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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SIMON THORNTON,
Plaintiff,
v.
MICHAEL MEDVIN, et al.,
Defendants.

Case No. [21-cv-01956-WHO](#) (PR)

**ORDER GRANTING DEFENDANT
MEDVIN'S MOTION FOR
SUMMARY JUDGMENT;**

**ORDER GRANTING DEFENDANT
PEARCE'S MOTION FOR
SUMMARY JUDGMENT**

Dkt. Nos. 20, 21 and 38

INTRODUCTION

Plaintiff Simon Thornton alleges in this 42 U.S.C. § 1983 suit that staff at the Mendocino County Jail provided constitutionally inadequate medical care for his back pain and degenerative disk disease. Defendant Dr. Michael Medvin, who personally treated Thornton, and Captain Pearce, who was Jail Commander during Thornton's incarceration and reviewed a grievance Thornton filed, each have filed a motion for summary judgment. Thornton has filed an opposition to both motions, Medvin and Pearce have each filed a reply, and Thornton has filed two unauthorized rebuttal briefs.

Defendant Medvin has presented undisputed evidence that he provided timely, appropriate, and constitutionally adequate medical care. Summary judgment will be granted in his favor. Because there is no genuine dispute of material fact whether Thornton received constitutionally adequate care, Pearce cannot be held liable. Accordingly, Medvin's and Pearce's motions for summary judgment are GRANTED.

1 **BACKGROUND**

2 The following facts are undisputed unless specifically noted otherwise. Thornton’s
3 claims arise from events that occurred during his February 20, 2020 to November 4, 2020
4 incarceration at the Mendocino County Jail (MCJ), where he had been transferred from the
5 CDCR for re-sentencing. (Medvin’s Mot. for Summ. J. (MMSJ, Dkt. No. 20 at 3.) What
6 follows is a summary of the medical care he received while at MCJ in 2020.

7 **February 20, 2020:** A receiving screening was performed on Thornton by
8 Anthony De Los Santos, a registered nurse. (*Id.*) Thornton said that his mobility was
9 impaired, that he could not walk more than five steps, and that he had attempted suicide
10 two weeks before. (*Id.*) Thornton had a history of bipolar disorder, borderline personality
11 disorder, hypertension, chronic low back pain, lumbar spondylosis, and gastroesophageal
12 reflux disease (GERD). (*Id.*) His current medications included Celexa, Trileptal, calcium
13 carbonate antacid and oxcarbazepine. (*Id.*)

14 Also on February 20, Thornton complained of back pain and was seen by registered
15 nurse Nancy Bair, who diagnosed chronic back pain, though she noted no grimacing
16 during the interview, and prescribed Tylenol at plaintiff’s request. (*Id.*) The medical plan
17 was for Thornton to use Tylenol and for a medical provider to evaluate him to develop a
18 further plan of care. (*Id.*)

19 **February 21:** A registered psychiatric nurse, Cheri Stone, conducted a mental
20 health evaluation. (*Id.*) Stone noted that Thornton had attempted suicide in prison by
21 swallowing razors, but he denied that he had any current suicidal ideation. (*Id.*) Stone
22 noted his medical history and current medications. (*Id.*) It was determined that Thornton
23 would be seen by a psychiatrist for continued care. (*Id.* at 4.)

24 **February 24:** A physical assessment performed by De Los Santos indicated that
25 Thornton normal strength and function in all extremities, with a normal gait, and there
26 were no limitations of daily activity living. (*Id.*)

27 Also on February 24, Kimberly Silva, a nurse practitioner, ordered that twice-a-day
28 activity checks should be done to evaluate Thornton’s back pain. (*Id.*) Medical staff were

1 to look at how plaintiff lifted, got in and out of bed, exercised, and twisted and flexed his
2 torso. (*Id.*)

3 **February 28:** Thornton was seen by Dr. Cuyler Goodwin, a psychiatrist, who
4 noted that Thornton’s psychiatric medications had been restarted when he arrived at MCJ.
5 (*Id.*) Thornton spoke of his history of bipolar and borderline personality disorders. (*Id.*)
6 After reviewing his mental health history and medications, Goodwin diagnosed
7 unspecified bipolar disorder. (*Id.*)

8 **March 1:** A licensed vocational nurse, Rachel Alexander, saw Thornton face-to-
9 face. (*Id.*) She saw no signs of distress. (*Id.*)

10 **March 2:** A registered nurse, Nancy Bell, saw Thornton regarding his complaints
11 of back pain. (*Id.*) He said he had a history of degenerative disc disorder, denied that he
12 had had any specific injury, and described his pain as a 7/10. (*Id.*) Bell diagnosed chronic
13 back pain and prescribed Tylenol. (*Id.*)

14 On March 2, Bell noted Thornton complained of acid reflux and asked for
15 famotidine, which had worked for him in the past. (*Id.*) The plan was for him to be seen
16 by a nurse practitioner. (*Id.*)

17 On that same day, Thornton was seen for a mental health evaluation by Leila
18 Lamun, a registered nurse. (*Id.*) He said he hadn’t received his medication for several
19 days and had been told the pharmacy was out of his medication. (*Id.*) He reported feeling
20 stress because of his court case and because his mother was not able to visit him. (*Id.*)
21 There were no complaints of back pain. (*Id.* at 5.)

