

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

OMAR REYNOSO,

C 11-4525 CW (PR)

Plaintiff,

ORDER GRANTING DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT AND DENYING
PLAINTIFF'S MOTIONS TO COMPEL AND FOR
THE APPOINTMENT OF COUNSEL

v.

M. SAYRE, et al.,

(Docket nos. 23, 26, 40)

Defendants.

_____ /

United States District Court
For the Northern District of California

Plaintiff, a state prisoner incarcerated at Pelican Bay State Prison (PBSP), filed this pro se civil rights action pursuant to 42 U.S.C. § 1983, alleging deliberate indifference to his serious medical needs and supplemental state law claims of medical negligence. Defendants have filed a motion for summary judgment, Plaintiff has filed an opposition and Defendants have filed a reply. Additionally, Plaintiff has filed motions to compel discovery and for the appointment of counsel.

For the reasons discussed below, Defendants' motion for summary judgment is GRANTED and Plaintiff's motions are DENIED.

BACKGROUND

The following facts are derived from Plaintiff's verified complaint and the attachments thereto, and the parties' papers in support of and in opposition to the motion for summary judgment and the declarations and exhibits submitted in support thereof.

Plaintiff has been diagnosed with hypolordosis (decreased spine curvature) with degenerative disc disease, two budging discs and a disc protrusion of approximately seven millimeters. As a result of his conditions he has severe pain in his lower back. He

1 also has numbness, tingling and sharp pain down his left leg as an
2 apparent result of damage to the peroneal nerve located in that
3 leg. Compl. ¶¶ 12-13.

4 Plaintiff was incarcerated at Centinela State Prison and
5 Corcoran State Prison (Corcoran) prior to his transfer to PBSP.
6 He alleges that while at both institutions doctors properly
7 diagnosed his condition and he received proper medical care
8 including diagnostic tests, consultation with an outside
9 specialist, epidural spinal injections to block the pain, the
10 prescription of pain medication, physical therapy and information
11 about spinal surgery. He contends, however, that since his
12 arrival at PBSP Defendants have disregarded the medical opinions
13 of those doctors and discontinued his treatment, leaving him in
14 constant and severe pain. Compl. ¶¶ 14-15.

15 Plaintiff arrived at PBSP on January 6, 2010. Pursuant to
16 California Department of Corrections and Rehabilitation (CDCR)
17 policy, his existing prescriptions were continued for thirty days
18 upon his arrival. Specifically, Defendant Dr. Sayre, the Chief
19 Medical Officer (CMO) at PBSP, authorized the continuation of
20 Plaintiff's prescriptions for Enalapril Maleate (blood pressure
21 medication), morphine 15 mg and Gabapentin (for nerve pain) until
22 he could be seen by a primary care physician (PCP) and have his
23 medications re-evaluated. Decl. Michael Sayre Supp. Mot. Summ. J
24 (Sayre Decl.) ¶ 4.

25 On January 28, 2010, Plaintiff was seen by Family Nurse
26 Practitioner (FNP) Phillip Mallory. Mallory documented his
27 complaints of back and leg pain and noted that his use of morphine
28 would be discussed with his PCP. Mallory also discontinued

1 Plaintiff's prescription for Gabapentin, because it is not an
2 approved formulary medication for neuropathic pain at PBSP.
3 Mallory instead prescribed Elavil (Amitrityline), which is a
4 formulary medication prescribed for neuropathic pain. Decl.
5 Phillip Mallory Supp. Mot. Summ. J. (Mallory Decl.) ¶ 2.

6 On February 5, 2010, Mallory met with Plaintiff again and
7 told him that custody staff had observed him on multiple occasions
8 running and playing handball out on the yard and had provided
9 video camera footage to Mallory of those activities. Mallory
10 discussed the video with Plaintiff and asked him how he was able
11 to participate in such activities in view of his subjective
12 reports of pain and inability to perform daily activities.
13 Plaintiff explained that the reason he was able to perform daily
14 activities was because, at the time, he was on strong pain
15 medication (morphine), without which he would not have been able
16 to perform these activities. Mallory informed Plaintiff that the
17 morphine was just "masking" his pain, and that the pain was his
18 body's way of helping to avoid further injury. Mallory told
19 Plaintiff that his use of narcotics for pain management would be
20 discontinued. Plaintiff objected that doing so would cause him to
21 suffer undue pain. Nevertheless, Mallory discontinued Plaintiff's
22 morphine prescription and, instead, prescribed Naproxen (a non-
23 steroidal anti-inflammatory medication) 500 mg twice a day, in
24 addition to the previously-prescribed Elavil. Mallory Decl. ¶ 3.

25 Plaintiff alleges that, on February 23, 2010, he filed an
26 inmate appeal of Mallory's decision to which he attached copies of
27 his results from MRI and EMG tests taken in April 2009, which
28 evidence that he has a chronic back condition. He states that the

1 appeal went unanswered and was never returned to him. Compl. ¶
2 19.

3 On February 26, 2010, Mallory submitted a Comprehensive
4 Accommodation Chrono to Dr. Sayre, requesting prescription glasses
5 and a wedge pillow for Plaintiff. According to Plaintiff, the
6 wedge pillow was prescribed to him by the CMO at Corcoran to help
7 him sleep by relieving the pressure on his lower back. Compl. ¶
8 42, Opp'n ¶ 28. Dr. Sayre approved the prescription glasses but
9 denied the wedge pillow because he is of the opinion that medical
10 research has not supported the use of wedge pillows as an
11 effective treatment for low back pain. Sayre Decl. ¶ 5.

12 On May 30, 2010, Plaintiff filed an inmate appeal complaining
13 of severe back pain. In response, on June 29, 2010, he was seen
14 by Defendant Dr. Nancy Adam, a PCP. He asked Dr. Adam to
15 reinstate the regimen of pain medication and physical therapy he
16 had received at Corcoran. Dr. Adam denied Plaintiff's requests;
17 instead, she prescribed Gabapentin 600 mg, even though Plaintiff
18 told her that it did not help his pain. Compl. ¶ 21.

19 According to Defendants, during the appointment Dr. Adam
20 noted the objective examination findings from Plaintiff's medical
21 records, which included the April 2009 MRI showing mild disc
22 protrusion and nerve impingement. She prescribed a 300 mg dose of
23 Gabapentin to be taken in the morning and a 600 mg dose to be
24 taken at night to relieve his back pain, with a follow-up
25 appointment in thirty days. She also noted that a referral for a
26 surgical consultation could be a "consideration." Decl. Nancy
27 Adam Supp. Mot. Summ. J. (Adam Decl.) ¶ 6. Dr. Adam is of the
28 opinion that, at the time she evaluated Plaintiff, his complaints

1 of back pain and leg numbness appeared to be inconsistent with the
2 objective findings of the MRI. Id. ¶ 7.

