Standard

4 As noted, plaintiff claims several instances of constitutionally inadequate medical and
5 mental health care while he was incarcerated at SRCJ. Deliberate indifference to a prisoner’s
6 serious medical needs violates the Eighth Amendment’s proscription against cruel and
7 unusual punishment.⁴ See Estelle v. Gamble, 429 U.S. 97, 104 (1976). Serious medical
8 needs include a prisoner’s mental health needs. See Doty v. County of Lassen, 37 F.3d 540,
9 546 (9th Cir. 1994).

10 A determination of “deliberate indifference” involves an examination of two elements:
11 the seriousness of the prisoner’s medical need and the nature of the defendant’s response to
12 that need. McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other
13 grounds, WMX Technologies, Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc).

14 A “serious” medical need exists if the failure to treat a prisoner’s condition could result in
15 further significant injury or the “unnecessary and wanton infliction of pain.” Id. (citing
16 Estelle v. Gamble, 429 U.S. at 104). A prison official is deliberately indifferent if he knows
17 a prisoner faces a “substantial risk of serious harm” and disregards that risk by failing to take
18 reasonable steps to abate it. Farmer v. Brennan, 511 U.S. 825, 837 (1994). The prison
19 official must not only “be aware of facts from which the inference could be drawn that a
20 substantial risk of serious harm exists,” but “must also draw the inference.” Id.

21 Consequently, in order for deliberate indifference to be established, there must exist both a
22 purposeful act or failure to act on the part of the defendant and harm resulting therefrom.
23 See McGuckin, 974 F.2d at 1060.

24
25 ⁴Plaintiff was a pretrial detainee at the time his claims arose. Claims by pretrial
26 detainees are analyzed under the Due Process Clause of the Fourteenth Amendment. See
27 Bell v. Wolfish, 441 U.S. 520, 535 n.16 (1979). Because pretrial detainees’ rights under the
28 Fourteenth Amendment are comparable to prisoners’ rights under the Eighth Amendment,
however, the Ninth Circuit applies the Eighth Amendment standard of review to pretrial
detainees’ claims, including claims of inadequate medical care. See Carnell v. Grimm, 74
F.3d 977, 979 (9th Cir. 1996) (holding Eighth Amendment guarantees provide minimum
standard of medical care for pretrial detainees).

1 IV. Motion to File Records Under Seal

2 In order to protect plaintiff's privacy in the instant action, the Alameda County
3 defendants, i.e., SRCJ and CJMH, have moved to file under seal plaintiff's medical and
4 mental health records submitted in support of their motion for summary adjudication.
5 Plaintiff has not objected to defendants' motion. The Court finds good cause for granting the
6 motion, and, for the following reasons, further finds plaintiff will not be prejudiced thereby.
7 First, the PHS defendants, who have filed a separate motion for summary judgment with
8 respect to plaintiff's medical claims, have submitted a complete copy of plaintiff's medical
9 records in support of their motion for summary judgment and have served plaintiff with a
10 copy thereof. (See Docket Nos. 197, 198, 199, 200 & 210). Second, the record shows
11 plaintiff has obtained from CJMH a copy of his mental health records for the relevant time
12 period. (See Documents Filed Under Seal Supp. Alameda Cty. Defs.' Mot. Summ. J. Ex V at
13 108-113.) Further, plaintiff has relied on records from both his medical and mental health
14 files in support of his opposition to the motions for summary judgment. Consequently, the
15 Court will grant the motion to file the records under seal in the interest of plaintiff's privacy,
16 and will summarize and cite to the records as appropriate in the instant order.

17 V. Plaintiff's Medical Claims

18 Plaintiff brings five claims of alleged constitutionally inadequate medical care against
19 SRCJ officials and employees and PHS medical staff.⁵ The Court addresses below each of
20 plaintiff's claims in turn; the facts are undisputed unless otherwise noted.⁶
21
22

23 ⁵The SRCJ defendants against whom plaintiff asserts medical care claims are:
24 Deputies Anderson, Arnold, Arrivas, Bao, Barrosa, Brawley, Cabrerias, Cody,
25 Dalton, De La Fuente, Gonzales, Robertson, Snider, St. Denis, and Strickland; Sgts. Molloy
26 and Shaull; Technicians Bryan and Marks; and Commander Harris.

27 The PHS defendants against whom plaintiff asserts medical claims are: Dr. I-Fei
28 Chen, Dr. Harold Orr, Wilfredo Reyes, L.V.N, Maria Sardi, R.N., and Prison Health
Services, Inc.

⁶As the medical claims brought against the SRCJ defendants arise from the same
events as the medical claims brought against the PHS defendants, the Court addresses jointly
the evidence and arguments of both groups of defendants with respect to each medical claim.

1 A. Broken Finger – May 2007

2 1. Background

3 Plaintiff claims he did not receive timely and adequate pain care from SRCJ and PHS
4 staff for a broken finger. The evidence submitted by the parties in support of and opposition
5 to the motions for summary judgment shows the following:

6 On May 16, 2007,⁷ plaintiff accidentally slammed his finger in a heavy door at some
7 time after 10:00 p.m. (Opp’n Ex. I-2.) Approximately ten minutes after plaintiff notified a
8 deputy of his injury, Nurse J. Comer (“Nurse Comer”) arrived, examined the finger, and
9 bandaged it. (Decl. Rocky Tuttle Supp. Alameda Cty. Defs.’ Mot. Summ. J. (“Tuttle Decl.”)
10 ¶¶ 2-4; Opp’n Ex. I-2.) Additionally, Nurse Comer contacted Dr. Wilson, who told Nurse
11 Comer to schedule an x-ray for plaintiff for the next day and prescribed Motrin for five days,
12 until May 21. (Decl. Harold Orr Supp. PHS Defs.’ Mot. Summ. J. (“Orr Decl.”) ¶ 7 & Ex. B
13 PHS228-00426, 00483.) Nurse Comer scheduled an x-ray for the following day and cleared
14 plaintiff to return to his cell. (Tuttle Decl. ¶ 4.)

15 The next day, May 17, an x-ray was taken of plaintiff’s finger. The x-ray showed the
16 finger was broken. That same date, Dr. Wilson ordered the dressing on the finger to be
17 changed every day until the finger was healed. (Orr Decl. ¶ 7 & Ex. B PHS228-00425,
18 00483.)

19 The next day, May 18, Nurse Mastroianni requested an orthopedic consultation for
20 plaintiff’s finger injury. She also prescribed the oral antibiotic Keflex. (Orr Decl. ¶ 8 & Ex.
21 B PHS228-00483.)

22 On May 21, the dressing on plaintiff’s finger was changed. That same date, plaintiff
23 filed a SRCJ grievance, complaining that he had not yet received his x-ray results or been
24 provided with pain medication for the pain in his finger. (Opp’n Ex. G.) May 21 also was
25 the final day of plaintiff’s Motrin prescription.

26 A dressing change was scheduled for the next day, May 22, but plaintiff was out for a
27

28 ⁷All further dates referenced in this section are in 2007, unless otherwise noted.

1 court appearance. On May 23, when the dressing on his finger was changed, plaintiff
2 requested pain medication. He was prescribed Vicodin for seven days, until May 30. (Orr
3 Decl. ¶ 8a & Exs. B PHS228-00443, 00481.)

4 On May 24, plaintiff had an orthopedic consultation. A splint was put on his finger
5 and he was scheduled to return for follow-up in one month. (Orr Decl. ¶ 8 & Ex. B PHS228-
6 00451.)

7 On June 1, two days after the final day of plaintiff’s Vicodin prescription, plaintiff
8 submitted a request for a refill, which request stated: “Pain Meds Ran Out for Finger.” (Ex.
9 B PHS228-00508.) In response to his request, he was seen on June 6 by Nurse Anderson.
10 She examined plaintiff and noted no signs or symptoms of distress. She referred plaintiff to
11 Nurse Mastroianni, who saw him the next day, June 7, and refilled his Vicodin prescription
12 for an additional seven days, through June 14. (Orr Decl. ¶ 9 & Ex. B PHS228-00425,
13 00444, 00479.)

14 On June 10, plaintiff submitted an SRCJ grievance, complaining that he had not
15 received adequate medical attention for the pain caused by his broken finger. (Opp’n Ex. H-
16 1.) The grievance was investigated by defendant Sgt. M. Molloy (“Sgt. Molloy”), who, on
17 June 12, asked PHS to provide a written response outlining the treatment plaintiff had
18 received for his injury. (Decl. M. Molloy Supp. Alameda Cty Defs.’ Mot. Summ. J.
19 (“Molloy Decl.”) ¶¶ 5-6 & Ex. C.) On June 14, PHS responded, summarizing plaintiff’s
20 May 16, 23 and 24 visits with medical personnel. Additionally, Molloy was told by PHS that
21 the continual use of pain medication can cause severe medical problems and, consequently,
22 in each case, PHS must balance the benefits of continued use of pain medication against
23 other potential harm to the patient. Plaintiff’s SRCJ grievance subsequently was denied.
24 (Molloy Decl. ¶ 9; Opp’n Ex. H-2.)

25 On June 21, plaintiff was seen for follow-up for his finger injury by the orthopedic
26 doctor. It was noted that plaintiff had lost his splint and was five weeks post-injury. The
27 doctor’s medical plan was for plaintiff to increase his activity as tolerated. No further
28 treatment was prescribed. (Orr Decl. ¶ 10 & Ex. B PHS228-00444.) The records do not

1 reflect that plaintiff made any further medical complaints regarding the May 16 injury to his
2 finger.

3 2. Analysis

4 a. Alameda County Defendants

5 Plaintiff maintains that the failure of certain SRCJ personnel to adequately respond to
6 his finger injury and subsequent complaints of pain amounted to deliberate indifference to his
7 serious medical needs. The Court, however, finds plaintiff has raised no triable issue of fact
8 with respect to deliberate indifference on the part of any SRCJ defendant. Rather, the
9 undisputed evidence shows that SRCJ personnel promptly responded to and investigated
10 plaintiff's complaints of injury and pain, and appropriately referred him to PHS for treatment.
11 Further, the undisputed evidence shows the SRCJ personnel were not put on notice that a
12 substantial risk of serious harm to plaintiff existed. In particular, there is no dispute that
13 SRCJ deputy Tuttle immediately summoned medical care on being told by plaintiff of the
14 finger injury, PHS Nurse Comer responded to Tuttle's call for medical care within ten
15 minutes, and Sgt. Molloy investigated plaintiff's grievance regarding medical care, which
16 investigation showed plaintiff had been seen daily by medical personnel after the initial
17 response by Nurse Comer, the finger had been x-rayed the day after the injury, follow-up
18 medical appointments had been provided, and plaintiff had seen an orthopedist
19 approximately a week after the injury.