22 **March 3:** Thornton saw Silva, who ordered Pepside for GERD at plaintiff’s
23 request. (*Id.*)

24 **March 8:** Thornton was seen by a licensed vocational nurse, Ashlynn Tuttle, who
25 saw no signs of distress. (*Id.*)

26 **March 10:** Defendant Dr. Medvin saw Thornton, who refused to be examined by
27 him. (*Id.*) Medvin stated in his notes that Thornton was “well-known” to him and his
28 staff. (*Id.*) He described Thornton as “very manipulative, with multiple vague complaints

1 currently and in the past which had proved to be unfounded.”¹

2 **March 18:** Thornton was seen by Alexander, who saw no signs of distress. (*Id.*)
3 Also on March 18, Thornton was seen by Silva, who noted his blood pressure had
4 normalized and therefore that there was no need for aggressive surveillance of this
5 condition. (*Id.*)

6 **April 1:** Thornton was seen face-to-face by Alexander, who saw no signs of
7 distress. (*Id.*)

8 **April 6:** Thornton was seen by Silva, who noted “no immediate need seen” and
9 that his blood pressure was under good control. (*Id.*) Also on April 6, 2020, plaintiff was
10 seen by Tuttle, who saw no signs of distress. (*Id.*)

11 **April 7:** Thornton saw Silva, who noted he had complained of dry skin, for which
12 he was given Eurcerin, and had complained “muscle cramp pain,” for which he had been

13
14 ¹ Medvin and Thornton had met during a prior incarceration at MCJ, during which
15 Thornton had made many complaints regarding his medical care. On January 31, 2017,
16 Medvin denied his request for an MRI of the lumbar spine for complaints of back pain and
17 noted that he had been thoroughly examined when he was in the emergency department on
18 October 19, 2016. (MMSJ, Dkt. No. 20 at 2.) The x-ray of the lumbar spine appeared
19 normal and a physical examination showed no evidence of an acute injury or any
20 significant neurologic impairment. (*Id.*)

21 On January 28, 2019, Medvin noted that Thornton was well known to him from
22 prior terms of incarceration, during which he had been seen many times engaging in
23 activities without limitations or signs of pain. (*Id.*) He ambulated easily and could sit and
24 stand without limitations or grimace. (*Id.*) Medvin’s assessment was “claimed back pain
25 without findings” and he did not prescribe any medications. (*Id.*)

26 On March 16, 2019, Julien Verbruggen, a registered nurse, saw Thornton, who
27 asked to speak to a mental health nurse because he was having “a mental health crisis.”
28 (*Id.*) He said that he was “stressed out because of my chronic back pain,” that Medvin did
not give him any treatment or medication, that that he had a “L5-S1 fracture and a pinched
nerve.” (*Id.*) Verbruggen saw that Thornton could move freely in his cell without any
noted guarding or grimace, and could obtain papers from his bed by bending down and
bending over. (*Id.* at 2-3.) It was planned that Thornton should be seen the nurse
practitioner for further evaluation. (*Id.* at 3.)

On March 25, 2019, Thornton, after refusing to see Medvin about his back pain,
signed a release of responsibility. (*Id.*) He wrote on the document: “I refuse to see Dr.
Medvin ever! He’s a quack!” (*Id.*)

1 given Tylenol. (*Id.*) He was told to use a warm cloth to soothe his skin and shave in the
2 same direction of hair growth. (*Id.*)

3 **April 15:** Medvin saw Thornton regarding his complaints of skin irritation on the
4 left side of his face, which became worse after shaving. (*Id.*) Medvin saw no swelling,
5 pus, or fever, but did see several mildly erythematous and tender papules on the left
6 mandibular area. (*Id.* at 6.) He diagnosed a mild skin infection and prescribed cephalexin.
7 (*Id.*)

8 **April 19:** Thornton saw Tuttle, who saw no signs of distress. (*Id.*)

9 **April 26:** Thornton was seen by Lamun for a mental health evaluation. (*Id.*) He
10 said he was “stressing out” while awaiting sentencing, but said he was able to eat and sleep
11 without any problem. (*Id.*) He did not mention any back pain. (*Id.*)

12 **May 1:** Williams, a registered nurse, saw Thornton regarding his complaints of dry
13 skin, dehydration, and intermittent muscle pain in the back and neck, which he attributed
14 to “this horrible mattress.” (*Id.*) After examining him, Williams saw no swelling,
15 bruising, or visible deformity, and told Thornton to make a sick call request if his
16 symptoms worsened. (*Id.*) Also on May 1, Tuttle, who saw Thornton face-to-face, saw no
17 signs of distress. (*Id.*)

18 **May 6:** Thornton saw Alexander, who saw no signs of distress. (*Id.*)

19 **May 13:** Thornton was seen by a nurse, Victor Perez, who saw no signs of distress
20 but did see plaintiff sitting and talking to himself. (*Id.*)

21 **May 22:** Thornton saw Garcia, who saw no signs of distress. (*Id.*)

22 **May 23:** Thornton was seen by a licensed vocational nurse, Sharrie Miller, who
23 noted that he had refused his medications on certain days. (*Id.*) She encouraged him to
24 take his medications as ordered. (*Id.*)

25 **May 27:** Thornton saw Alexander, who saw no signs of distress. (*Id.* at 6-7.)