3 On August 23, 2010, Defendant Physical Assistant-Certified
4 (PA-C) Laurie Thomas saw Plaintiff for the first time. He told
5 her that his condition was getting worse and his pain was
6 increasing. Specifically, he explained that the numbness, pain
7 and tingling sensation in his left leg had increased, the pain in
8 his lower back had become intolerable, he no longer could sleep on
9 his back or stomach or sit to eat his meals because of his bulging
10 discs, and it was difficult for him to sit to use the bathroom.
11 Compl. ¶ 25.

12 Thomas examined Plaintiff and concluded that her findings
13 were consistent with chronic low back pain with radicular
14 neuropathy. She increased his Gabapentin dosage to 600 mg twice a
15 day and "discussed heat and cold modalities for relief of
16 discomfort and provided him with a handout for stretches and ways
17 to prevent back pain." Decl. Laurie Thomas Supp. Mot. Summ. J.
18 (Thomas Decl.) ¶ 4. The following day, Thomas completed a
19 Physician Request for Services that she forwarded to the
20 Utilization Management Committee, requesting an evaluation of
21 Plaintiff by a neurosurgeon for possible back surgery. In
22 Thomas's professional opinion, however, she did not believe he was
23 a candidate for back surgery as there were no neurological changes
24 that were limiting his activities of daily living. On September
25 1, 2010, the committee denied the request for a neurosurgeon
26 evaluation. Id.

27 On September 13, 2010, Thomas saw Plaintiff in the clinic for
28 his chronic care appointment to discuss his chronic conditions of

1 hypertension and Hepatitis C. During this visit she refilled
2 three of his prescriptions for hypertension and ordered urine and
3 blood tests. According to Plaintiff, Thomas told him that, per
4 direct orders from Dr. Sayre, all of his other medications,
5 including Gabapentin, were going to be discontinued. Plaintiff
6 objected and asked Thomas to compare his MRI results from 2007 and
7 2009, which showed an increase in the size of his bulging discs.
8 Compl. ¶¶ 26-28.

9 On September 27, 2010, Thomas saw Plaintiff for complaints of
10 lower back and knee pain. Her assessment based on physical
11 examinations and review of his medical records was chronic low
12 back pain with neuropathy. According to Thomas, Plaintiff's
13 neuropathy, which was in his lower left leg, was not consistent
14 with previous MRI findings for his spine as there was no
15 correlation between his reported pain and numbness and the results
16 of the MRI. Specifically, the findings of the prior MRI of his
17 spine showed some disc protrusion and mild nerve root impingement
18 at the L4-L5 and L5-S1 levels of his spine, but the areas of his
19 body in which he reported pain did not correlate with those
20 vertebrae spaces. Thomas Decl. ¶ 6.

21 On November 15, 2010, Thomas saw Plaintiff at sick call. She
22 informed him that his request for an MRI had been denied. Compl.
23 ¶ 28. He asked Thomas for alternative back pain treatments,
24 either surgery or epidural injections, based on the evaluation he
25 had received while at Corcoran. Thomas noted that his MRI results
26 were inconsistent with his reports of pain and that he received
27 physical therapy at Corcoran in 2009. Plaintiff told Thomas that
28 with forty-five minutes of physical therapy exercises he would get

1 some relief from his symptoms. Upon her examination of Plaintiff,
2 Thomas noted that there was no change in his back from the prior
3 exams. Plaintiff told Thomas that the current prescription of
4 Gabapentin 600 mg twice daily was not giving him any relief, so
5 Thomas tapered him off of Gabapentin with 400 mg for fourteen days
6 and prescribed a trial of Sulindac 200 mg twice daily for thirty
7 days.¹ She advised him that he needed to perform daily stretches,
8 light exercise and learn to live with his current pain by
9 adjusting his daily activities according to his pain level that
10 day. She also told him that his pain could not be alleviated
11 completely. He was given a pain assessment packet to complete,
12 and Thomas told him that she would take his case to the
13 Pain Management Committee for review and discussion, because
14 prescriptions for any inmate taking narcotics, long-term non-
15 steroidal anti-inflammatory medications or tricyclic medications
16 must be reviewed by the Pain Management Committee on a regular
17 basis. Thomas Decl. ¶ 7.

18 At the Pain Management Committee meeting on December 10,
19 2010, Plaintiff's current medications, complaints and MRI
20 and physical examination findings were reviewed. The committee
21 expressed concern about the amount of pain medication he was
22 taking in light of his hypertension and Hepatitis C and suggested
23 that his medications be regulated and prescribed in small amounts.
24 Thomas Decl. ¶ 7.

25 Thomas next saw Plaintiff on January 31, 2011, for complaints
26

27 ¹ Sulindac is a non-steroidal anti-inflammatory drug.
28

1 of left knee pain. Her examination revealed a very mild limp
2 favoring the left that got better with every step. Her findings
3 were consistent with left knee pain with "known medial meniscal
4 tear" from Plaintiff's prior knee surgery in 2007. Thomas
5 referred him to the Utilization Management Committee for an
6 evaluation of his left knee by an orthopedic surgeon. The
7 committee denied the request on February 9, 2011, because it did
8 not meet the standardized InterQual criteria.² Thomas Decl. ¶ 8.

9 On March 16, 2011, Thomas saw Plaintiff at sick call for
10 complaints of back and knee pain. She told him that the orthopedic
11 consult for his knee had been denied. After conducting an
12 extensive review of his file, she noted that his treatments with
13 morphine, Neurontin (Gabapentin) and Tylenol #3 (with Codeine) had
14 all failed, that Ibuprofen, Naproxen, Tylenol and Sulindac "all
15 tear up his stomach and did not help," and that the Utilization
16 Management Committee at Corcoran had denied two requests for a
17 consultation with a neurosurgeon in 2009. She considered a
18 Utilization Management referral for physical therapy, but after
19 reviewing the results of Plaintiff's physical therapy treatments
20 in 2009 saw that the treatments did not have an impact. She spoke
21 with Plaintiff at length about back stretches and informed him
22 that no surgical intervention was warranted unless there was new
23 trauma or injury to his back or knee, because he did not meet the
24 standardized InterQual criteria. Thomas Decl. ¶ 10.