20 Additionally, the undisputed evidence shows SRCJ personnel did not act with
21 deliberate indifference to plaintiff's needs for pain medication. In particular, there is no
22 dispute that medical assessments and decisions regarding prescription pain medication are
23 not within the purview of SRCJ personnel. Further, the undisputed evidence shows that
24 when investigating plaintiff's grievance Sgt. Molloy also investigated plaintiff's complaint of
25 inadequate pain management, and PHS advised Sgt. Molloy that pain medication, in fact, had
26 been prescribed, but that because continued use of pain medication can cause severe medical
27 problems, PHS had exercised its best medical judgment in deciding the length of time in
28 which plaintiff would be given such prescription medication.

1 Plaintiff's contention that SRCJ personnel failed to adequately respond to his
2 complaints of pain in the period between his two seven-day prescriptions for Vicodin
3 likewise do not suggest SRCJ personnel acted in conscious disregard of a serious risk of
4 harm to plaintiff. In particular, the undisputed evidence shows that SRCJ personnel knew
5 PHS staff were treating plaintiff and using their medical judgment for his complaints of pain,
6 and that SRCJ grievance unit investigations failed to reveal any reason for SRCJ personnel to
7 believe PHS was indifferent to any serious medical need.

8 Based on the above, the Court concludes there is no evidence from which a reasonable
9 trier of fact could conclude any SRCJ defendant had the subjective state of mind required to
10 establish deliberate indifference to plaintiff's serious medical needs.

11 b. PHS Defendants

12 Plaintiff claims PHS staff acted with deliberate indifference to his serious medical
13 needs by failing to provide him with prompt and adequate treatment for his finger injury.
14 The undisputed evidence shows, however, that the injury to plaintiff's finger was promptly
15 diagnosed and appropriately treated by PHS staff. In particular, such evidence shows the
16 following: within ten minutes of reporting his injury, plaintiff was seen by Nurse Comer,
17 who bandaged the finger, prescribed Motrin for five days, and scheduled an x-ray for
18 plaintiff; the next day, plaintiff had an x-ray that showed the finger was broken; the following
19 day, an orthopedic consultation was ordered and plaintiff was prescribed oral antibiotics;
20 three days later, the dressing on plaintiff's finger was changed; two days after that, when
21 plaintiff had been without Motrin for one day due to the expiration of his prescription,
22 plaintiff was prescribed Vicodin for pain for seven days; the next day, plaintiff had an
23 orthopedic consultation and a splint was put on his finger; one week later, after plaintiff had
24 been without Vicodin for one day due to the expiration of his prescription, plaintiff submitted
25 a request for a refill and within one week his prescription was refilled; one week after that
26 prescription expired plaintiff was seen for follow up for his finger injury by the orthopedic
27 doctor and no further treatment was prescribed.

28 Plaintiff further claims PHS medical staff acted with deliberate indifference because

1 they failed to treat his finger pain until May 23, seven days after the injury. The Court finds
2 plaintiff's contentions unsupported by the evidence. As noted, plaintiff was treated with
3 Motrin from May 16, the day of his injury, through May 21. Dr. Orr, the PHS Health Care
4 Manager, has attested that plaintiff's treatment with Motrin for the first week after his injury
5 was medically appropriate, based on the nature and extent of plaintiff's injury, and plaintiff
6 has not presented evidence that calls such medical assessment into dispute. In particular,
7 although plaintiff was seen almost daily by medical personnel during the time he was taking
8 Motrin, there is no evidence in the medical records that shows plaintiff complained to PHS
9 personnel that he was not receiving adequate pain control. Further, plaintiff went only one
10 day without any form of pain medication, specifically, he would have taken his last Motrin
11 on May 21 and was prescribed Vicodin on May 23, and the record shows the reason plaintiff
12 was not seen by a medical practitioner on May 22 was because he was away at court.

13 Plaintiff also claims PHS staff acted with deliberate indifference when his first
14 Vicodin prescription expired on May 30 but was not refilled until June 7. The Court finds no
15 evidence that the delay in refilling the Vicodin prescription amounted to deliberate
16 indifference. In particular, the evidence shows plaintiff's Vicodin prescription was not
17 scheduled to be renewed automatically, and, as attested by Dr. Orr, due to the length of time
18 that had elapsed following plaintiff's injury it would have been appropriate to provide no
19 further narcotic pain medication after the first prescription expired. (Orr Decl. ¶ 55.)
20 Consequently, PHS personnel could not have been expected to renew the prescription
21 without a specific complaint from plaintiff that he was suffering from pain that would
22 warrant such renewal. In view of plaintiff's June 1 medical request expressing only that his
23 pain medication had run out, and not that he was suffering from pain, let alone severe pain,
24 and because it was medically appropriate that further narcotic pain medication not be
25 provided at such time, the time between plaintiff's refill request and the refilling of the
26 prescription was not unreasonable.

27 Based on such evidence, the Court finds plaintiff has failed to raise a triable issue as
28 to whether the PHS defendants acted with deliberate indifference to plaintiff's serious

1 medical needs when diagnosing and treating his broken finger and providing him with pain
2 medication.

3 B. Treatment After Alleged August 8, 2007 Assault

4 1. Background

5 Plaintiff claims that at approximately 4:30 p.m. on August 8, 2007, a deputy grabbed
6 his right arm and threw him to the ground in his cell and, as a result, he hit his head and
7 suffered a blackout and concussion, swelling and bruising on the left side of his head, and
8 sharp pains in his left shoulder. He further claims he pushed the medical call button in his
9 cell but no deputy came until pill call, at approximately 6:30 p.m. Plaintiff further claims he
10 did not receive adequate treatment for his injuries. (SAC ¶ V(C) at 3:17-5:6.)

11 The evidence submitted by the parties in support of and opposition to the motions for
12 summary judgment shows the following:

13 On August 8, plaintiff submitted a request for medical services for injuries he alleges
14 he received as a result of his having been assaulted. (Orr Decl. ¶ 11 & Ex. B PHS228-
15 00507.) That same date, at 6:30 p.m., plaintiff was seen by defendant Wilfredo Reyes,
16 L.V.N., (“Reyes”), for complaints of headache and shoulder pain. Plaintiff told Reyes that he
17 had fallen. He also reported a history of shoulder injuries. Reyes examined plaintiff, found
18 no signs of acute distress, and scheduled plaintiff for further evaluation the following day at
19 sick call. (Orr Decl. ¶ 11 & Ex. B PHS228-00439.) That same date, plaintiff, after being
20 examined by Reyes, filed an SRCJ grievance, complaining he had been assaulted by a deputy
21 and denied immediate medical care. (Decl. Ben Schaul Supp. Alameda Cty. Defs.’ Mot.
22 Summ. J. (“Schaul Decl.”) ¶ 3.)

23 The next day, August 9, plaintiff was seen at sick call by Dr. Pajong. According to
24 Dr. Pajong’s notes, plaintiff complained of left temple pain without double vision and light
25 sensitivity. There was a question as to whether plaintiff had lost consciousness when he was
26 injured. No other signs of acute distress were found. Dr. Pajong assessed plaintiff as having
27 fallen and suffered a left temple hematoma and questionable left shoulder pain. Vicodin was
28 prescribed, x-rays were ordered, and a follow-up appointment with an orthopedist was

1 scheduled. (Orr Decl. ¶ 12 & Ex. B PHS228-00438-00439.) Dr. Pajong told plaintiff to let
2 medical staff know immediately if plaintiff started to suffer from double or blurred vision.
3 (Ex. B PHS228-00506.)

4 The next day, August 10, plaintiff complained of episodic double vision. That same
5 date he was seen by medical staff. At the time of his examination he stated he was not
6 having any trouble with his vision. On examination, plaintiff's vital signs were normal.
7 Tenderness was noted to his forehead and left side of the head. Plaintiff was scheduled to
8 follow up for further evaluation three days later, on August 13. (Orr Decl. ¶ 13 & Ex. B
9 PHS228-00440.)

10 On August 13, it was recommended that plaintiff be seen at the eye clinic for his
11 complaint of double vision; a request for an internal consultation with the eye clinic was
12 submitted that day. (Orr Decl. ¶ 14 & Ex. PHS-228-00440.) Also on August 13, plaintiff
13 had x-rays taken of his skull and shoulder for his complaints of pain following his injury.
14 (Ex. B PHS228-0497.)

15 On August 15, plaintiff was seen in sick call for review of his x-ray results. He was
16 informed that the x-ray results were negative for injury, and that he would be seen by the
17 orthopedist for further follow up. Plaintiff's vital signs were normal and he denied any signs
18 or symptoms of nausea, vomiting or double vision at that time. The plan was for plaintiff to
19 return to the clinic as needed. (Orr. Decl. ¶ 15 & Ex. B PHS228-00440.)

20 The next day, August 16, plaintiff was seen by Dr. Bachellor, an orthopedic specialist.
21 Plaintiff did not complain of stiffness in his neck. He reported a history of having a previous
22 left shoulder separation. On examination, there was no evidence of left shoulder separation,
23 and it was noted that the x-rays of his left shoulder were within normal limits. Dr.
24 Bachellor's impression was that plaintiff had a questionable strain of the left shoulder.
25 Plaintiff was scheduled to see a physical therapist to increase shoulder-joint range of motion.
26 (Orr. Decl. ¶ 16 & Ex. B PHS228-00448, 00449.)

27 On August 17, defendant Sgt. Schaul denied plaintiff's SRCJ grievance, in which
28 plaintiff claimed he had been assaulted and denied immediate medical care. (Opp'n Ex. W.)

1 On August 20, plaintiff filed a medical request slip, complaining of continuing neck
2 pain and stating his belief that he was being prevented from receiving medical care because
3 of medical staff's desire to protect the SRCJ personnel who had assaulted him. (Ex. B
4 PHS228-00503.)