26 **June 2:** Thornton was seen by Silva, who noted that his blood pressure remained
27 stable even though he had stopped his taking his blood pressure medications. (*Id.*) The
28 plan was to discontinue the blood pressure medications. (*Id.*)

1 **June 9:** Thornton saw Alexander, who saw no signs of distress. (*Id.*)

2 **June 10:** Thornton saw Bair regarding complaints of a blister under the tongue.
3 (*Id.*) He did not mention any back pain. (*Id.*)

4 **June 16:** Thornton saw Lamun for a mental health evaluation. (*Id.*) He spoke of
5 his feelings about his court case, the court process, his life in prison, and his plans for
6 when he was released. (*Id.*) He said he was able to eat and sleep without difficulty, but
7 made no reports of back pain. (*Id.*) Lamun noted that he laughed and smiled
8 appropriately. (*Id.*)

9 Also on June 16, Thornton submitted a request for medical services, in which he
10 stated that he had been experiencing neck and lower back pain, and asked to see a nurse or
11 a nurse practitioner. (*Id.*)

12 **June 17:** Silva ordered twice-a-day activity checks of plaintiff to evaluate his back
13 pain. (*Id.*) Medical staff were to look at him lifting, getting in and out of bed, exercising,
14 and twisting of and flexing at the torso. (*Id.*) Also on June 17, a licensed vocational nurse,
15 Eril Udarbe, looked in at Thornton, who was “mainly in his cell lying down.” (*Id.*)
16 Udarbe saw no signs of distress. (*Id.*) Also on June 17, Thornton was seen by Alexander,
17 who saw no signs of distress. (*Id.*)

18 **June 19:** Tuttle saw Thornton, who was smiling, and walking around without a
19 grimace. (*Id.* at 7-8.)

20 **June 20:** Thornton was seen by Miller, who noted that he ambulated and moved
21 quickly. (*Id.* at 8.) She saw no guarding or other limitations. (*Id.*)

22 **June 21:** Thornton was seen by Williams, who advised him he was scheduled to
23 see a medical provider regarding his complaints of back pain. (*Id.*) She noted he had
24 signed a release of information which had been faxed to San Joaquin General Hospital.
25 (*Id.*) Also on June 21, Thornton saw Miller, who noted he moved easily without
26 limitations, and had full range of motion, and no limp or guarding. (*Id.*)

27 **June 22:** Silva penned a progress note in which she wrote that Thornton had a
28 history of complaints of back pain. (*Id.*) She described the complaints as somatic, and not

1 evidenced by activity checks, and that he had made multiple requests for pain medications.
2 (*Id.*) Medvin told Silva that there was no need to see Thornton that day for similar
3 complaints. (*Id.*) Also on June 22, Williams penned a progress note, in which she wrote
4 that a fax had been received from Sutter Health indicating that they had no records
5 regarding Thornton. (*Id.*)

6 **June 28:** Thornton was observed by Tuttle, who saw no signs of distress. (*Id.*)

7 **June 29:** Thornton was seen by a registered nurse, Nancy Bell, regarding
8 complaints of a wound on the left buttock. (*Id.*) Bell saw that there was a scab over a
9 wound on the left medial area of the left buttock, but there was no redness, swelling, or
10 drainage. (*Id.*) She encouraged Thornton to leave the wound alone. (*Id.*)

11 **July 3:** Thornton submitted a request to see a nurse practitioner regarding his lower
12 back pain. (*Id.*)

13 **July 4:** Christina Engelman, a registered nurse, saw Thornton regarding his July 3
14 request, who said the pain had been ongoing for five years ever since an assault occurred.
15 (*Id.* at 9.) The level of pain, he said, was a 6/10, and he spoke of numbness, tingling, and
16 weakness of the extremities. (*Id.*) After physically examining him, Engleman saw
17 Thornton was able to complete straight leg raises with slight difficulty. (*Id.*) She
18 diagnosed chronic back pain. She gave him a printout regarding stretching exercises for
19 the back and prescribed ibuprofen. (*Id.*)

20 **July 7:** Thornton saw Silva, who noted his blood pressure was slightly increased
21 and that he did not want to take blood pressure medication. (*Id.*) Continued monitoring of
22 his blood pressure was the plan. (*Id.*) He made no reference to back pain. (*Id.*) Also on
23 July 7, Ibette Garcia, a licensed vocational nurse, saw Thornton face-to-face and observed
24 no signs of distress. (*Id.*) Also on July 7, Stacy Holden, a registered nurse, saw him
25 regarding GERD complaints, and prescribed Simethicone. (*Id.*)

26 **July 8:** Lamun saw Thornton for a mental health assessment. (*Id.*) He spoke of
27 feeling stressed out and depressed, and stated that his mother had been hospitalized with
28 liver problems. (*Id.*) Lamun noted that he was eating and sleeping well without problems.