25 On May 20, 2011, Dr. Sayre discontinued Plaintiff's chrono

26
27 ² The InterQual standardized criteria are objective criteria
28 used in both private and community settings to evaluate and
determine the need for diagnostic testing and treatment. Thomas
Decl. ¶ 8.

1 for a wedge pillow, which Plaintiff maintains helps him sleep by
2 relieving the pressure on his lower back. He claims this was done
3 in retaliation for his telling medical staff that he had no option
4 left but to file a lawsuit to obtain proper medical care. Compl.
5 ¶ 42 & Ex. F.³ According to Plaintiff, the wedge pillow is not a
6 financial burden on the CDCR because he paid for it with his trust
7 account money. Opp'n ¶ 28 & Ex. 30.

8 Plaintiff was moved to a different housing unit at PBSP and
9 was seen by a new PCP, Dr. Ikegbu, on May 27, 2011. After
10 evaluating him and reviewing his medical file, Dr. Ikegbu
11 prescribed a trial of a "steroid boost" for five days to relieve
12 inflammation, referred him for physical therapy and to the chronic
13 pain management team for evaluation, and prescribed Naproxen 500
14 mg twice a day. Opp'n ¶ 8 & Ex. 6. Plaintiff attended physical
15 therapy sessions on June 15 and 29, 2011. During the sessions,
16 the physical therapist discovered that his left leg is more than
17 one inch longer than his right leg, but did not know if this was
18 aggravating his condition. At the second session, the physical
19 therapist told him that physical therapy would not benefit him
20 because it would not fix the disc damage. He wrote in his
21 discharge summary that Plaintiff should continue to report to his
22 physician if his symptoms did not change and that "injections and
23 surgery are viable next steps." Opp'n ¶ 9 & Ex. 7 at 100.

24 ³ The evidence concerning Plaintiff's possession of the wedge
25 pillow is disputed. Plaintiff states that after he first arrived
26 at PBSP in February 2010, Dr. Sayre approved his continued use of
27 the wedge pillow, which had been prescribed by a doctor at
28 Corcoran, and he used the pillow from his arrival at PBSP until
May 20, 2011. Compl. ¶ 42, Opp'n ¶ 28. According to Dr. Sayre,
however, he discontinued Plaintiff's use of the wedge pillow on
February 26, 2010, Sayre Decl. ¶ 5 & Ex. A (DEF 000730), and again
on May 20, 2011, id. ¶ 8 & Ex. A (DEF 000727).

1 When Dr. Ikegbu was reassigned, Plaintiff returned to the
2 care of PA-C Thomas. On November 14, 2011, Thomas saw Plaintiff
3 at sick call for back pain and lower left leg numbness radiating
4 to the ankle and toes. Her physical examination of him was
5 essentially normal. She noted that the numbness in his leg might
6 be related to his prior knee surgeries because his EMG results
7 stated that the tingling in his calf first started after his first
8 knee surgery in 2007. Noting that he had not tried Salsalate for
9 back pain, she prescribed Salsalate 500 mg for thirty days⁴ and
10 recommended moist compresses to the low back and yoga and self-
11 massage. Thomas refilled the prescription for Salsalate on
12 February 3, 2012. Thomas Decl. ¶ 13.

13 On March 20, 2012, Thomas saw Plaintiff for both chronic care
14 and a sick call appointment. Plaintiff told her that the numbness
15 in his left calf was worsening. Thomas conducted a physical
16 examination and noted an essentially normal back exam but
17 decreased sensation in the lower lateral one-third of Plaintiff's
18 left calf, top of foot and medial first and second toes,
19 consistent with peroneal nerve involvement.⁵ Thomas prescribed a
20 trial of Nortriptyline for his leg symptoms,⁶ advised him to
21 continue yoga and self-massage, and ordered the nurse to follow up
22 for leg length measurements because no documentation was found

23
24 ⁴ Salsalate is a non-steroidal anti-inflammatory drug.

25 ⁵ The peroneal nerve is found on the outside part of the
26 lower knee. This nerve is responsible for transmitting impulses to
and from the leg, foot, and toes.

27 ⁶ Nortriptyline is a tricyclic anti-depressant that is also
28 used for neuropathic pain.

1 regarding any discrepancies. Thomas Decl. ¶ 14.

2 On May 4, 2012, Thomas noted that Plaintiff had submitted a
3 health care request to the nurse stating that the pain medication
4 prescribed for the peroneal nerve was ineffective; consequently,
5 Thomas discontinued the Nortriptyline. Thomas Decl. ¶ 15.

6 On May 21, 2012, Thomas saw Plaintiff at sick call for
7 complaints of back pain and numbness in his lower left leg.
8 Thomas examined him, noting the left calf numbness and a normal
9 back exam. Thomas spent approximately forty minutes with
10 Plaintiff and advised him that no treatment alternatives were
11 available because he had no benefit with the available oral
12 medications, he is not a surgical candidate for his back and his
13 request for epidural injections had been denied. Thomas Decl. ¶
14 16.

15 On May 22, 2012, Dr. Adam was contacted after Plaintiff
16 reported that his back had "locked" and his lower extremities were
17 numb. She prescribed 500 mg of Methocarbamol⁷ and two tablets of
18 Tylenol #3 with codeine. Adam Decl. ¶ 9 & Ex. D.

19 On September 12, 2012, Thomas saw Plaintiff for his chronic
20 care visit. He complained that he felt a new pulling sensation in
21 his back and difficulty urinating with incomplete bladder
22 emptying. Thomas performed a back examination and digital rectal
23 examination. She found that both were normal. To further
24 evaluate him, she ordered an x-ray of Plaintiff's lumbosacral
25 spine and left hip. On October 9, 2012, she conducted a chart
26 review of his blood pressure readings to determine if any

27

28 ⁷ Methocarbamol is a muscle relaxant.

1 medication changes were necessary. Thomas Decl. ¶ 17.

2 While Thomas was on vacation, Plaintiff reported a lower back
3 pain flare-up at the end of October 2012. He was seen by nursing
4 staff on October 29 and Dr. Venes on October 31. Dr. Venes found
5 he had chronic lower back pain without alarming signs or symptoms
6 with possible muscle spasm. He was prescribed a temporary course
7 of Methocarbamol and Ketorolac Tromethamine (an injectable anti-
8 inflammatory) for two weeks and oral anti-inflammatories for two
9 weeks. Based on Thomas's knowledge and review of Plaintiff's
10 medical conditions and records, she believes this was an
11 appropriate course of treatment. Thomas Decl. ¶ 18.