5 The next day, August 21, plaintiff was seen by the physical therapist, Rodney Silva
6 ("Silva"). Plaintiff complained of left shoulder pain but did not report any problem with his
7 neck. Silva's assessment was that plaintiff had sprained the ligament in his shoulder. The
8 plan was for plaintiff to increase range of motion through self-stretching and to return on
9 August 29. (Orr Decl. ¶ 17 & Ex. B PHS228-00448.)

10 The next day, August 22, plaintiff was seen at the medical clinic by Dr. Horatio
11 Campos. Plaintiff claimed to have been beaten and to have sustained injuries to his left
12 shoulder and neck. Dr. Campos's assessment was that plaintiff had a strain of the cervical
13 spine and left shoulder. Dr. Campos ordered cervical spine and lateral shoulder x-rays and
14 prescribed Darvocet, a pain medication. (Orr Decl. ¶ 18 & Ex. B PHS228-00441.) The x-
15 rays were taken the next day, on August 23, and showed no abnormality. (Orr Decl. ¶ 18 &
16 Ex. B PHS228-00496.)

17 On September 4, plaintiff was seen again by Silva, the physical therapist. Plaintiff
18 complained of increased pain from his stretching exercises. Silva's evaluation was that
19 plaintiff had pain on palpation to the distal end of the clavicle. Plaintiff informed Silva that
20 he was scheduled to have a Mumford procedure, a surgery to remove the end of the clavicle.
21 Silva discharged plaintiff from further physical therapy at that time. (Orr Decl. ¶ 19.)

22 On September 11, plaintiff declined to be seen at the eye clinic, stating he no longer
23 was having blurred vision. (Orr Decl. ¶ 20 & Ex. B PHS228-00436.)

24 On September 28, plaintiff was seen by the optometrist. Plaintiff reported that he had
25 experienced mild fuzziness in his vision in August, but that such condition had improved and
26 that he no longer had double vision. The optometrist's impression was that plaintiff likely
27 had mild macular edema in August. The plan was for plaintiff to return to the clinic in eight
28 weeks. The prognosis was favorable. (Orr Decl. ¶ 22 & Ex. B PHS228-0045.)

1 2. Analysis

2 a. Alameda County Defendants

3 Plaintiff claims that after he pushed the intercom for medical assistance after having
4 been assaulted on August 8, SRCJ personnel did not timely respond to his need for medical
5 care and thereafter failed to ensure he was properly treated for the injuries he sustained.
6 Plaintiff's contentions are unsupported by the evidence.

7 To support his allegation that he was assaulted and attempted to summon medical care
8 at approximately 4:30 p.m. on August 8, plaintiff has submitted a copy of a disciplinary
9 report filed by deputy E. Thibodeaux on that same date, reporting that at 4:20 p.m. plaintiff
10 would not return to his cell after being ordered by Thibodeaux to do so and, when plaintiff
11 began to walk away, Thibodeaux grabbed the left shoulder of plaintiff's shirt and escorted
12 him to his cell. (Opp'n Ex. O.) The report, however, substantiates neither plaintiff's
13 assertion that he was assaulted nor that he attempted to summon medical help. Further,
14 assuming such assertions are true,⁸ plaintiff has presented no evidence to show that any SRCJ
15 official actually heard and ignored his request for medical attention made via the intercom, or
16 that the failure of SRCJ personnel to respond to his cell resulted from deliberate indifference
17 to his need for medical care.

18 Additionally, plaintiff's evidence shows that on the same date plaintiff allegedly was
19 assaulted, defendant Deputy Barrosa brought plaintiff a sick call slip and defendant
20 Technician Bryan told plaintiff that Bryan had called PHS to ensure that plaintiff would be
21 seen at sick call the following day. (SAC ¶ V(C) at 4:6-8, 13-19, 22-26, 5:1-2.)

22 Further, the undisputed evidence shows that after plaintiff filed his SRCJ grievance on
23 August 8, complaining he had been assaulted and needed immediate medical care, the
24 grievance was investigated by Sgt. Schaul, who determined from plaintiff's PHS medical
25 records that two hours after the alleged assault plaintiff had been seen by a nurse who noted
26

27 _____
28 ⁸Plaintiff's SAC is verified; consequently, his factual allegations contained therein
constitute admissible evidence.

1 no outward signs of trauma and found plaintiff talkative, alert and oriented. (Opp'n Ex. W.)
2 Additionally, there is no evidence suggesting plaintiff suffered any injury due to the alleged
3 delay in his being seen by medical personnel. Specifically, when plaintiff was seen by a
4 doctor the day after the assault he was cleared to go to his cell, and subsequent x-ray results
5 for injury were negative. (Schauhl Decl. ¶¶ 4-7.)

6 Based on the above, the Court finds plaintiff has failed to raise a triable issue of fact
7 with respect to whether any SRCJ defendant acted with deliberate indifference to plaintiff's
8 serious medical needs in connection with plaintiff's efforts to obtain medical care after
9 allegedly having been assaulted on August 8.

10 b. PHS Defendants

11 Plaintiff claims the PHS defendants acted with deliberate indifference to his serious
12 medical needs by failing to properly treat the head and shoulder injuries he suffered after the
13 alleged assault on August 8. The undisputed evidence, however, shows no deliberate
14 indifference. In particular, sets of x-rays were ordered in response to plaintiff's complaints
15 of shoulder and head pain, but no evidence of any significant abnormality was found.
16 Additionally, medical staff was alert for signs of a serious head injury and followed up on
17 plaintiff's complaints of double vision, but no evidence supported a diagnosis of a serious
18 head injury.

19 Specifically, the evidence shows the following: within two hours after he was injured,
20 plaintiff was evaluated in his cell by Nurse Reyes, who saw no sign of a condition requiring
21 emergency treatment or evaluation and put plaintiff on the sick call list for the next day; two
22 days after plaintiff was injured he was seen by Dr. Pajong who examined plaintiff, saw no
23 signs of serious injury, prescribed Vicodin, and ordered x-rays of plaintiff's skull and left
24 shoulder; three days after plaintiff was injured he was seen by medical staff for complaints of
25 double vision and scheduled for a return visit in three days; in the week after plaintiff was
26 injured he was seen for a follow-up visit and referred to the eye clinic, had x-rays taken of his
27 skull and shoulder, had the x-rays reviewed and saw an orthopedist; in the second week after
28 he was injured plaintiff was seen by a physical therapist, was prescribed pain medication and

1 had x-rays taken that showed no abnormality; and in the month following plaintiff's injury,
2 plaintiff was again seen by the physical therapist, declined to go to the eye clinic for his
3 complaints of double vision, and subsequently saw an optometrist, who determined plaintiff
4 had mild swelling of the eye, a condition not requiring further treatment.

5 In sum, the undisputed evidence shows plaintiff was extensively evaluated and treated
6 by PHS nursing staff, staff doctors, the orthopedic doctor, the physical therapist and the
7 optometrist. At most, plaintiff has shown that he did not agree with the treatment he
8 received. "A difference of opinion between a prisoner-patient and prison medical authorities
9 regarding treatment does not give rise to a § 1983 claim." Franklin v. Oregon, 662 F.2d
10 1337, 1344 (9th Cir. 1981). Accordingly, the Court finds plaintiff has failed to raise a triable
11 issue as to whether the PHS defendants were deliberately indifferent to plaintiff's serious
12 medical needs following the injury suffered by plaintiff on August 8.

13 C. Treatment Between September 11 and November 7, 2007

14 1. Background

15 Plaintiff claims he experienced back pain, chest pain and difficulty breathing after
16 being assaulted by a deputy at around 9:00 a.m. on September 11. He claims he tried to
17 summon medical attention, but the intercom button in his cell was not working, and medical
18 attention was not provided until September 14. Thereafter, he alleges, he was not seen by
19 doctors between September 16 and October 31, despite submitting many medical request
20 slips and filing many grievances regarding back and shoulder pain, headaches and dizziness.
21 (SAC ¶ V(D) at 5:9-28).

22 The evidence submitted by the parties in support of and opposition to the motions for
23 summary judgment shows the following:

24 On September 11, at 10:20 a.m., plaintiff was seen by Nurse Mastroianni, complaining
25 that a previous injury to his left shoulder had been aggravated when a deputy handcuffed him
26 that morning. He also complained that he had been having diarrhea for two days.
27 Mastroianni ordered x-rays of plaintiff's left shoulder and prescribed Pepto-Bismol and
28 Flexeril, a muscle relaxant. She instructed plaintiff to report to medical staff if the diarrhea

1 continued. (Orr Decl. ¶ 20 & Ex. B PHS228-00419, 00436.)

2 Two days later, on September 13, an x-ray was taken of plaintiff's left shoulder. It
3 showed no abnormality. (Orr Decl. ¶ 20 & Ex. B PHS228-00495.)

4 Plaintiff was seen again by Nurse Mastroianni the following day, September 14. He
5 reported his diarrhea had resolved. He complained of increased lower back pain and that
6 non-steroidal pain medications upset his stomach. After examining plaintiff, Nurse
7 Mastroianni assessed his condition as a lumbar strain. She prescribed analgesic balm for the
8 lumbar spine area twice a day and for plaintiff to follow up as needed. (Orr Decl. ¶ 21 & Ex.
9 B PHS228-00417, 00435.)

10 On September 22, plaintiff filed a grievance with SRCJ officials, complaining that he
11 had submitted a call form on September 16 but hadn't been seen for medical care until
12 September 19. (Opp'n Ex. DD.) Sgt. Molloy investigated plaintiff's complaints by asking
13 PHS to respond. On September 28, PHS responded, stating that plaintiff's most recent
14 examination and x-ray results were negative for injury, and that plaintiff had been taken off
15 all pain medications and prescribed an analgesic balm. (Molloy Decl. ¶ 16 & Ex. E.)
16 Plaintiff's SRCJ grievance claiming inadequate care subsequently was denied. (Opp'n Ex.
17 DD-2.)