1 Her note did not contain any reference to back pain. (*Id.*) He was scheduled for a
2 psychiatric telemedicine visit. (*Id.*) Also on July 8, Thornton submitted a medical request,
3 incorrectly dated as July 10, 2020, in which he asked to be seen by a nurse practitioner
4 about ongoing back pain caused by spondylosis. (*Id.*) He stated that ibuprofen was
5 ineffective. (*Id.*)

6 **July 9:** Silva cancelled a sick call for complaints of back pain because Medvin had
7 recently discussed Thornton’s case with him. (*Id.*) Thornton had made multiple
8 complaints of back pain and other somatic complaints, but there had been no indications of
9 these complaints on activity checks or examinations. (*Id.* at 10.) Thornton was placed on
10 physician sick call if he continued to complain of back pain. (*Id.*)

11 **July 13:** Thornton asked to have his ibuprofen prescription renewed, and asked to
12 see a nurse practitioner or Medvin about treatment for spondylosis. (*Id.*) On that same
13 day, July 13, Tuttle saw him, but saw no signs distress. (*Id.*)

14 **July 14:** Garcia saw Thornton face-to-face and saw no signs of distress. (*Id.*)
15 Thornton said he needed medication for stomach pain which he had had for four days.
16 (*Id.*) He also spoke of pain in his legs, and cramping in his legs at night. (*Id.*) Garcia
17 noticed he walked with a steady gait and he was able to bend without guarding or a loss of
18 balance. (*Id.*)

19 **July 21:** Thornton was seen by Diana Hibbert, a licensed vocational nurse, who
20 saw no signs of distress. (*Id.*)

21 **July 22:** Silva penned a progress note in which she wrote that Thornton had
22 multiple and varied somatic complaints; a history of complaints of back pain; and had a
23 long history of seeing Dr. Medvin. She also wrote that his multiple complaints were not
24 evidenced by activity checks; he had made multiple requests for pain medications; per
25 Medvin, there was no need for Thornton to be seen that day; and the plan was to speak to
26 Medvin to determine if monthly evaluations by a physician would be beneficial. (*Id.*)

27 **July 24:** Tuttle saw Thornton face-to-face and saw no signs of distress. (*Id.*)

28 **July 30:** Silva saw Thornton, who had been given hypertension education

1 materials. (*Id.*) He made no mention of back pain. (*Id.* at 10-11.)

2 **July 31:** Tuttle saw Thornton face-to-face and saw no signs of distress. (*Id.*)

3 **August 13:** Williams saw Thornton regarding his complaints of abdominal
4 pain and nausea. (*Id.*) His diastolic blood pressure was abnormal at 100 and 102. (*Id.*)
5 When she physically examined him, she noted the abdomen was soft and tender to
6 palpation. (*Id.*) Thornton was to see a provider if his symptoms worsened or did not
7 resolve. (*Id.*)

8 **August 23:** Thornton saw Tuttle, but there were no signs of distress. (*Id.*)

9 **August 24:** Thornton asked to see a nurse, a nurse practitioner, or a physician
10 about various complaints, which included severe gas, lower back pain, and periodic
11 constipation. (*Id.*) He also asked for various testing, which included tests for Hepatitis C,
12 sexually transmitted infections, and COVID. (*Id.*)

13 **August 25:** Thornton saw Garcia, who observed no signs of distress. (*Id.*)
14 Thornton asked to see a physician or a nurse practitioner and had made “multiple requests
15 for various studies.” (*Id.*) Also on August 25, he saw Silva, who reviewed recent lab
16 results. (*Id.*) He asked to be tested for COVID, even though he hadn’t been exposed to the
17 virus. (*Id.*) Also on August 25, Silva ordered activity checks twice a day in order to assess
18 his complaints of back pain. (*Id.*)

19 **August 26:** Garcia observed Thornton in his cell. (*Id.*) He was walking with a
20 steady gait, able to turn without guarding or a grimace. (*Id.*)

21 **August 28:** Tuttle observed Thornton in his cell, where she saw him walking
22 around with a steady gait and without a grimace. (*Id.* at 11-12.)

23 **August 30:** Thornton saw Hibbert, who noted no complaints of pain, no grimace,
24 and no signs of distress. (*Id.* at 12.)

25 **September 6:** Engelman noted that Thornton, who was alert and showed no signs
26 of distress, was upset that he hadn’t seen a physician to adjust his medications. (*Id.*)

27 **September 7:** Thornton saw Engelman, who observed no signs of distress. (*Id.*)
28 Also on September 7, Bridget Roscoe, a psychiatric nurse practitioner, saw him. (*Id.*) He

1 said that he had been trying to see a physician for three months; reported having issues
2 with manic outbursts; reported he had been sentenced to life in prison and would be
3 returning to prison soon; and he denied any current suicidal ideation or homicidal
4 ideation. (*Id.*) The medical plan was to start him on Thorazine. (*Id.*)

5 **September 8:** Thornton saw Garcia, who saw no signs of distress. (*Id.*)

6 **September 11:** Thornton saw Medvin, who noted that he had multiple somatic
7 complaints. (*Id.*) He complained of lumbar back pain, which, according to Medvin, had
8 not been supported by any medical observations. (*Id.*) During the physical examination,
9 Medvin noted that Thornton moved easily without limitations, and that his reflexes,
10 strength, and sensation in the lower extremities were normal. (*Id.*) Thornton also asked
11 for new prescription glasses. (*Id.*)

12 **September 16:** Silva received a call from a deputy stating that Thornton had been
13 placed in a holding cell. He claimed “brutality” by an officer, which had resulted in a
14 broken hand. (*Id.*) Silva went to the cell immediately, and saw that Thornton was naked,
15 moving both hands with no outward expression of pain, showed a full range of motion in
16 both hands, and that there was no swelling or redness. (*Id.* at 12-13.) Silva noted that the
17 lack of concerning symptoms showing a broken hand (and considering the risk of assault),
18 the physical would be deferred. (*Id.* at 13.)