12 On November 7, 2012, Dr. Sayre, in his role as PBSP CMO,
13 reviewed Plaintiff's medications and completed a "Notification to
14 PCP of Change in Medication" for the Naproxen prescribed on
15 October 30, 2012. Dr. Sayre concluded that, after the
16 prescription expired, the medication should not be renewed until
17 Plaintiff was re-evaluated and reviewed by his PCP to determine
18 whether continued administration of this medication was
19 appropriate. Dr. Sayre's concern was for possible complications
20 involving Plaintiff's blood pressure and gastrointestinal system,
21 which, in turn, could cause serious complications for his chronic
22 conditions of hypertension and Hepatitis C. Sayre Decl. ¶ 11.

23 On November 16, 2012, Thomas conducted a review of
24 Plaintiff's left hip and lumbar spine x-rays and noted that the
25 hip x-rays were normal with a 1 mm calcification, which is not
26 clinically significant. The x-rays of the lumbosacral spine
27 showed lumbar spine spondylosis (narrowing of the spine)
28 indicating arthritic changes in the spine, but no acute osseous

1 (new formation of the bone) and no fractures or displacement of
2 vertebrae. According to Thomas, "the degenerative changes noted
3 in the x-ray were consistent with 'wear and tear' on the back,
4 also called a 'mechanical' or arthritic back which no surgical
5 intervention would resolve or relieve." Thomas Decl. ¶ 18.
6 Plaintiff maintains that the x-rays show disc space narrowing,
7 which can lead to possible nerve root entrapment, and also that
8 the x-rays do not show muscles, nerves or discs and, therefore,
9 should not be relied upon to diagnose his condition. Opp'n ¶¶ 52-
10 53 & Exs. 41-42.

11 DISCUSSION

12 I. Plaintiff's Motion to Compel

13 Plaintiff has filed a motion to compel Dr. Sayre's production
14 of documents and a response to an interrogatory to which Dr. Sayre
15 has asserted objections. Dr. Sayre opposes the motion.

16 Under Rule 26 of the Federal Rules of Civil Procedure,
17 parties are entitled to discovery regarding any nonprivileged
18 matter that is relevant to any party's claim or defense, including
19 the existence, description, nature, custody, condition, and
20 location of any documents or other tangible things and the
21 identity and location of persons who know of any discoverable
22 matter. Fed. R. Civ. P. 26(b)(1). For good cause, the court may
23 order discovery of any matter relevant to the subject matter
24 involved in the action. Relevant information need not be
25 admissible at the trial if the discovery appears reasonably
26 calculated to lead to the discovery of admissible evidence. Id.

27 The court must limit access to discovery that is
28 "unreasonably cumulative or duplicative, or can be obtained from

1 some other source that is more convenient, less burdensome, or
2 less expensive," Fed. R. Civ. P. 26(b)(2)(C)(i), or where "the
3 burden or expense of the proposed discovery must be assessed in
4 light of its likely benefit, considering the needs of the
5 case, the amount in controversy, the parties' resources, the
6 importance of the issues at stake in the action, and the
7 importance of the discovery in resolving the issues," Fed. R. Civ.
8 P. 26(b)(2)(C)(iii).

9 A. Request for Production of Documents, Set One, No. 8
10 Plaintiff's Request for Production of Documents, Set One, No.
11 8, to Dr. Sayre states the following:

12 In November of 2011 the District Attorney pressed
13 charges against Defendant C.M.O. Sayre for property
14 damage to a co-worker's vehicle and for false reports
15 during the same incident, Plaintiff requests any and all
16 police reports, incident reports, video footage,
17 complaints, or other document(s) that may exist as a
18 result of this incident that took place at Defendant's
19 Sayre job-site here at Pelican Bay Prison.

20 Pl.'s Mot. Compel, Ex. 1 at 2.

21 Dr. Sayre objected to the request as irrelevant and calling
22 for documents that violate his right of privacy. Defs.' Opp'n
23 Mot. Compel, Ex. A at 2.

24 Plaintiff maintains the documents are relevant to Dr. Sayre's
25 credibility because Dr. Sayre has presented false medical
26 information about his condition and symptoms in an attempt to
27 minimize his need for treatment.

28 The Court finds the requested information is not discoverable
because it is not relevant to any claim or defense in this case.
Dr. Sayre's involvement in the noted incident does not make the
facts alleged by Plaintiff more or less probable and are of no
consequence in determining whether Dr. Sayre acted with deliberate

1 indifference to Plaintiff's serious medical needs. Accordingly,
2 Plaintiff's motion with respect to this request for production is
3 DENIED.

4 B. Request for Production of Documents, Set One, No. 9
5 Plaintiff's Request for Production of Documents, Set One, No.
6 9, to Dr. Sayre requests the following:

7 Any logs, lists, or other documentation reflecting
8 grievances and lawsuit/complaints filed by Pelican Bay
9 State Prison inmates from Jan-6-2010 to the date of your
10 response.

11 Pl.'s Mot. Compel, Ex. 1 at 3.

12 Dr. Sayre objected to the request on the grounds that it is
13 irrelevant, vague, overbroad, unduly burdensome and would violate
14 the privacy rights of other inmates. Defs.' Opp'n Mot. Compel,
15 Ex. A at 1.

16 Plaintiff maintains that the request is relevant because he
17 is attempting to discover whether a pattern of medical negligence
18 and deliberate indifference to inmates' serious medical needs
19 exists at PBSP, and that it is not overbroad because he is not
20 seeking specific information from the grievances. He suggests
21 that "Defendants Counsel can simply look at and the P.B.S.P.
22 records of all the grievances, complaints or lawsuits that have
23 been filed from January 2010 to October 2012, and make a list of
24 [them]" for Plaintiff's review. Mot. Compel at 8.

25 In response, Dr. Sayre notes that Plaintiff's suggestion
26 would require counsel to examine records pertaining to grievances
27 filed by several thousand inmates over a thirty-four month period,
28 and that Plaintiff has made no showing that this information is
necessary to his claims against the four Defendants in this case.