18 On September 24, plaintiff was seen by defendant Dr. Harold Orr ("Dr. Orr"), who
19 had been contacted by plaintiff's mother, a former patient of Dr. Orr, and asked to look in on
20 plaintiff. Dr. Orr saw plaintiff briefly, reviewed plaintiff's records, and called plaintiff's
21 mother and told her that plaintiff was being followed and treated appropriately by medical
22 staff. Dr. Orr did not enter a progress note because, as the medical director, he oversees the
23 treatment of many inmates and does not enter progress notes unless there is a specific reason
24 to do so, such as altering the care regimen. Dr. Orr did not schedule an appointment to see
25 plaintiff the following day, as plaintiff did not need any immediate treatment at the time and
26 it was appropriate for plaintiff to be seen in the regular course of scheduled follow-ups. (Orr
27 Decl. ¶ 24.)

28 On September 28, plaintiff was seen by the optometrist for his previously scheduled

1 appointment. (Orr Decl. ¶ 22 & Ex. B PHS228-0045.)

2 On October 15, plaintiff filed a grievance with SRCJ officials, complaining he had
3 been denied medical attention by the housing nurse. The grievance was denied on
4 October 20 because the housing nurse had determined plaintiff's complaints were not an
5 emergency and he was scheduled for a follow-up appointment pursuant to the normal course
6 of scheduling. (Orr Decl. ¶ 24, Opp'n Ex. GG.)

7 On October 23, plaintiff obtained an order from the superior court, directing that
8 plaintiff be seen for complaints for migraines and back pain that he had brought to the
9 attention of the court. The next day, the PHS nurse noted plaintiff's chart was not available
10 and rescheduled an appointment for plaintiff with the nurse practitioner or doctor once the
11 chart became available. That same day, October 24, plaintiff filed another SRCJ grievance,
12 complaining he was not being provided with adequate medical care, including treatment for
13 his shoulder pain. Plaintiff's grievance was denied on the ground he was receiving treatment,
14 just not of the type plaintiff felt was appropriate. (Orr Decl. ¶ 24, Opp'n Ex. KK.)

15 On October 26, plaintiff filed a grievance, complaining that PHS still had not
16 complied with the superior court's order. (Opp'n Ex. LL.) On October 29, plaintiff's chart
17 was available and Dr. Orr requested that plaintiff be seen by the nurse practitioner. Plaintiff
18 could not be seen on October 30, as he was out for a court appearance. (Orr Decl. ¶ 24.)

19 On October 31, plaintiff was seen by Nurse Mastroianni. Plaintiff complained of
20 having headaches on the left side of his head after sustaining head trauma in August 2007.
21 He stated he had been using Motrin, but that it caused stomach upset. He also reported
22 taking Tylenol, but stated it was not effective. He stated he had been experiencing lower
23 back pain since September 11, and that the analgesic balm was not effective. He also
24 complained of left shoulder pain from an old injury and stated he was supposed to have had
25 surgery in the past; he also said the pain was not responsive to physical therapy.
26 Additionally, he said that he had lost eleven pounds secondary to depression and wanted to
27 see a psychiatrist, and he complained of having a cough with yellow green sputum. After
28 examining plaintiff, Nurse Mastroianni prescribed Baclofen, a muscle relaxant; Percogesic, a

1 pain medication; and Humibid, a decongestant. Nurse Mastroianni scheduled plaintiff for a
2 follow-up medical appointment on November 5, and noted plaintiff was scheduled for a
3 psychiatric appointment on November 15.

4 On November 5, plaintiff was seen by Dr. Wilson. Plaintiff reported a decrease in
5 coughing. He complained of headaches and low back pain. Dr. Wilson referred plaintiff to
6 physical therapy for core strengthening and flexibility exercises, and noted in the medical
7 report that although plaintiff had multiple complaints, the examination of plaintiff was
8 “uncompelling” (Orr Decl. ¶ 25 & Ex. B PHS228-00416, 00447), meaning, there was no
9 objective evidence to support plaintiff’s subjective complaints (Orr Decl. ¶ 25).

10 On November 7, plaintiff was transferred to Atascadero State Hospital
11 (“Atascadero”). (Molloy Decl. ¶ 4.)

12 2. Analysis

13 a. Alameda County Defendants

14 Plaintiff claims SRCJ personnel did not timely respond to his need for medical care
15 after he was assaulted on September 11 and for lengthy periods of time thereafter. The
16 undisputed evidence, however, shows otherwise.

17 First, such evidence shows that plaintiff claims he was assaulted at approximately
18 9:00 a.m., and that he was seen that same day at 10:20 a.m. by Nurse Mastroianni, who
19 ordered x-rays of plaintiff’s left shoulder and prescribed a muscle relaxant and Pepto-Bismol.

20 Second, the undisputed evidence shows that between September 22 and October 26
21 plaintiff filed three SRCJ grievances, each of which Sgt. Molloy promptly investigated by
22 asking PHS to respond, and that PHS responded that plaintiff was seen by a PHS nurse less
23 than two hours after the incident, no signs of trauma were observed, x-rays taken two days
24 later were negative, and PHS health care givers saw plaintiff on one other occasion in
25 September, four other occasions in October, and once more in November.

26 Plaintiff also claims the SRCJ defendants acted with deliberate indifference to his
27 serious medical needs because the intercom button in his cell was not working when he tried
28 to summon medical help after he was assaulted. Plaintiff, however, has presented no

1 evidence that shows any SRCJ defendant either knew the intercom was broken or failed to
2 fix it in conscious disregard of a substantial risk of harm to plaintiff's health and safety.
3 Further, the undisputed evidence shows that even though the intercom button was not
4 working, plaintiff was seen by a nurse within ninety minutes of having been injured, and the
5 nurse found no objective evidence of a serious condition or injury.

6 Based on the above, the Court concludes plaintiff has failed to raise a triable issue
7 with respect to whether any SRCJ defendant acted with deliberate indifference to plaintiff's
8 serious medical needs following his alleged assault on September 11.

9 b. PHS Defendants

10 Plaintiff complains the PHS defendants denied him treatment for his back and
11 shoulder pain, headaches and dizziness from September 16 until October 31, when he was
12 seen by Nurse Mastroianni. While the evidence shows plaintiff was not seen by any PHS
13 defendant during the relevant period, plaintiff has failed to raise a triable issue with respect to
14 whether the reason for his failure to be seen was due to defendants' deliberate indifference.
15 Rather, the undisputed evidence shows that from September 16 to October 31, PHS received
16 no direct request for medical care from plaintiff. Instead, PHS was made aware of plaintiff's
17 complaints because he filed several SRCJ administrative grievances. Upon request from the
18 SRCJ grievance unit, PHS promptly responded that they were aware of plaintiff's
19 complaints, which were being addressed. Additionally, within one week of PHS's receiving
20 the superior court's order for a medical report concerning plaintiff's complaints, plaintiff was
21 seen and thoroughly evaluated by Nurse Mastroianni, and five days later he was seen by Dr.
22 Wilson.⁹

23 Moreover, there is no evidence showing plaintiff suffered any harm as a result of the
24 claimed delay. In particular, the undisputed evidence shows that prior to September 16

26 ⁹The superior court's issuance of such order does not lead to an inference that
27 defendants acted with deliberate indifference to plaintiff's medical needs. The undisputed
28 evidence is that PHS often receives orders from the superior court, requesting that inmates be
seen for complaints they have brought to the attention of the court at the time they appear
before the court. (Orr Decl. ¶ 24.)

1 plaintiff was medically evaluated on three occasions, that thereafter he was seen by Dr. Orr
2 on September 24 and by the optometrist on September 28, and that there was nothing to
3 indicate an emergency or new injury to plaintiff at any of those appointments, or at the time
4 he was seen on October 31.

5 Based on the above, the Court concludes plaintiff has failed to raise a triable issue
6 with respect to whether any PHS defendant acted with deliberate indifference to plaintiff's
7 serious medical needs following his alleged assault on September 11.

8 D. Treatment for Back Pain Between March 19 and April 4, 2008

9 1. Background

10 Plaintiff claims he was not seen promptly for medical care when he was transferred
11 back to SRCJ from Atascadero, and was not given pain medication for his back.

12 The evidence submitted by the parties in support of and opposition to the motions for
13 summary judgment shows the following:

14 Plaintiff returned to SRCJ from Atascadero on March 19, 2008.¹⁰ The transfer form
15 noted that the medications plaintiff had been taking at Atascadero, other than psychiatric
16 medications, had been prescribed on an "as needed" basis and, consequently, were not sent
17 with plaintiff when he was transferred back to SRCJ. (Orr Decl. ¶ 26 & Ex. B PHS228-
18 00352, 00353, 00359.)

19 Upon his arrival at SRCJ, plaintiff was screened by a nurse. The intake examination
20 showed plaintiff had reported chronic headaches and back pain. He was prescribed Tylenol
21 650 two times a day for five days. It was noted that plaintiff stated he had been weaning
22 himself off Seroquel, a psychiatric medication. He was scheduled for a psychiatric
23 appointment. (Orr Decl. ¶ 26.)

24 Twelve days later, on March 31, plaintiff filed a grievance with SRCJ officials,
25 complaining that, among other things, he had not received follow-up medical care for his
26 headaches and back pain after his return to SRCJ. On April 2, Sgt. Molloy requested a
27

28 ¹⁰All further dates referenced in this section are in 2008, unless otherwise noted.

1 response from PHS concerning plaintiff's complaints. On April 3, PHS responded that
2 plaintiff had been prescribed Tylenol, he had not submitted any sick call request slips to PHS
3 after his return to SRCJ, and, as of March 20, he had been refusing his psychiatric
4 medications every day. Also on April 3, the SRCJ grievance unit asked PHS to have plaintiff
5 seen by medical personnel as soon as possible; PHS responded by seeing plaintiff the next
6 day.

7 On April 4, plaintiff was seen by Nurse Mastroianni. He reported a history of
8 migraine headaches and treatment with Imitrex at Atascadero. He also complained of low
9 back pain for which he had received multiple treatments that were somewhat effective. He
10 further complained he was not receiving his psychiatric medications. After examining
11 plaintiff, Nurse Mastroianni was not convinced he had migraine headaches, and thought the
12 headaches might be tension related. Nurse Mastroianni prescribed Robaxin and
13 acetaminophen, and referred plaintiff to the psychiatry clinic and for a physical therapy
14 consult. (Orr Decl. ¶ 28 & Ex. B PHS228-00235-36.).