19 **September 17:** Thornton saw Miller, who noted that his right wrist was “scantly
20 swollen” due to punching a wall several days prior. (*Id.*) It was planned to check the wrist
21 again at the medication pass. (*Id.*) Also on September 17, Medvin ordered that Thornton’s
22 wrist should be checked for swelling twice a day. (*Id.*)

23 **September 18:** Thornton asked to be seen because he was in “extreme pain” and
24 needed an x-ray of the left hand and wrist. (*Id.*)

25 **September 19:** Thornton, who complained of wrist pain, saw Tuttle, who noted
26 that he had been seen by a nurse practitioner who stated the wrist was not broken, and that
27 the plan was to order ibuprofen. (*Id.*)
28

1 **September 21:** Thornton saw Tuttle, who noted that his left wrist did not look
2 swollen, but also that he was not using his left hand to hold a cup. (*Id.*)

3 **September 22:** Miller saw Thornton outside his cell while it was being searched.
4 (*Id.*) She noted he was standing “leisurely,” while his hands were cuffed behind his back,
5 without any apparent problem with the wrist. (*Id.*) Also on September 22, Silva ordered
6 activity checks to be performed twice a day. (*Id.*)

7 **September 23:** Thornton saw Vanessa Martinez, a registered nurse, who noted that
8 he was complaining of a “fractured wrist,” but she noticed “no deficits.” (*Id.*)

9 **September 24:** Dr. Robert Hurwitz reviewed x-rays of the left and right wrists,
10 which showed the wrists were normal without evidence of any fracture. (*Id.*) Also on
11 September 24, Miller saw Thornton regarding a sick call. (*Id.* at 14.) He spoke of nausea
12 and pain in the left wrist following an altercation. (*Id.*) Miller noted that an x-ray had
13 been taken that morning and that medical staff had been told of his multiple complaints of
14 wrist pain. (*Id.*) Also on September 24, Silva ordered face-to-face triage, once in the
15 morning. (*Id.*)

16 **September 29:** Thornton asked for a referral to an optometrist, and he said that he
17 needed to be seen “by medical” about the x-rays of his wrists, as well as for his
18 degenerative disc disease. (*Id.*)

19 **September 30:** Thornton saw Alexander face-to-face, but she saw no signs of
20 distress. (*Id.*)

21 **October 2:** Thornton saw Tuttle, who saw no signs of distress. (*Id.*) Also on
22 October 2, he asked to be placed on the nurse’s sick call to find out about treatment for his
23 degenerative disc disease and ongoing wrist pain. (*Id.*)

24 **October 3:** Thornton saw Tuttle, who observed no signs of distress. (*Id.*) Also on
25 October 3, Medvin ordered activity checks to be performed twice a day, when Thornton
26 would be unaware of them. (*Id.*)

27 **October 4:** Garcia saw Thornton for an activity check. She noted he rose easily
28 from a supine position in the bed, and there was no limping, guarding, or grimace noted.

1 (Id.)

2 **October 5:** Tuttle noted Thornton was laughing at his cell door, though he was not
3 walking around, and there was no grimace. (Id.) Also on October 5, Thornton saw
4 Medvin, to whom he complained of lumbar back pain. (Id.) Medvin noted Thornton had
5 been observed on many occasions by medical staff performing physical activities over the
6 prior seven years. (Id. at 15.) He also had recently been seen moving easily without any
7 grimace or limitation. (Id.) Dr. Medvin noted Thornton would not be receiving
8 medications “for this factitious complaint.” (Id.)

9 Also on October 5, Silva penned a progress note, in which she wrote that “per
10 dental assistant Galvani,” Thornton had been seen by a dental provider and had a normal
11 range of motion. (Id.) He had been seen getting in and out of the dental chair with ease,
12 without outward signs or symptoms of pain. (Id.) Also on October 5, Silva penned a
13 second progress note, in which she wrote that there was no evidence of back pain during
14 activity checks. (Id.) She also wrote regarding the complaints of wrist pain that the x-rays
15 showed no fracture of either wrist. (Id.)

16 **October 6:** Thornton submitted a medical request in which he made multiple
17 complaints including “open leaking puss wounds” and pain in the wrist, and asked for
18 referrals to an optometrist and a referral for treatment of his degenerative disc disease.
19 (Id.)

20 **October 7:** Stone saw Thornton on mental health sick call, during which he
21 reported he wasn’t doing well; claimed medical staff was refusing to see him and he was in
22 pain; and complained about the timing of his follow-up appointment with Dr. Goodwin,
23 whom he was scheduled to meet later that week. (Id.) Stone noted Thornton showed no
24 limitation of the wrist, that there was no guarding or grimace noted, and that he was able to
25 gesticulate freely with both hands. (Id.) Also on October 7, Thornton saw Miller, who
26 noted that appeared to be moving well, and did appear to favor his left wrist. (Id.) Also on
27 October 7, Thornton saw Alexander, who noted that he made no complaints. (Id.) He
28 asked to see a physician and a mental health provider. (Id. at 15-16.) Alexander noted he

1 had already been scheduled to see both. (*Id.*)

2 **October 8:** Thornton saw Miller, who noted that there were no signs of pain; he
3 used both of his wrists easily; and he had no issues with using his hand to hold a water cup.
4 (*Id.* at 16.)