The Court agrees that the request is overbroad and would

1 impose an undue burden on Defendants. Moreover, evidence of
2 medical accusations and/or complaints made by other inmates is
3 irrelevant and not reasonably calculated to lead to the discovery
4 of admissible evidence concerning Defendants' motive or intent
5 with respect to their treatment of Plaintiff. Plaintiff's claims
6 against Defendants are based on his own medical treatment.
7 Accusations of negligence and/or a violation of the Eighth
8 Amendment or lawsuits filed by other inmates fail to evidence
9 Defendants' liability toward Plaintiff. Further, Plaintiff has
10 not demonstrated that his need for the information, which concerns
11 the medical care of other inmates, outweighs the privacy rights of
12 Defendants and the inmates making the accusations. Accordingly,
13 Plaintiff's motion with respect to this request for production of
14 documents is DENIED.

14 C. Interrogatories to Dr. Sayre, Set One, No. 9

15 Plaintiff's interrogatory to Dr. Sayre, Set One, No. 9, asks
16 the following:

17 Have you made any statements in writing or verbally to
18 any Pelican Bay physicians or to any one else for the
19 matter, to the effect that the symptoms of pain,
20 numbness, tingling, loss of sensations to lower-
21 extremities experienced by the plaintiff are not caused
22 by the 7mm nerve impingement on the Nerve root L5-S1,
23 that there was no evidence of any involvement of S1
24 nerve root. If you have made any statements in writing
25 or verbally. Describe and explain "How you reached this
26 conclusion?" and (sic) explain the basis for this
27 conclusion.

23 Pl.'s Mot. Compel, Ex. 2 at 4.

24 Dr. Sayre objected to this interrogatory on the grounds that
25 it is compound, contains a statement, assumes facts not in
26 evidence, and is argumentative. Defs.' Opp'n Mot. Compel at 5.
27 Further, without waiving these objections, Dr. Sayre indicated
28 that he did not recall any verbal statements regarding this issue,

1 nor could he locate documents that reflect this issue. Id.

2 In his motion to compel, Plaintiff states that he already has
3 evidence that Dr. Sayre did in fact make the alleged statements
4 and is seeking additional information that may lead him to find
5 other relevant documents. In support of his argument, Plaintiff
6 refers to his Exhibit 5, which is a memorandum that reflects
7 answers provided by Dr. Sayre about Plaintiff's medical condition
8 in response to questions asked by Steven Fama of the Prison Law
9 Office. Pl.'s Mot. Compel at 8 & Ex. 5. Dr. Sayre maintains,
10 however, that the memorandum does not contradict his answer to the
11 interrogatory because he has responded to the best of his ability
12 and still submits that he does not recall making verbal or written
13 statements regarding the information Plaintiff sets forth in the
14 interrogatory. Defs.' Opp'n Mot. Compel, Ex. A at 3.

15 Dr. Sayre, by way of his attorney's signed response to
16 Plaintiff's interrogatories, has complied with Rule 26 and
17 certified that, "to the best of his knowledge, information and
18 belief formed after a reasonable inquiry," he does not possess the
19 information that Plaintiff seeks. Fed. R. Civ. P. 26(g)(1) He
20 cannot be compelled to provide a different response. Accordingly,
21 Plaintiff's motion to compel Dr. Sayre's further response to the
22 noted interrogatory is DENIED.

22 II. Motion for Summary Judgment

23 A. Legal Standard

24 Summary judgment is only proper where the pleadings,
25 discovery and affidavits show there is "no genuine issue as to any
26 material fact and that the moving party is entitled to judgment as
27 a matter of law." Fed. R. Civ. P. 56(c). Material facts are
28 those that may affect the outcome of the case. Anderson v.

1 Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A dispute as to a
2 material fact is genuine if the evidence is such that a reasonable
3 jury could return a verdict for the nonmoving party. Id.

4 The court will grant summary judgment "against a party who
5 fails to make a showing sufficient to establish the existence of
6 an element essential to that party's case, and on which that party
7 will bear the burden of proof at trial." Celotex Corp. v.
8 Catrett, 477 U.S. 317, 322-23 (1986). The moving party bears the
9 initial burden of identifying those portions of the record that
10 demonstrate the absence of a genuine issue of material fact. The
11 burden then shifts to the nonmoving party to "go beyond the
12 pleadings, and by his own affidavits, or by the 'depositions,
13 answers to interrogatories, or admissions on file,' designate
14 'specific facts showing that there is a genuine issue for trial.'" Id.
15 at 324 (citing Fed. R. Civ. P. 56(e)).

16 In considering a motion for summary judgment, the court must
17 review the evidence in the light most favorable to the nonmoving
18 party. See Leslie v. Grupo ICA, 198 F.3d 1152, 1158 (9th Cir.
19 1999). The court's function on a summary judgment motion is not
20 to make credibility determinations or weigh conflicting evidence
21 with respect to a disputed material fact. See T.W. Elec. Serv. v.
22 Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir.
1987).

23 A district court may consider only admissible evidence in
24 ruling on a motion for summary judgment. See Fed. R. Civ. P.
25 56(e); Orr v. Bank of America, 285 F.3d 764, 773 (9th Cir. 2002).
26 A verified complaint may be used as an opposing affidavit under
27 Rule 56, as long as it is based on personal knowledge and sets
28 forth specific facts admissible in evidence. See Schroeder v.

1 McDonald, 55 F.3d 454, 460 & nn.10-11 (9th Cir. 1995).

2 B. Deliberate Indifference Standard

3 Deliberate indifference to serious medical needs violates the
4 Eighth Amendment's proscription against cruel and unusual
5 punishment. See Estelle v. Gamble, 429 U.S. 97, 104 (1976);
6 McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled
7 on other grounds, WMX Technologies, Inc. v. Miller, 104 F.3d 1133,
8 1136 (9th Cir. 1997) (en banc). Serious medical needs include
9 serious mental health needs. See Doty v. County of Lassen, 37
10 F.3d 540, 546 (9th Cir. 1994). A determination of "deliberate
11 indifference" involves an examination of two elements: the
12 seriousness of the prisoner's medical need, and the nature of the
13 defendant's response to that need. McGuckin, 974 F.2d at 1059.

14 A serious medical need exists if the failure to treat a
15 prisoner's condition could result in further significant injury or
16 the unnecessary and wanton infliction of pain. Id. The existence
17 of an injury that a reasonable doctor or patient would find
18 important and worthy of comment or treatment, the presence of a
19 medical condition that significantly affects an individual's daily
20 activities, or the existence of chronic and substantial pain are
21 examples of indications that a prisoner has a serious need for
22 medical treatment. Id. at 1059-60.