15 On April 11, in further response to Sgt. Molloy's investigation of plaintiff's medical
16 grievance, PHS informed Sgt. Molloy of plaintiff's examination by Nurse Mastroianni and
17 that there were no findings that would warrant prescribing the pain medication plaintiff was
18 requesting in his grievance. (Molloy Decl. ¶ 20 & Ex. G.)

19 Subsequently, on April 14 and April 29, plaintiff refused to see the physical therapist.
20 (Orr Decl. ¶ 31 & Ex. B PHS228-00241.)

21 2. Analysis

22 a. Alameda County Defendants

23 Plaintiff's contention that the SRCJ defendants did not provide him with prompt and
24 adequate medical attention upon his return from Atascadero is not supported by the evidence.
25 Rather, the undisputed evidence shows the following: subsequent to plaintiff's return to
26 SRCJ from Atascadero on March 19, plaintiff did not communicate with SRCJ officials
27 about alleged inadequate medical care until he filed a grievance on March 31; two days later,
28 Sgt. Molloy investigated the grievance by requesting a response from PHS; the following day

1 the grievance unit asked PHS to see plaintiff as soon as possible; plaintiff was seen by PHS
2 the very next day; one week later PHS informed Sgt. Molloy of the results of plaintiff's
3 examination, specifically, that there were no medical findings that would warrant prescribing
4 the particular pain medication plaintiff was requesting.

5 Based on the above, the Court concludes there is an absence of evidence to support a
6 finding that the SRCJ defendants acted with deliberate indifference to plaintiff's serious
7 medical needs.

8 b. PHS Defendants

9 Plaintiff's contention that the evidence shows he was not promptly seen by PHS
10 medical staff upon his return to SRCJ, and that he was not provided the medication he had
11 been receiving at Atascadero, is equally unavailing. In particular, the undisputed evidence
12 shows that on March 19, the day of plaintiff's return to SRCJ, the transfer form sent with
13 plaintiff from Atascadero showed that the medications he reported to have been taking for his
14 physical conditions were being taken on an "as needed basis"; that same date, he was seen by
15 a PHS nurse who prescribed Tylenol for five days for plaintiff's complaint of headaches and
16 back pain; as of March 31 plaintiff had not submitted any sick call slips to PHS; within one
17 day of being notified of plaintiff's SRCJ grievance, a PHS nurse saw plaintiff, prescribed
18 Robaxin and acetaminophen, and planned for plaintiff to be seen by the psychiatry
19 department and to receive a physical therapy consultation; on both April 14 and 29 plaintiff
20 refused to see the physical therapist.

21 Based on the above, the Court concludes plaintiff has failed to raise a triable issue as
22 to whether the PHS defendants acted with deliberate indifference to his serious medical
23 needs by failing to promptly see him upon his return to SRCJ and to prescribe medication for
24 his complaints of pain.

1 E. Treatment Between July 15 and September 2, 2008

2 1. Background

3 Plaintiff complains he aggravated his back and shoulder injuries on July 15, when he
4 was moved to a top tier bunk, and that he received inadequate medical care for his injuries
5 because he was not provided with a medical chrono for a lower bunk and did not receive
6 proper attention for his back and shoulder pain. He further complains he did not receive
7 adequate medical care for his chronic weight loss.

8 The evidence submitted by the parties in support of and opposition to the motions for
9 summary judgment shows the following:

10 Plaintiff's medical chart does not contain any record of plaintiff's sustaining an injury
11 on July 15. Instead, the record reflects that on July 16, a deputy reported that plaintiff
12 refused to go to an outside appointment for evaluation of a condition in his mouth. The
13 reason provided by plaintiff was that he could not move because of a disc problem he had
14 suffered at Atascadero. That same date, plaintiff was seen by PHS medical staff, who
15 examined plaintiff, assessed chronic back pain, prescribed Neurontin and scheduled him to
16 be seen at sick call. (Orr Decl. ¶ 37 & Ex. B PHS228-00229.)

17 The next day, July 17, plaintiff was seen by defendant Dr. I-Fei Chen ("Dr. Chen").
18 (Orr Decl. ¶ 38; Chen Decl. ¶ 4.) Plaintiff requested a chrono, specifically, a medical order
19 for him to be placed on a lower bunk in a lower tier. Dr. Chen examined plaintiff, who was
20 not in acute distress. Dr. Chen's assessment was that plaintiff had chronic low back pain,
21 with no objective signs of any abnormality. Dr. Chen denied plaintiff's chrono request. She
22 encouraged plaintiff to perform self-directed physical therapy for range of motion and
23 strengthening. (Decl. Dr. I-Fei Chen Supp. PHS Defs.' Mot. Summ. J. ("Chen Decl.") ¶ 8.)

24 The next week, on July 25, Deputy Franco "unofficially" gave plaintiff a lower bunk
25 at plaintiff's request, despite the lack of a medical order. (SAC ¶ V(F) at 9:1-4.)

26 On July 31, plaintiff was seen by Dr. Chen pursuant to a superior court order to
27 address plaintiff's back and left shoulder pain. Dr. Chen noted in the medical chart that she
28 had already addressed plaintiff's back pain on July 17. Additionally, she noted that when she

1 attempted to examine plaintiff's shoulder, she was unable to do so because plaintiff refused
2 to move his left arm or let her passively move his arm. He also refused to sign a release of
3 responsibility and said he wanted to file a grievance. (Orr Decl. ¶ 40; Chen Decl. ¶ 5).

4 On August 5, Sgt. Molloy asked PHS to respond to an SRCJ grievance plaintiff had
5 filed, in which plaintiff complained of inadequate medical attention. The investigation
6 showed that the last sick call slip PHS had received from plaintiff was dated June 30, and that
7 PHS had received no sick call slips from plaintiff complaining of a re-injury to his shoulder;
8 additionally, plaintiff had been seen in sick call on five occasions after June 26. PHS further
9 advised Sgt. Molloy there was no medical indication for further x-rays and that medical
10 records from Atascadero did not support plaintiff's claims of a back and shoulder injury other
11 than a complaint of shoulder pain, which had been treated with Tylenol. (Molloy Decl., ¶¶
12 22-23 & Ex. H.)

13 Thereafter, plaintiff obtained another superior court order, dated August 26, for
14 evaluation of his shoulder and back. The next day, Dr. Chen responded to the superior court,
15 expressing her frustration with what she described as plaintiff's continued attempts to
16 manipulate the medical staff. In particular, Dr. Chen explained that she had examined
17 plaintiff's back, which was normal, and that he refused to allow her to assess his shoulder.
18 She stated it would be a disservice to plaintiff to enable his behavior, and she requested the
19 court be judicious in its further issuance of such orders. (Orr Decl. ¶ 41; Chen Decl. ¶ 6).

20 That same date, August 27, plaintiff filed a SRCJ grievance, complaining he needed
21 to be seen by another doctor. Sgt. Molloy asked PHS to respond; two days later, PHS
22 informed Sgt. Molloy that plaintiff had been seen by a nurse practitioner and two doctors on
23 several occasions, there was no medical indication that a second opinion was required, and
24 there was no medical need for a lower tier, lower bunk chrono. (Molloy Decl. ¶¶ 24-25 &
25 Exs. I & J.)

26 On September 2, plaintiff was seen by Dr. Wilson. Plaintiff claimed he had suffered a
27 shoulder separation in September 2006 and surgery was pending. Dr. Wilson's assessment
28 was left shoulder separation with joint pain, low back pain and decreased weight. Dr. Wilson

1 ordered laboratory testing, a physical therapy consultation, analgesic balm, Ensure and
2 Percogesic. He also approved a lower bunk chrono, and ordered plaintiff's weight to be
3 checked at regular intervals. (Orr Decl. ¶ 42.)

4 Thereafter in 2008, plaintiff was seen as follows: on September 18 by Dr. Chen; on
5 October 1 by Dr. Wilson, who ordered an orthopedic consult for plaintiff's complaints of
6 shoulder and back pain; on October 2 for physical therapy; on October 16 in the orthopedic
7 clinic for possible treatment of his shoulder pain with steroid injections; and on December 31
8 by a PHS nurse, at which time anti-inflammatory medication was prescribed and x-rays of
9 plaintiff's shoulder were ordered. (Chen Decl. ¶ 7; Orr Decl. ¶¶ 44, 46, 49, 52.) On January
10 6, 2009, plaintiff was seen twice by Dr. Magat, pursuant to a court order for evaluation of
11 pain in plaintiff's left shoulder, possible rotator cuff injury and back pain with a possible
12 degenerative disc. Dr. Magat noted that plaintiff had refused the previously ordered x-rays of
13 plaintiff's shoulder and neck, and that plaintiff would not allow Dr. Magat to examine his left
14 shoulder. On January 15, plaintiff refused to sign a request-for-information form to allow
15 Dr. Magat to receive his records from Kaiser regarding his left shoulder. (Orr Decl. ¶¶ 52-
16 53.)

17 2. Analysis

18 a. Alameda County Defendants

19 Plaintiff claims he received constitutionally inadequate medical care between July 15
20 and September 2, 2008, because he was not timely provided a medical chrono for a lower
21 bunk for his back and shoulder pain, was not seen often enough by medical staff for said
22 pain, and was not treated for his chronic weight loss. The undisputed evidence shows that no
23 SRCJ defendant acted with deliberate indifference to plaintiff's medical needs in such regard.
24

25 First, plaintiff has presented no evidence that any SRCJ defendant acted with
26 deliberate indifference to his complaints regarding his bunk. Rather, the undisputed evidence
27 shows: plaintiff first complained of his injury to a SRCJ deputy on July 16; he was seen the
28 next day by Dr. Chen, who assessed plaintiff as suffering from chronic back pain and

1 declined to write a lower bunk chrono; he was “unofficially” given a lower bunk a week later
2 by SRCJ deputy Franco; he subsequently filed a grievance that was investigated by Sgt.
3 Molloy; five days later he was seen by Dr. Wilson, who prescribed a lower bunk chrono.

4 Second, with respect to plaintiff’s complaint of inadequate medical follow up, the
5 undisputed evidence shows that during the relevant time period plaintiff filed two grievances,
6 and within two days of each such filing Sgt. Molloy had asked for and received from PHS
7 information showing that plaintiff had been seen several times by PHS medical staff and his
8 medical concerns were being addressed. Although plaintiff complained he was not receiving
9 appropriate care from PHS medical staff, the information obtained by Sgt. Molloy showed
10 that while plaintiff did not agree with the diagnoses and treatment he was receiving from
11 PHS, he in fact was receiving a substantial amount of care for his complaints from numerous
12 medical providers.