5 **October 9:** Dr. Goodwin saw Thornton, who said, “I don’t want to be here any
6 longer, I’m done with this place, I want to go back to prison.” (*Id.*) He complained of
7 insomnia, but of nothing else. (*Id.*) Dr. Goodwin advised him that insomnia is common
8 for incarcerated persons and that nothing indicated that a change to his medications was in
9 order. (*Id.*)

10 **October 17:** Thornton saw Tuttle, who observed no signs of distress. (*Id.*) Also
11 on October 17, Teresa DeLaTorre, a registered nurse, saw Thornton regarding complaints
12 of ingrown hairs that have turned into infections. (*Id.*) After the physical examination, she
13 noted there were small, crusted lesions in the beard area of the face, which appeared to be
14 healing. (*Id.*) He was told to keep the area clean, to avoid touching the area with his
15 hands, and he was advised to request a sick call if the problem worsened. (*Id.*)

16 **October 27:** Thornton saw Alexander, who observed no signs of distress. (*Id.*)

17 **November 2:** Miller saw Thornton, who complained of nausea and throwing up
18 bile after an altercation. (*Id.*) Miller noted that there were superficial scrapes on his scalp
19 which were cleaned with saline by a nurse. (*Id.*) There were no signs of distress, and he
20 was given Zofran for nausea. (*Id.*)

21 **November 3:** Holden authored a progress note in which she wrote that Thornton
22 was standing at the window and did not appear to be in distress. (*Id.*)

23 **November 4:** Thornton was released from the Mendocino County Jail. (*Id.*)

24 **STANDARD OF REVIEW**

25 Summary judgment is proper where the pleadings, discovery and affidavits
26 demonstrate that there is “no genuine dispute as to any material fact and [that] the movant
27 is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Material facts are those
28 which may affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,

1 248 (1986). A dispute as to a material fact is genuine if there is sufficient evidence for a
2 reasonable jury to return a verdict for the nonmoving party. *Id.*

3 The party moving for summary judgment bears the initial burden of identifying
4 those portions of the pleadings, discovery and affidavits which demonstrate the absence of
5 a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).
6 Where the moving party will have the burden of proof on an issue at trial, it must
7 affirmatively demonstrate that no reasonable trier of fact could find other than for the
8 moving party. On an issue for which the opposing party by contrast will have the burden
9 of proof at trial, as is the case here, the moving party need only point out “that there is an
10 absence of evidence to support the nonmoving party’s case.” *Id.* at 325.

11 Once the moving party meets its initial burden, the nonmoving party must go
12 beyond the pleadings and, by its own affidavits or discovery, set forth specific facts
13 showing that there is a genuine issue for trial. Fed. R. Civ. P. 56(c). The Court is
14 concerned only with disputes over material facts and “[f]actual disputes that are irrelevant
15 or unnecessary will not be counted.” *Anderson*, 477 U.S. at 248. It is not the task of the
16 court to scour the record in search of a genuine issue of triable fact. *Keenan v. Allan*, 91
17 F.3d 1275, 1279 (9th Cir. 1996). The nonmoving party has the burden of identifying, with
18 reasonable particularity, the evidence that precludes summary judgment. *Id.* If the
19 nonmoving party fails to make this showing, “the moving party is entitled to a judgment as
20 a matter of law.” *Celotex*, 477 U.S. at 323 (internal quotations omitted).

21 DISCUSSION

22 I. Dr. Medvin’s Motion for Summary Judgment

23 Deliberate indifference to a prisoner’s serious medical needs violates the Eighth
24 Amendment’s proscription against cruel and unusual punishment. *Estelle v. Gamble*, 429
25 U.S. 97, 104 (1976). A prison official is deliberately indifferent if he knows that a prisoner
26 faces a substantial risk of serious harm and disregards that risk by failing to take
27 reasonable steps to abate it. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994) (equating the
28 standard with that of criminal recklessness). The prison official must not only “be aware

1 of facts from which the inference could be drawn that a substantial risk of serious harm
2 exists,” but “must also draw the inference.” *Id.* Consequently, in order for deliberate
3 indifference to be established, there must exist both a purposeful act or failure to act on the
4 part of the defendant and harm resulting therefrom. *McGuckin v. Smith*, 974 F.2d 1050,
5 1060 (9th Cir. 1992) (overruled on other grounds, *WMX Technologies, Inc. v. Miller*, 104
6 F.3d 1133, 1136 (9th Cir. 1997) (en banc)).

7 The Supreme Court has further clarified this standard by holding that “it is
8 obduracy and wantonness, not inadvertence or error in good faith, that characterize the
9 conduct prohibited by the Eighth Amendment.” *Whitley v. Albers*, 475 U.S. 312, 319
10 (1986). A mere accident or evaluative mistake is not to be characterized as wanton
11 infliction of unnecessary pain. *Estelle*, 429 U.S. at 105.

12 A plaintiff must show that his doctors or nurses embarked on a course of “medically
13 unacceptable” treatment in “conscious disregard of an excessive risk to [his] health.”
14 *Toguchi v. Chung*, 391 F.3d 1051, 1058-60 (9th Cir. 2004). A claim of mere negligence
15 related to medical problems, or a difference of opinion between a prisoner patient and a
16 medical doctor, is not enough to make out a violation of the Eighth Amendment. *Id.*;
17 *Franklin v. Oregon*, 662 F.2d 1337, 1344 (9th Cir. 1981).