23 A prison official is deliberately indifferent if he knows
24 that a prisoner faces a substantial risk of serious harm and
25 disregards that risk by failing to take reasonable steps to abate
26 it. Farmer v. Brennan, 511 U.S. 825, 837 (1994). The prison
27 official must not only "be aware of facts from which the inference
28 could be drawn that a substantial risk of serious harm exists,"

1 but he "must also draw the inference." Id. In order for
2 deliberate indifference to be established, therefore, there must
3 be a purposeful act or failure to act on the part of the defendant
4 and resulting harm. See McGuckin, 974 F.2d at 1060.

5 Deliberate indifference may be shown when prison officials
6 deny, delay or intentionally interfere with medical treatment, or
7 it may be shown in the way in which they provide medical care.
8 See id. at 1062. But neither a difference of opinion between a
9 prisoner-patient and prison medical authorities regarding
10 treatment nor a showing of nothing more than a difference of
11 medical opinion as to the need to pursue one course of treatment
12 over another is sufficient to establish deliberate indifference.
13 See Toguchi v. Chung, 391 F.3d 1051, 1059-60 (9th Cir. 2004). In
14 order to prevail on a claim involving choices between alternative
15 courses of treatment, a plaintiff must show that the course of
16 treatment the doctors chose was medically unacceptable under the
17 circumstances, and that they chose this course in conscious
18 disregard of an excessive risk to the plaintiff's health. Id. at
19 1058.

20 C. Analysis

21 1. Back Complaints

22 Plaintiff maintains that Defendants should have provided him
23 with surgery and/or epidural steroid injections to treat his
24 complaints of back pain. In support of their motion for summary
25 judgment, Defendants have presented evidence that, based on their
26 considered medical evaluations, they determined that neither
27 surgery nor epidural steroid injections were appropriate for his
28 back condition. Adam Decl. ¶ 5; Thomas Decl. ¶ 18.

1 In particular, Defendants have presented evidence which shows
2 that Plaintiff's MRI study results were inconsistent with his
3 reported symptoms. Adam Decl. ¶ 7; Thomas Decl. ¶¶ 6, 20.
4 Notably, a referral for a surgery consult made by Thomas was
5 discussed by PBSP medical providers and the Utilization Management
6 Committee, all of whom agreed that Plaintiff's symptoms were not
7 consistent with his MRI findings, that is, there was no
8 correlation between his reported pain and numbness and the results
9 shown on the MRI. Specifically, the MRI showed some disc
10 protrusion and mild nerve root impingement at the L4-L5 and L5-S1
11 levels of his spine, but the areas of the body where Plaintiff
12 complained of pain did not correlate with these L4-L5 and L5-S1
13 levels. Thomas Decl. ¶ 6. Moreover, x-ray studies confirmed
14 arthritic changes in his back with no new bone formation,
15 fractures or displacement of vertebrae. Id. ¶ 18. In sum, the
16 MRI studies, x-rays and physical examinations of Plaintiff's back
17 revealed that he suffered from a "mechanical" or arthritic back
18 which cannot be resolved or relieved by surgery. Id.

19 In support of their argument, Defendants have submitted the
20 declaration of Dr. Bruce Barnett, a licensed physician who is
21 employed by the CDCR as the CMO of the Receiver's Office of Legal
22 Affairs. His current duties include participation in the
23 Receiver's process for reviewing medical care issues raised in
24 various court actions. He regularly reviews medical services
25 provided to inmates in the context of applicable standards of care
26 and offers guidance to healthcare providers. He also directly
27 cares for patients in the prisons on a part-time basis. In 2010
28 he served on the CDCR committee that proposed guidelines for

1 management of inmates' chronic pain based upon authoritative
2 medical research and recommendations. Decl. B. Barnett Supp. Mot.
3 Summ. J. (Barnett Decl.) ¶ 3.

4 According to Dr. Barnett, medical research has shown that MRI
5 studies of the spine do not accurately or consistently correlate
6 with back pain or disease; rather, the research has shown that
7 many people with disc bulges or protrusions visible on MRIs have
8 no symptoms at all. Barnett Decl. ¶ 10; Barnett Decl. Supp. Reply
9 ¶ 6. He further attests that surgical treatment is generally not
10 helpful for degenerative changes in the spine (i.e., the arthritic
11 back), and that surgery in Plaintiff's case was especially
12 inappropriate based on the inconsistencies between the objective
13 findings and his subjective complaints. Barnett Decl. ¶ 10.

14 Plaintiff asserts that back surgery will "fix" his back
15 problems. According to Dr. Barnett, however, even if Plaintiff
16 was a candidate for back surgery there is extensive authoritative
17 literature establishing that back surgery often fails to cure back
18 pain and leaves patients worse off than before surgery. Barnett
19 Decl. Supp. Reply ¶¶ 6-7.

20 Plaintiff argues that Defendants should have ordered epidural
21 steroid injections for his back. However, according to
22 Defendants' undisputed declarations, epidural steroid injections
23 are no longer administered to inmate patients in the CDCR because
24 of an abundance of medical literature which has found little to no
25 benefit from such injections for chronic low back pain and
26 attendant significant risks to the patient. Barnett Decl. ¶ 14;
27 Adam Decl. ¶ 5; Thomas Decl. ¶ 18.

28 Based on the above evidence, the Court finds that Plaintiff

1 has not raised a triable issue of material fact with respect to
2 whether Defendants' decision to deny his requests for surgery or
3 epidural injections were medically unacceptable under the
4 circumstances and whether they chose this course of action in
5 conscious disregard of an exceptional risk to his health.
6 Toguchi, 391 F.3d at 1058. Accordingly, Defendants are GRANTED
7 summary judgment on this claim.

8 2. Wedge Pillow for Back Pain

9 Plaintiff claims that Dr. Sayre acted with deliberate
10 indifference to his serious medical needs by discontinuing his
11 chrono for a wedge pillow that had been prescribed by the CMO at
12 Corcoran. He maintains that the wedge pillow helps him to
13 position himself more comfortably while in bed, enabling him to
14 sleep better.

15 Defendants contend Dr. Sayre acted reasonably because a wedge
16 pillow is not medically necessary for the treatment of Plaintiff's
17 back pain. According to Title 15 of the California Code of
18 Regulations (CCR), Defendants can administer only health care that
19 is "medically necessary." Medical necessity is determined by
20 assessment of the patient's medical needs in light of those
21 treatments which have been found to be medically indicated based
22 on objective medical studies ("outcome data") pursuant to CCR
23 Section 3350.2⁸ Barnett Decl. Supp. Reply ¶¶ 4, 9. In Dr.