13 Based on the above, the Court concludes there is an absence of evidence from which it
14 could be found that any of the SRCJ defendants acted with deliberate indifference to
15 plaintiff’s serious medical needs.

16 b. PHS Defendants

17 Plaintiff’s complaint of deliberate indifference by the PHS defendants also fails. With
18 respect to plaintiff’s contention that Dr. Chen wrongly refused to provide him with a lower
19 bunk chrono, there is no evidence to suggest that Dr. Chen’s evaluation of plaintiff’s medical
20 needs amounted to deliberate indifference. Rather, the evidence shows that at plaintiff’s first
21 appointment with Dr. Chen, she thoroughly examined plaintiff and determined he had
22 chronic lower back pain that did not require a lower bunk chrono, and that at plaintiff’s
23 subsequent appointments with Dr. Chen, plaintiff did not allow her to examine his shoulder
24 or back. Additionally, plaintiff subsequently was evaluated at physical therapy and by an
25 orthopedist, and no significant shoulder condition was diagnosed. Further, while Dr. Wilson
26 eventually approved plaintiff for a lower bunk on September 2, his assessment of plaintiff did
27 not reveal any serious back problem that had been ignored by Dr. Chen. Consequently, Dr.
28 Wilson’s decision to provide plaintiff with the lower bunk chrono evidences no more than a

1 difference of medical opinion about the treatment of plaintiff's chronic lower back pain. A
2 showing of nothing more than a difference of medical opinion as to the need to pursue one
3 course of treatment over another is insufficient, as a matter of law, to establish deliberate
4 indifference. See Toguchi v. Chung, 391 F.3d 1051, 1058-60 (9th Cir. 2004).

5 Plaintiff also complains that he did not receive proper care for his chronic weight loss.
6 The undisputed evidence shows, however, that no PHS employee acted with deliberate
7 indifference to plaintiff's weight problem. Rather, such evidence shows that from the time of
8 plaintiff's arrival at SRCJ in April 2007 his weight had been monitored regularly, the
9 laboratory tests ordered by Dr. Wilson in September 2008 showed no abnormality, plaintiff
10 was prescribed dietary supplements, and, by October 1, Dr. Wilson concluded plaintiff was
11 showing slow weight gain and recommended he remain on dietary supplements and continue
12 to be monitored.

13 Based on the above, plaintiff has failed to raise a triable issue with respect to whether
14 any PHS defendant acted with deliberate indifference to plaintiff's serious medical needs.

15 F. Conclusion

16 Plaintiff has not shown that any SRCJ or PHS defendant acted with deliberate
17 indifference to plaintiff's medical needs on any occasion set forth in the SAC. Specifically,
18 the undisputed evidence demonstrates that defendants did not disregard plaintiff's medical
19 needs, but, rather, that they investigated and responded to plaintiff's medical complaints, and
20 provided plaintiff with a considerable amount of medically acceptable care. Accordingly,
21 summary judgment will be granted in favor of the SRCJ and PHS defendants on each of
22 plaintiff's medical claims.

23 VI. Plaintiff's Mental Health Care Claims

24 Plaintiff alleges two claims of constitutionally inadequate mental health care against
25 the CJMH defendants. First, plaintiff claims he was not prescribed appropriate anti-
26 psychotic drugs when he told CJMH physicians and CJMH Director Swafford that he was
27 suffering from depression, paranoia, fear, and hearing voices, and that the drugs being
28 prescribed did not help. (SAC ¶ VI(A) at 3:11-20.) Second, he claims he received

1 inadequate mental health treatment between July 13 and August 27, 2007, and again between
2 September 3 and October 27, 2008. (SAC ¶ VI(A) at 4:13-21.) He also claims CJMH and
3 SRCJ supervisory officials failed to act to ensure that he receive adequate mental health care.

4 A. Background

5 The evidence submitted by the parties in support of and opposition to the CJMH
6 defendants' motion for summary adjudication shows the following:

7 Plaintiff arrived at SRCJ on March 10, 2007.¹¹ That same date, an initial mental
8 health screening was conducted by CJMH. Based on plaintiff's depiction of certain
9 symptoms, a provisional assessment of schizophrenia was made and he was scheduled for a
10 follow-up appointment with CJMH for a formal assessment. (See Documents Filed Under
11 Seal Supp. Alameda Cty. Defs.' Mot. Summ. J. Ex V at 1-2.)

12 On March 14, at the formal assessment interview, plaintiff stated he suffered from
13 auditory hallucinations and had a history of psychiatric treatment going back to 1985. He
14 further stated that prior to his incarceration he had been taking two anti-psychotic
15 medications, Seroquel and Mellaril, as well as the anti-depressant Prozac, but had taken no
16 medication in the past several weeks because he ran out. Dr. Rosenthal, a psychiatrist,
17 diagnosed plaintiff as schizophrenic with paranoid tendencies, and recommended he be
18 housed in the mental health unit. (Ex. V at 3-6.)

19 Dr. Rosenthal prescribed a thirty-day course of Risperdol, an anti-psychotic
20 medication that plaintiff stated had helped him in the past, and Prozac. (Id.) Although, as
21 noted, plaintiff stated he had been taking Seroquel and Mellaril prior to his incarceration,
22 those medications were not prescribed for plaintiff. Specifically, Seroquel is an anti-
23 psychotic that is heavily abused in correctional facilities because inmates grind it up and
24 snort it as a substitute for heroin. Mellaril is an anti-psychotic with dangerous side effects,
25 including extreme sedation and urinary retention. Because there are other anti-psychotics
26 that are better and safer alternatives to Seroquel and Mellaril, those medications are not

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28 ¹¹All further dates referenced in this section are in 2007, unless otherwise noted.

1 available for CJMH doctors to prescribe. (Rosenthal Decl. ¶¶ 9-11; Thomas Decl. ¶ 13.)

2 Further, Dr. Rosenthal saw no medical basis for the use of either Seroquel or Mellaril.

3 (Rosenthal Decl. ¶ 12.) Plaintiff was scheduled to return to see Dr. Rosenthal on April 11.

4 On March 22, plaintiff was seen by Dr. Russell, a rehabilitation therapist. It was
5 determined that plaintiff should keep taking his medication and that he would be reevaluated
6 in a week. (Ex. V at 9-10.)

7 Plaintiff refused to go to his March 28 follow-up appointment with Dr. Russell, and
8 was rescheduled to see a psychiatrist on April 11, on which date plaintiff was “not seen.”
9 (Ex. V at 11.)¹² Dr. Rosenthal nevertheless continued plaintiff’s medications and scheduled
10 him for a return appointment on April 25. (Ex. V. at 11.)

11 On April 25 plaintiff refused to attend his appointment; he was scheduled to return on
12 April 27. Plaintiff also refused to attend the April 27 appointment. Because his medications
13 expired that same date, Dr. Rosenthal renewed the prescriptions, in order that plaintiff could
14 continue to receive treatment. (Ex. V at 14-15.) He scheduled plaintiff to return on May 4.

15 Plaintiff did not make his May 4 appointment because he was out for a court
16 appearance. He was rescheduled for May 9, but refused to attend the appointment. He was
17 rescheduled for May 11. (Ex. V at 16.)

18 On May 11, plaintiff saw Dr. Rosenthal. He complained of auditory hallucinations
19 and depression. He requested that he be prescribed Seroquel; Dr. Rosenthal explained that
20 Seroquel was not available. Plaintiff agreed to an increase in the dosages of Risperdol and
21 Prozac to better control his symptoms. He was scheduled for a follow-up appointment in one
22 month, on June 15. (Ex. V at 17-18.)

23 Plaintiff refused to attend the June 15 appointment. Dr. Rosenthal continued
24 plaintiff’s medications and rescheduled him for June 22. On June 22, plaintiff met with Dr.
25 Rosenthal and complained of auditory and visual hallucinations. He told Dr. Rosenthal he
26 had been treated at Kaiser with Risperdol and Haldol, an anti-psychotic, which helped. Dr.

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28 ¹²The medical records do not reflect the reason why plaintiff was not seen. (See id.)

1 Rosenthal agreed to add Haldol to plaintiff's treatment regimen, and scheduled plaintiff to
2 return in one month, on July 20. (Ex. V at 20-21.)

3 On July 12, Dr. Russell, the rehabilitation therapist, saw plaintiff after plaintiff
4 requested medication to restore his competence to participate in court proceedings. At that
5 appointment, plaintiff complained of auditory and visual hallucinations. Dr. Russell
6 scheduled plaintiff to meet with herself and Dr. Rosenthal, the psychiatrist, the next day. At
7 that next appointment, plaintiff claimed to have several identities. Dr. Rosenthal was unable
8 to determine if plaintiff was delusional and/or had multiple personalities. He continued
9 plaintiff's medications, increased the dosage of Haldol, and scheduled plaintiff to return on
10 August 8. (Ex. V at 24-28.)

11 On July 17, five days after plaintiff's meeting with Drs. Russell and Rosenthal,
12 plaintiff was seen in his cell by CJMH Director Swafford, after complaining he was not
13 getting the medications he needed, specifically, Seroquel and Mellaril. Director Swafford
14 reviewed plaintiff's symptoms and medications and determined that his current medications
15 were appropriate; it was unclear to Director Swafford, however, whether plaintiff was taking
16 his medications as prescribed. She wrote in her notes that plaintiff would be going to
17 Atascadero for a competency evaluation. (Ex. V at 29.)

18 Three days later, plaintiff refused to attend his scheduled follow-up appointment with
19 Dr. Rosenthal. He was rescheduled for July 27; on that date, however, he was away at court.
20 He was rescheduled for August 3, at which time he saw Dr. Russell. Plaintiff complained the
21 medications were not working well enough. Dr. Russell told plaintiff she was leaving CJMH
22 and would schedule him to see Dr. Rosenthal and a new therapist the next week, on
23 August 8. (Ex. V at 30.)

24 On August 8, plaintiff refused to be seen for a morning appointment and was placed
25 on the afternoon schedule as an add-on; the schedule change, however, was not noted for the
26 transporting deputy, and plaintiff missed his appointment. As his medications were set to
27 expire on August 12, his medications were extended until August 22, when he was scheduled
28 to see the psychiatrist and therapist. (Ex. V at 31-32.)