18 Defendant Medvin has submitted evidence, summarized above, that Thornton was
19 seen by MCJ medical staff multiple times in response to his complaints, was given
20 medication for his back pain and other ailments, had x-rays, was observed walking and
21 moving without grimacing or obvious pain, and, despite the frequency of his medical
22 appointments, often did not mention back pain. Medvin also has submitted competent
23 medical evidence in the form of a declaration from Dr. Alfred Joshua, a physician and
24 surgeon licensed to practice in California. (MMSJ, Joshua Decl., Dkt. No. 20-3 at 2.)
25 Joshua was selected in 2013 to lead the San Diego County Sheriff’s Medical Services
26 Division “as Chief Medical Officer to design and manage a medical system that provides
27 comprehensive medical care for the 91,000+ inmate/patients who are annually booked.”
28 (*Id.*) He has reviewed 1,276 pages of Thornton’s medical records. In his medical opinion,

1 Medvin “acted reasonably and purposefully and did not show any indifference or
2 deviations from care with respect to the clinical management of Mr. Thornton’s chronic
3 lower back pain from reported degenerative disc disease.” (*Id.* at 8.) He avers that

4 Thornton’s complaints were inconsistent with his activity level and gait. One
5 would reasonably expect a person with 11/10 back to be unable to walk and
6 having symptoms that would hinder their activity of daily living (eating,
7 feeding, grooming, and bathing.) This was not the case and observed by both
8 clinical and correctional staff on the prescribed activity checks. Moreover
9 Mr. Thornton was seen multiple times by registered nurses, mental health
10 providers, nurse practitioners, as well as Dr. Medvin. There is also no
11 evidence of abnormality from a previous traumatic injury to warrant long
12 standing pain medications or further imaging studies from follow up
13 resolution.

14 Mr. Thornton’s complaints seem related to his pain management, and he
15 seems intent on getting specific medications outside of the over-the-counter
16 pain medications provided on the commissary list. I see no clinical evidence
17 for further imaging studies that are needed without an abnormality in the
18 neurological exam which Mr. Thornton did not have.

19 (*Id.* at 8.)

20 In summary, defendant Medvin has presented undisputed evidence that he provided
21 Thornton with constitutionally adequate medical care. Thornton was examined both
22 physically and mentally promptly and repeatedly; received x-rays and given medication to
23 treat his pain; and was observed by staff to see how impairing his back pain was. This
24 shows attention and care, not deliberate indifference. Though Thornton contends that
25 Medvin did not provide him the treatment he wished, this amounts a difference of opinion
26 between a prisoner patient and a medical doctor, and therefore is not sufficient to make out
27 a violation of the Eighth Amendment. *Toguchi*, 391 F.3d at 1058-60.

28 The soundness of the treatment is supported by the declaration of Dr. Joshua, who
was retained as a medical expert by defendant’s counsel. In his declaration, Joshua states
that after reviewing the medical record, he concluded without equivocation that Medvin
“acted reasonably and purposefully and did not show any indifference or deviations from
care with respect to the clinical management of Mr. Thornton’s chronic lower back pain

1 from reported degenerative disc disease.” Joshua opined that “Thornton’s complaints were
2 inconsistent with his activity level and gait” and he saw “no clinical evidence for further
3 imaging studies that are needed without an abnormality in the neurological exam which
4 Mr. Thornton did not have.”

5 Thornton alleges in his complaint that Medvin was deliberately indifferent to his
6 serious medical needs regarding his degenerative disk disease and general back pain. He
7 contends that Medvin “ignored the [p]laintiff’s [p]leas’s [sic] for help in regards to the pain
8 in plaintiff’s lower lumbar spine caused by degenerative disk disease.” (Compl., Dkt. No.
9 1 at 4.) With his complaint, he includes a declaration by his cellmate at MCJ, Spencer
10 Asher, who avers he “witnessed the plaintiff struggle daily with pain to his lower back,”
11 including seeing plaintiff having difficulties getting out of bed, crying and wincing
12 because of the pain. (*Id.*, Asher Decl., Dkt. No. 1 at 11.) Asher claims that Thornton “told
13 me he submitted medical slips to be seen a multitude of times all without any treatment
14 given.” (*Id.*) He also swears that “medical staff have refused to see him and yet claim that
15 they have done daily activity checks but not at all since I’ve been his cellmate” and that the
16 only time staff have seen him is when medication is being passed out. (*Id.* at 11-12.)