24
25 ⁸ CCR Section 3350(b) defines these terms as follows:

26 (1) Medically Necessary means health care services that
27 are determined by the attending physician to be
28 reasonable and necessary to protect life, prevent
significant illness or disability, or alleviate severe
pain, and are supported by health outcome data as being
effective medical care.

1 Barnett's opinion, there is no objective evidence that a wedge
2 pillow is "medically necessary" for Plaintiff as defined in CCR
3 Section 3350. Specifically, Dr. Barnett does not dispute that a
4 wedge pillow might be used by Plaintiff to make himself more
5 "comfortable," but opines that there is insufficient support in
6 the medical research for the proposition that a wedge pillow
7 reduces back pain and, hence, is medically necessary. Barnett
8 Decl. ¶ 16. Further, Defendants note that Plaintiff told Thomas
9 that he was capable of sleeping on both sides and could turn to
10 get into these positions. Thomas Decl. ¶ 16.

11 Based on the above evidence, the Court finds that Plaintiff
12 has not raised a triable issue of material fact with respect to
13 whether Dr. Sayre's decision to discontinue his chrono for a wedge
14 pillow was medically unacceptable under the circumstances and
15 whether he chose this course of action in conscious disregard of
16 an exceptional risk to his health. Toguchi, 391 F.3d at 1058.
17 Accordingly, Defendants are GRANTED summary judgment on this
18 claim.

21 (2) Outcome Study means the definition, collection and
22 analysis of comparable data, based on variations in
23 treatment, concerning patient health assessment for
24 purposes of improving outcomes and identifying cost-
25 effective alternatives.

26 (3) Outcome Data mean statistics such as diagnoses,
27 procedures, discharge status, length of hospital stay,
28 morbidity and mortality of patients, that are collected
and evaluated using science-based methodologies and
expert clinical judgment for purposes of outcome
studies.

1 3. Medications

2 Plaintiff complains about Defendants' discontinuation of his
3 morphine prescription for pain relief. He states that morphine
4 permits him to engage in normal activities. However, no medical
5 or scientific evidence has been presented to support this claim.

6 According to Defendants' evidence, morphine is a highly toxic
7 and addictive opiate appropriately used only in unusual and
8 extreme circumstances for severe pain arising from anatomic
9 defects or diseases clearly identified as appropriate for such
10 therapy. The goal in prescribing morphine is to ameliorate the
11 degree of extreme discomfort, not eliminate all barriers to normal
12 activity. Barnett Decl. Supp. Reply ¶ 10.

13 Defendants attest that, in Plaintiff's case, the objective
14 evidence does not show that he has any anatomic defects or
15 diseases that require treatment with morphine. Further, treatment
16 of his reported mechanical back pain with opiates such as morphine
17 would be ill-advised based on the medical evidence of his
18 condition. Specifically, the risks of complications from
19 morphine--including sedation and death--are serious and
20 substantial, and there is no clinical benefit to such treatment.
21 Barnett Decl. ¶¶ 12-13; Barnett Decl. Supp. Reply ¶ 10. Dr.
22 Barnett opines: "The physical examinations, diagnostic results and
23 evidence of Plaintiff's daily function provides ample basis for
24 defendants to appropriately engage in conservative treatment
25 strategies, and to avoid surgery, use of opiates or other
26 unnecessary and potentially dangerous medical treatment." Barnett
27 Decl. Supp. Reply ¶ 11.

28 Additionally, Defendants present evidence that, based on

1 Plaintiff's chronic medical conditions of high blood pressure and
2 Hepatitis C, the Pain Management Committee properly concluded that
3 his medications must be carefully monitored at low doses.

4 Consequently, his medical providers have treated him with short
5 courses of narcotic medications for his complaints of acute
6 episodes of back discomfort. See Adam Decl. ¶ 9; Barnett Decl.

7 ¶ 6. The Pain Management Committee's conclusion applied to all of
8 Plaintiff's prescriptions, not just morphine. For example, at
9 committee meetings in December 2010 and June 2011, it was
10 recommended that Plaintiff's use of Naproxen be limited and kept
11 at a lower dose. Consequently, Thomas determined that she would
12 wait for him to submit a request for healthcare services and
13 address any pain issues as they arose, with the goal of reducing
14 his Naproxen prescription to 250 mg, to be filled only on rare
15 occasions for back pain flare-ups, in order to limit side effects
16 from long term use and complications with his hypertension and
17 Hepatitis C. Thomas Decl. ¶¶ 10-11, 19, 21.

18 Notwithstanding these limitations, the evidence shows that
19 Defendants have prescribed a number of other pain medications to
20 try to manage Plaintiff's discomfort. According to his self-
21 reporting, however, all medications have proved ineffective.
22 Notably, Thomas has prescribed a number of medications for his
23 complaints, including Sulindac, Naproxen, Salsalate, Gabapentin,
24 Tylenol #3, Nortriptyline and Amitriptyline. However, Plaintiff
25 has denied any benefit from Nortriptyline, Salsalate, Gabapentin
26 and Tylenol #3, and claimed that Naproxen caused burning in his
27 stomach and Amitriptyline caused numbing in his mouth.

28 Based on the above evidence, the Court finds that Plaintiff

1 has not raised a triable issue of material fact with respect to
2 whether Defendants' medication decisions were medically
3 unacceptable under the circumstances and whether they chose their
4 course of action in conscious disregard of an exceptional risk to
5 his health. Toguchi, 391 F.3d at 1058. Accordingly, Defendants
6 are GRANTED summary judgment on this claim.

7 4. Knee Pain

8 Plaintiff alleges that knee surgery had been approved for him
9 at Corcoran before his transfer to PBSP, and that Defendants'
10 decision not to provide him with the surgery evidences their
11 deliberate indifference to his medical needs. Defendants present
12 the following evidence in support of their argument that it is not
13 medically necessary for him to see an orthopedic surgeon for
14 consultation or repair of his knee.

15 Thomas saw Plaintiff on January 31, 2011, for complaints of
16 left knee pain. She noted that after previous arthroscopic knee
17 surgery in 2007 he had complained of continued pain and a
18 subsequent MRI revealed re-injury to the medial meniscus. Her
19 examination revealed a very mild limp favoring the left leg, which
20 got better with each step, and that he was able to get on and off
21 the table and bend to sit in the chair. Her examination and
22 findings were consistent with left knee pain with known medial
23 meniscal tear. Thomas referred Plaintiff to the Utilization
24 Management Committee for evaluation of his left knee by an
25 orthopedic surgeon. The request was denied because it did not
26 meet the InterQual standardized criteria used to evaluate and
27 determine the need for diagnostic testing and treatment. Thomas
28 Decl. ¶ 10. Specifically, the committee determined that

1 Plaintiff's condition did not meet the criteria for an orthopedic
2 consult or repair because the examination indicated that his knee
3 was not unstable, which is the InterQual criterion required to
4 refer a patient for an orthopedic consult for the knee. Sayre
5 Decl. ¶ 7.