1 On August 15, CJMH was notified by Captain Wilkinson that Sheriff Ahern had
2 received complaints from plaintiff that plaintiff was not receiving adequate mental health
3 treatment. (Ex. V at 33.)

4 On August 22, plaintiff was seen by Dr. Rosenthal. He complained of auditory
5 hallucinations and depression. Dr. Rosenthal increased plaintiff's anti-psychotic
6 medications, and scheduled plaintiff to return on September 14. (Ex. V at 34-35.)

7 The next day, August 23, Dr. Rosenthal determined that plaintiff could be returned to
8 housing in the general population, because he had no behavioral or problematic symptoms
9 that required him to remain in the mental housing unit. Additionally, on that same date,
10 plaintiff's therapist, Thomas Resburg ("Resburg"), provided a primary diagnosis of
11 malingering, based on marked discrepancies between plaintiff's reported symptoms and
12 CJMH medical staff's objective findings, plaintiff's lack of cooperation with a diagnostic
13 interview, and secondary gain to plaintiff should he be found incompetent to stand trial.
14 (Rosenthal Decl. ¶ 16 & Ex. V at 36-37.)

15 Approximately two weeks later, on September 14, plaintiff was seen at a follow-up
16 appointment with Dr. Rosenthal. Plaintiff reported the auditory hallucinations had decreased
17 and agreed to continue with his medications. He was scheduled to return in one month, on
18 October 16. (Ex. V at 38-19.)

19 Thereafter, plaintiff filed a grievance, complaining he was not receiving proper
20 medication. At plaintiff's October 16 appointment, a doctor reviewed plaintiff's medical
21 record and determined that the dose of Risperdol written in plaintiff's medical chart was not
22 the same dose plaintiff had been prescribed. The dose was increased to the correct amount
23 and plaintiff was scheduled to return in one month, on November 15. (Ex. V at 40-41.)

24 On November 7, plaintiff was transferred to Atascadero, and did not return to SRCJ
25 until March 19, 2008.¹³ Upon his return, plaintiff had an initial intake screening by CJMH.
26 At that time, plaintiff said he had been prescribed Seroquel at Atascadero, but had been
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28 ¹³All further dates referenced in this section are in 2008, unless otherwise noted.

1 tapering himself off and hadn't taken any for the past two months. He reported no auditory
2 hallucinations, and that he was willing to resume Prozac. Later that day, plaintiff was seen
3 by Dr. Rosenthal, who noted plaintiff was non-delusional and prescribed Prozac for him. A
4 return appointment was scheduled for April 11. (Ex. V at 44-50.)

5 On April 1, in response to a request from the superior court with respect to plaintiff's
6 mental health status, plaintiff was seen by therapist Resburg. Plaintiff complained that he
7 needed more medication and that he wanted the medication he had been receiving at
8 Atascadero. Resburg scheduled plaintiff to see the psychiatrist in two days. (Ex. V at 52-
9 53.) On April 3, plaintiff was seen by Dr. Thomas; plaintiff asked to be prescribed Seroquel,
10 Risperdol, and Prozac, as had been prescribed at Atascadero. He reported auditory and
11 visual hallucinations, and said he had been diagnosed as schizophrenic for the past twenty-
12 five years. Upon further questioning by Dr. Thomas, however, plaintiff would not say
13 specifically how his hallucinations were manifested. Plaintiff then told Dr. Thomas that if
14 Dr. Thomas would not prescribe him the medications he wanted, he would not talk to Dr.
15 Thomas. Dr. Thomas diagnosed plaintiff as having a personality and impulse control
16 disorder and concluded there was "[n]o need for treatment with typical antipsychotics," but
17 that mood stabilizers might offer some benefit. Plaintiff did not want to discuss the matter
18 further. (Ex. V at 54-55.)

19 On April 22, plaintiff's Prozac prescription expired. Although no return appointment
20 had been scheduled for plaintiff, Dr. Thomas, on that same date, renewed plaintiff's
21 prescriptions and planned to go and see plaintiff. On April 30, Dr. Thomas went to
22 plaintiff's housing unit to see him. Plaintiff again told Dr. Thomas he had been diagnosed as
23 a paranoid schizophrenic for the past twenty-five years, and that he suffered from auditory
24 and visual hallucinations. As with their previous visit, however, plaintiff refused to answer
25 further questions from Dr. Thomas. Dr. Thomas wrote in the medical chart that he would
26 attempt to reevaluate plaintiff in the following month, on May 27. (Ex. V at 58-60.) Also on
27 April 22, plaintiff was seen by therapist Resburg for a court-ordered evaluation. Resburg
28 wrote that plaintiff continued to demand the medications he had received at Atascadero, but

1 that Resburg saw no overt indication of psychotic disorders. Plaintiff's Prozac prescription
2 was renewed. (Ex. V at 61.)

3 On May 13, plaintiff was moved to the mental health unit because of a conflict with a
4 housing deputy. (Ex. V at 63.) The next day, plaintiff was seen by Dr. Thomas after plaintiff
5 reported in court that he had attempted suicide by trying to hang himself in his cell the night
6 before. Dr. Thomas investigated plaintiff's report, but found no objective evidence to
7 support plaintiff's account. (Ex. V at 65.)

8 The next day, May 15, CJMH Director Swafford interviewed plaintiff's cellmate,
9 whom plaintiff said had witnessed the suicide attempt. Plaintiff's cellmate stated plaintiff
10 had not tried to hang himself or made any other suicidal gestures. (Ex. V at 66.)

11 The following day, May 16, CJMH responded to a request from the superior court for
12 a mental health evaluation of plaintiff as well as an explanation as to whether plaintiff was
13 receiving different medication than he had received at Atascadero and, if so, the reasons
14 therefor. The CJMH evaluator wrote that plaintiff was denying any auditory or visual
15 hallucinations at the time, was not requesting anti-psychotic medications, and was asking to
16 be moved back to the general population. (Ex. V at 67-68.)

17 On May 28, plaintiff was seen by Dr. Thomas. Plaintiff stated he was doing well but
18 was depressed. He made no delusional statements. Dr. Thomas continued plaintiff's Prozac,
19 but found no objective evidence of psychosis to support prescribing anti-psychotic
20 medication. Dr. Thomas scheduled a return appointment for plaintiff for June 18. The day
21 after plaintiff's appointment with Dr. Thomas, therapist Resburg approved plaintiff for return
22 to the general population. (Ex. V at 71-73.)

23 Resburg was unable to see plaintiff on June 18, and rescheduled the appointment for
24 June 24. On June 24, plaintiff did not appear for his appointment because he was away at
25 court. (Ex. V at 75.) Plaintiff saw Resburg on June 27, and complained his symptoms were
26 not being treated. He stated both that he was and was not having auditory hallucinations. He
27 also stated he was not taking his medication. He asked to meet with a doctor to discuss his
28 medication. (Ex. V at 76-77.)

1 On July 7, plaintiff saw Dr. Thomas. He complained of anxiety and constant anger.
2 Dr. Thomas increased plaintiff's Prozac prescription, and prescribed Risperdol, Benadryl,
3 and Trileptal, a mood stabilizer. (Ex. V at 78-80.)

4 On July 24, plaintiff had another appointment with Dr. Thomas. Plaintiff reported he
5 was doing better; he was still depressed, but had decreased anxiety and no psychotic
6 symptoms. Plaintiff's Prozac dose was increased and his other medications were continued.
7 He was scheduled for a return appointment on August 28. (Ex. V at 81-82.)

8 Plaintiff was not seen on August 28 because Dr. Thomas was not available. Plaintiff
9 was rescheduled and saw Dr. Thomas on September 8. Plaintiff reported hearing voices and
10 having anxiety, but showed no overt signs of delusions or psychiatric disorders and reported
11 no acute psychiatric issues. Dr. Thomas increased plaintiff's Risperdol dosage and scheduled
12 a return visit for October 13. (Ex. V at 83-84.)

13 Dr. Thomas was unable to see plaintiff on October 13 and rescheduled the
14 appointment for October 27. On that date, plaintiff reported he was depressed and anxious,
15 and still hearing voices. He did not report delusional behavior. Dr. Thomas increased
16 plaintiff's Prozac and Trileptal dosages and scheduled a review for December 1. (Ex. V at
17 87-88.)

18 Dr. Thomas saw plaintiff on December 1, at which time plaintiff said he was hearing
19 voices and asked for Seroquel. Upon evaluating plaintiff, however, Dr. Thomas determined
20 plaintiff did not have psychotic symptoms and told plaintiff, as he had before, that no anti-
21 psychotics would be prescribed, that plaintiff already was receiving a higher dose of
22 Risperdol than is typically prescribed as an adjunct to an anti-depressant for anxiety, and that
23 there was no indication for change. Dr. Thomas concluded: "Patient is clearly not psychotic
24 and [is] attempting to manipulate system to receive medication he does not need on clinical
25 grounds. No medication changes at this time." (Ex. V at 90.) Plaintiff was scheduled to
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28

1 return January 5, 2009.¹⁴

2 Plaintiff did not keep his January 5 appointment. He was seen again by Dr. Thomas
3 on January 26, at which time Dr. Thomas diagnosed plaintiff as malingering and told plaintiff
4 that the doses of medication he was receiving were excessive in relation to the objective
5 evidence of illness plaintiff was displaying. (Ex. V at 94-95.)

6 Plaintiff refused to attend follow-up appointments with Dr. Thomas on March 9,
7 April 6, and April 28. In the interim, plaintiff's prescriptions expired. When Dr. Thomas
8 saw plaintiff again, in May 2009, plaintiff stated the prior medications were effective; Dr.
9 Thomas restarted the medications, but told plaintiff such medications would not be renewed
10 if plaintiff could not be seen by medical staff. When plaintiff was seen in July 2009 by
11 Thomas, he refused to speak or be evaluated. In August 2009, plaintiff refused to attend two
12 scheduled appointments; consequently, his expired medications were not renewed. When
13 plaintiff next saw Dr. Thomas, at the end of August 2009, Dr. Thomas agreed to prescribe a
14 higher dose of Risperdol for plaintiff, even though in Dr. Thomas's medical opinion the dose
15 was too high. From that time through February 2010, plaintiff had his medications adjusted
16 by Dr. Thomas, and also refused to see Dr. Thomas on two occasions. (Ex. V at 96-100,
17 105-107, 114-120.)