17 Asher’s evidence does not create a genuine dispute of material fact. He became
18 Thornton’s cellmate on October 16, 2020, and therefore did not witness anything from the
19 time Thornton arrived at MCJ (February 20, 2020) through October 15, 2020. (*Id.* at 11.)
20 His assertions that he saw Thornton struggle daily because of back pain is not a medical
21 diagnosis and also it fits with the sort of back pain Thornton described to medical staff.
22 His contention that Thornton told him that no treatment was given is not evidence that
23 plaintiff did not receive any treatment — rather it is a recitation of plaintiff’s version of the
24 facts. Furthermore, his assertion that he’s rarely seen staff observe Thornton does not
25 negate defendant’s evidence nor create a genuine dispute of material fact. Staff likely
26 observed Thornton without Asher’s knowledge, especially from February 20 to October
27 15.
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1 In his opposition, Thornton offers no competent medical evidence to counter
2 defendant's. Rather, he alleges that Medvin was deliberately indifferent by not obtaining
3 his prior medical records that contained x-rays, pain assessments, therapy progress notes,
4 and medical imaging. (Opp., Dkt. No. 33 at 1-3.) He appends various medical records that
5 precede and follow his incarceration at MCJ, some at least ten years old. They show
6 nothing remarkable, nothing that contradicts Medvin's diagnoses, and nothing that creates
7 a genuine dispute of material fact that his treatment was constitutionally inadequate.
8 Records of CDCR spine examinations state "Gross alignment of spine is within normal
9 limits" (*id.* at 21 and 23); "The heights of the vertebral bodies and intervertebral disc
10 spaces are normal" (*id.*); "No acute osseous abnormality" (*id.* at 24); "The bone
11 mineralization is age appropriate" (*id.*); "Mild degenerative changes of the lumbar spine"
12 (*id.* at 25); "Spinal alignment is preserved. Disc heights are preserved. No acute fracture
13 or traumatic malalignment" (*id.* at 26); and "Minimal lower lumbar degenerative changes"
14 (*id.* at 30).

15 Thornton offers no competent medical evidence to counter defendant's and the
16 Asher declaration does not meet the nonmoving party's burden to identify, with reasonable
17 particularity, the evidence that precludes summary judgment. Thornton has not shown that
18 Medvin embarked on a course of "medically unacceptable" treatment in "conscious
19 disregard of an excessive risk to [his] health." *Toguchi*, 391 F.3d at 1058-60.

20 Thornton filed an unauthorized rebuttal to Medvin's reply. Medvin moves to strike
21 the unauthorized rebuttal. The motion is GRANTED. But the result would not change if I
22 did consider it. Thornton points out that his medical records show that he had back pain
23 problems; Dr. Medvin, in failing to obtain his prior medical records, failed to follow the
24 American Medical Association's ethics code, which states that physicians have an ethical
25 responsibility to place their patient's welfare above their own self-interest; and that
26 Medvin's assertion that plaintiff had a history of meritless complaints is itself meritless,
27 which he would have found out had Medvin obtain his medical records. (Rebuttal, Dkt.
28 No. 37 at 2-7.) None of these points, accepted as true, addresses the underlying care that

1 Thornton did receive.

2 Defendant Medvin’s motion for summary judgment is GRANTED.

3 **II. Defendant Pearce’s Motion for Summary Judgment**

4 Thornton also contends that Captain Pearce, Jail Commander during his
5 incarceration at MCJ, was deliberately indifferent to his serious medical needs when he
6 failed to respond to his complaint about his medical care and intervene with medical staff.
7 (Compl., Dkt. No. 1 at 6.) He filed a grievance on October 1, 2020, regarding his medical
8 care. (*Id.* at 13.) It was reviewed by MCJ staff, who confirmed that Thornton was
9 receiving regular care and that his concerns were being addressed. (*Id.* at 14.) This
10 grievance would have been the only way Pearce would have been made aware of
11 Thornton’s complaints about his medical care.

12 Summary judgment will be granted in favor of defendant Pearce. As discussed
13 above, Thornton has not shown a genuine dispute of material fact that Medvin or anyone
14 else was deliberately indifferent to his serious medical needs. Therefore, he cannot meet
15 the requirement for § 1983 claims that a right secured by the Constitution or laws of the
16 United States was violated. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

17 Furthermore, Pearce indicated that he would have followed his usual practice. He
18 would have reviewed prior responses to the inmate’s grievance and talked to medical staff
19 to “determine if the previous response adequately addressed the issues being raised in the
20 grievance and assure that the inmate’s medical needs were being met.” (Pearce’s Mot. for
21 Summ. J (PMSJ), Dkt. No. 21 at 12-13.) The record shows that Lieutenant John Bednar
22 reviewed the grievance, obtained from medical staff specific information about Thornton’s
23 care, and communicated that information to Pearce. (*Id.* at 13.) From that information,
24 Pearce would have no basis to believe that Thornton was facing an excessive risk to his
25 health or safety, and therefore was not deliberately indifferent by failing to intervene.
26 There is no evidence that rebuts Pearce’s statements.

27 Thornton has filed an unauthorized rebuttal to Pearce’s opposition, which is struck
28 as unauthorized. (Dkt. No. 39.) Even if I considered it, it merely repeats contentions

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Thornton has raised in his complaint and would not change the Court's ruling.

Defendant Pearce's motion for summary judgment is GRANTED.

CONCLUSION

Defendant Medvin's motion for summary judgment is GRANTED. (Dkt. No. 20.)

Defendant Pearce's motion for summary judgment is GRANTED. (Dkt. No. 21.)

Defendant Medvin's motion to strike the unauthorized rebuttal is GRANTED. (Dkt. No.

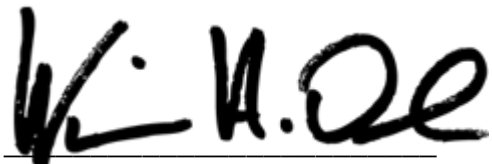
38.) Thornton's unauthorized rebuttal to Pearce's opposition is STRICKEN. (Dkt. No.

39.) The Clerk shall terminate all pending motions, enter judgment in favor of defendants

Medvin and Pearce, and close the file.

IT IS SO ORDERED.

Dated: September 26, 2022



WILLIAM H. ORRICK
United States District Judge