B. Analysis

18 1. Failure to Prescribe Appropriate Anti-Psychotic Medications

19 Plaintiff's first claim is that the failure of CJMH medical staff to prescribe him
20 Seroquel and/or Mellaril constituted deliberate indifference.

21 As a threshold matter, it is undisputed that neither plaintiff's therapist, Thomas
22 Resburg, nor CJMH Director Swafford was authorized to prescribe psychiatric medication.
23 Consequently, plaintiff's claim must be limited to his prescribing psychiatrists, Dr. Rosenthal
24 and Dr. Thomas. Plaintiff's disagreement with his psychiatrists about what medications he
25 should have been prescribed, however, does not amount to deliberate indifference to
26

27 _____
28 ¹⁴In the SAC, plaintiff alleges the final occasion on which he was not given appropriate treatment was the December 1, 2008 visit. (SAC ¶ VI(A) at 4:22-28.)

1 plaintiff's mental health needs. Rather, the undisputed evidence shows that plaintiff was
2 prescribed medication in accordance with the best medical judgment of the doctors treating
3 him, and that his symptoms improved on the prescribed medical regimen. Further, plaintiff's
4 own failure to attend follow-up appointments with the doctors and failure to consistently take
5 his medications undermines his argument that the medications he was receiving were not
6 appropriate.

7 To summarize, the undisputed evidence shows the following. Seroquel and Mellaril
8 are not prescribed at CJMH because of their potential for abuse and serious side effects, and
9 Risperdol is considered an equally effective anti-psychotic without such associated problems.
10 Upon plaintiff's first meeting with Dr. Rosenthal shortly following plaintiff's arrival at
11 SRCJ, he told Dr. Rosenthal that he had been helped by Risperdol in the past. Consequently,
12 Dr. Rosenthal prescribed Risperdol, among other drugs, for plaintiff in March 2007, and
13 subsequently increased the dosage of Risperdol and other medications as plaintiff reported
14 symptoms that warranted such increases in Dr. Rosenthal's medical judgment. Dr. Rosenthal
15 also added an additional anti-psychotic medication, Haldol, to plaintiff's medication regimen
16 when plaintiff told Dr. Rosenthal that Haldol had helped in the past.

17 By August 23, 2007, plaintiff's behavior issues had sufficiently improved to the point
18 that Dr. Rosenthal determined he was able to leave the mental health unit and return to the
19 general population. Additionally, plaintiff was diagnosed by his therapist as malingering.
20 Plaintiff's medications nevertheless were continued at his next two appointments, in
21 September and October 2007. On November 7, 2007, he was transferred to Atascadero.
22 Between the date of plaintiff's arrival at SRCJ in March 2007 and his transfer to Atascadero
23 in November 2007, plaintiff refused to attend six CJMH mental health appointments.

24 When plaintiff returned from Atascadero in March 2008, he reported that he had taken
25 no anti-psychotic medications in two months; Dr. Thomas evaluated him and prescribed
26 Prozac for depression. Less than two weeks later, plaintiff asked Dr. Thomas to prescribe
27 Seroquel and other anti-psychotics for him, but refused to allow Dr. Thomas to evaluate him.
28 Three weeks later, plaintiff was again seen by Dr. Thomas and also by therapist Resburg.

1 Although plaintiff continued to ask for anti-psychotic medications, neither Dr. Thomas nor
2 Resburg noted any objective findings to support prescribing such medications.

3 Over the course of the next several months, plaintiff continued to ask Dr. Thomas to
4 prescribe anti-psychotic medications, but Dr. Thomas never observed any objective or overt
5 indications of psychosis or psychiatric disorders or any medical indication for treatment with
6 anti-psychotics. At times plaintiff appeared anxious and depressed, and Dr. Thomas
7 discussed the use of mood stabilizers to help with irritability associated with plaintiff's
8 primary diagnosis of personality disorder, as well as a low dose of anti-psychotic medication
9 for depression. Plaintiff initially refused to consider mood stabilizers, but eventually agreed
10 to take one, as well as a low dose of Risperdol for depression. Dr. Thomas also continued
11 plaintiff's prescription for Prozac.

12 In December 2008, plaintiff again asked Dr. Thomas to prescribe Seroquel. Dr.
13 Thomas wrote in the medical record that plaintiff did not have psychotic symptoms and told
14 plaintiff no anti-psychotics would be prescribed. When Dr. Thomas saw plaintiff again in
15 January 2009, he diagnosed plaintiff as malingering. Over the course of the next five
16 months, plaintiff refused to attend three follow-up appointments and, as a result, his
17 prescriptions expired. After the prescriptions were renewed in May 2009, plaintiff again
18 refused, over a period of three months, to be evaluated by Dr. Thomas and to attend two
19 scheduled appointments. Again, the prescriptions expired. Thereafter, through February
20 2010, when the instant motion for summary adjudication was filed, plaintiff again had his
21 medications adjusted by Dr. Thomas, and also refused to see Dr. Thomas on two occasions.

22 In short, the evidence establishes that plaintiff received regular and substantial mental
23 health treatment and was prescribed a detailed psychiatric medication regimen, which
24 plaintiff's prescribing doctors, Drs. Rosenthal and Thomas, adjusted over time, in accordance
25 with their best medical judgment. Further, the evidence shows that CJMH Director Swafford
26 investigated and responded to plaintiff's concerns about his mental health care, as did SRCJ
27 officials.

28 Accordingly, the Court finds plaintiff has failed to raise a triable issue with respect to

1 whether any CJMH defendant responsible for plaintiff's treatment with psychiatric
2 medication chose a course of treatment in conscious disregard of a substantial risk to
3 plaintiff's mental health, nor has plaintiff raised a triable issue as to whether any CJMH or
4 SRCJ supervisory official failed to respond appropriately to plaintiff's mental health
5 requests.

6 2. Inadequate Mental Health Care

7 Plaintiff's second claim is that CJMH medical personnel acted with deliberate
8 indifference to his serious mental health needs by failing to see him often enough between
9 July 13 and August 27, 2007, and again between September 3 and October 27, 2008.
10 Plaintiff's claim of deliberate indifference is wholly unsupported by the record.

11 The undisputed evidence shows that during the first period of six weeks, in the
12 summer of 2007, plaintiff was scheduled to be seen six times by CJMH mental health
13 personnel, he refused to come to one appointment, he missed one appointment because he
14 was in court, and he was seen four times, including the appointment he had on the last day of
15 the relevant time period. Further, there is nothing in the record to support an inference that
16 plaintiff's condition worsened during that time; instead, by August 23, 2007, his symptoms
17 had improved to the extent that he was cleared to leave mental health housing and rejoin the
18 general population, where he stayed until he was transferred to Atascadero in November
19 2007.

20 In regard to the second period of six weeks, in the fall of 2008, the undisputed
21 evidence shows that plaintiff was scheduled to see Dr. Thomas on August 28, but that the
22 appointment was rescheduled for September 8 because of Dr. Thomas's unavailability. At
23 the September 8 appointment, plaintiff reported hearing voices and having anxiety, but
24 showed no overt signs of delusions or psychiatric disorders and reported no acute psychiatric
25 issues. Consequently, Dr. Thomas increased plaintiff's Risperdol dosage and scheduled a
26 return for October 13.

27 When Dr. Thomas was unable to keep the October 13 appointment, he rescheduled
28 plaintiff to be seen on October 27. When seen on that date, plaintiff showed no objective

1 signs of any psychiatric disorder and presented essentially as he had on September 8,
2 specifically, anxious and depressed, with no indication of any psychiatric injury due to the
3 missed appointment. In sum, plaintiff's claim regarding the period in the fall of 2008
4 amounts to plaintiff's dissatisfaction with the fact that his regular monthly psychiatric
5 appointment was delayed for two weeks due to Dr. Thomas's unavailability. The record
6 shows, however, that at the relevant time, plaintiff was not showing any objective symptoms
7 of a psychiatric disorder, and that his mental condition after the two-week delay was no
8 different than before the delay.

9 Based on the above, the Court finds there is an absence of evidence to support
10 plaintiff's claim that he received inadequate mental health care during the two above-noted
11 time periods.

12 3. Conclusion

13 Plaintiff has failed to present evidence sufficient to raise a triable issue with respect to
14 whether any CJMH or SRCJ defendant acted with deliberate indifference to plaintiff's
15 serious mental health needs. Accordingly, summary adjudication will be granted to the
16 CJMH and SRCJ defendants on plaintiff's mental health claims.

17 **CONCLUSION**

18 For the foregoing reasons, the Court orders as follows:

19 1. The Alameda County defendants' motion to file records under seal is hereby
20 GRANTED. The Clerk of the Court shall file the records under seal pursuant to Civil Local
21 Rule 7-11.

22 2. The Alameda County defendants' motion for summary adjudication is hereby
23 GRANTED, and judgment shall be entered in favor of the following Alameda County
24 defendants: SRCJ Deputies Anderson, Arnold, Arrivas, Bao, Barrosa, Brawley, Cabrerias,
25 Cody, Dalton, De La Fuente, Gonzales, Robertson, Snider, St. Denis, and Strickland; Sgts.
26 Molloy and Shaull; Technicians Bryan and Marks; Commander Harris; CJMH Drs.


1 Rosenthal and Thomas; therapist Resburg; Director Swafford.¹⁵

2 3. The PHS defendants' motion for summary judgment is hereby GRANTED, and
3 judgment shall be entered in favor of the following PHS defendants: Prison Health Services,
4 Inc.; Drs. Harold Orr and I-Fei Chen; Maria Sardi, R.N.; Wilfredo Reyes, L.V.N.

5 This order terminates Docket Nos. 172, 176 and 195.

6 IT IS SO ORDERED.

7 DATED: September 24, 2010


MAXINE M. CHESNEY
United States District Judge

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¹⁵The following Alameda County defendants remain in the instant action, to the extent they are named as defendants in claims other than plaintiff's medical and mental health care claims: SRCJ Deputies Barao, Boutwell and McGill; Lt. Jurgens-Lewis; Capt. Melansen.