6 Based upon Dr. Barnett's training and experience and his
7 review of the medical record, it is his professional opinion that
8 this determination was appropriate and consistent with the
9 standard of care for best practices. There is substantial
10 evidence in Plaintiff's medical records to show that his knee is
11 stable and that he can engage in activities such as exercising for
12 an hour or more each day. See Compl. Ex. 33; Pl.'s Decl. Supp.
13 Opp'n ¶ 38. Consequently, Dr. Barnett opines, it would be
14 improper to perform surgery, and Defendants' decision to reject
15 Plaintiff's request for an orthopedic consultation and surgery is
16 consistent with the best practices as set forth in in the
17 InterQual guidelines and authoritative journals. Barnett Decl.
18 Supp. Reply ¶ 16.

19 Based on the above evidence, the Court finds that Plaintiff
20 has not raised a triable issue of material fact with respect to
21 whether Defendants' treatment of his knee pain was medically
22 unacceptable under the circumstances and whether they chose their
23 course of action in conscious disregard of an exceptional risk to
24 his health. Toguchi, 391 F.3d at 1058. Accordingly, Defendants
25 are GRANTED summary judgment on this claim.

26 5. Left Leg Pain

27 Plaintiff contends that Defendants failed to treat symptoms
28 of numbness and tingling in his lower left leg. According to

1 Defendants' evidence, Plaintiff has peroneal nerve damage that
2 occurred after his knee trauma and subsequent surgery in 2007;
3 this nerve damage is not related to his complaints of low back
4 pain and cannot be cured. The only possible treatment to
5 alleviate the peroneal nerve discomfort is neuropathic pain
6 medications. Numerous medications have been prescribed for
7 Plaintiff by Thomas and other medical providers for this condition
8 but, according to Plaintiff's self-reporting, he has obtained no
9 relief from them. Thomas Decl. ¶ 19.

10 Plaintiff describes numerous prior consultations in 2007 and
11 2008 with orthopedic, neurology and pain management experts and
12 alleges that none of those medical doctors determined that his
13 peroneal nerve damage was due to the knee surgery, as Defendants
14 have claimed. He further states that peroneal nerve damage is a
15 "rare" side effect of knee surgery and suggests that it is
16 therefore impossible that his symptoms can be attributed to his
17 previous knee surgery or damage to the peroneal nerve. Defendants
18 assert that this argument is misguided. Specifically, according
19 to the record evidence, an EMG report dated March 24, 2009, shows
20 that Plaintiff does have peroneal nerve damage. The peroneal
21 nerve emanates from around the area of the knee as a branch of the
22 sciatic nerve; there is no peroneal nerve in the back. According
23 to Dr. Barnett, calf numbness can arise from damage to the sensory
24 branches of the peroneal nerve, but pain and numbness in the calf
25 may also be symptoms associated with nerve compression at the
26 level of the spine. He acknowledges that Plaintiff may have some
27 sensory deficits associated with either or both of these
28 conditions, that is, he may have symptoms arising from compromise

1 of the peroneal nerve and he may be experiencing symptoms from
2 traction on nerve fibers coming from his low spine or throughout
3 the sciatic nerve. But, in either case, it is Dr. Barnett's
4 professional opinion that, based upon his experience and training,
5 the evidence in the medical record and the radiographic findings,
6 Plaintiff does not suffer from a condition that is "even close" to
7 warranting surgical intervention. Barnett Decl. Supp. Reply ¶
8 14.

9 Based on the above evidence, the Court finds that Plaintiff
10 has not raised a triable issue of material fact with respect to
11 whether Defendants' diagnosis and treatment of his left leg pain
12 was medically unacceptable under the circumstances and whether
13 they chose their course of action in conscious disregard of an
14 exceptional risk to his health. Toguchi, 391 F.3d at 1058.
15 Accordingly, Defendants are GRANTED summary judgment on this
16 claim.

17 6. Warden Jacquez

18 In addition to the above claims that he was not provided with
19 adequate medical care by Defendants, Plaintiff maintains that
20 Defendant Warden F. Jacquez acted with deliberate indifference
21 because he is responsible "overall" for the actions of his
22 employees, and because he did not approve Plaintiff's transfer to
23 another prison where he could receive proper medical care. Compl.
24 ¶ 9.⁹

25
26
27 ⁹ Jacquez was the Warden at PBSP from September 2008 until
28 January 2010, and was the Chief Deputy Warden at PBSP from January
2010 until his retirement from the CDCR in July 2011.

1 Plaintiff's claim fails because, as a matter of law, there is
2 no respondeat superior liability under 42 U.S.C. § 1983. That is,
3 under no circumstances can a defendant be held liable solely
4 because he is responsible for the actions or omissions of another.
5 See Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). A
6 supervisor may be liable under § 1983 upon a showing of either his
7 personal involvement in the constitutional deprivation or a
8 sufficient causal connection between his wrongful conduct and the
9 constitutional violation. Henry A. v. Willden, 678 F.3d 991,
10 1003-04 (9th Cir. 2012). In order to establish such liability, a
11 plaintiff must show that the supervisor had the requisite state of
12 mind, which turns on the requirement of the particular claim and,
13 more specifically, on the state of mind required by the particular
14 claim, not on a generally applicable concept of supervisory
15 liability. Oregon State University Student Alliance v. Ray, 699
16 F.3d 1053, 1071 (9th Cir. 2012).

17 Here, Plaintiff has not presented evidence that raises a
18 triable issue with respect to whether Jacquez acted with
19 deliberate indifference to his serious medical needs. Instead,
20 the undisputed evidence shows that Jacquez's only involvement with
21 Plaintiff was his attendance at three Institutional Classification
22 Committee (ICC) meetings where the status and custody levels of
23 inmates in segregated housing, including Plaintiff, were
24 discussed. Decl. F. Jacquez Supp. Mot. Summ. J. (Jacquez Decl.)
25 ¶¶ 4-5. The record shows that the ICC members discussed
26 Plaintiff's security status and custody issues with him, including
27 criteria for his segregated housing status at PBSP, but it does
28 not reflect that any ICC member, including Jacquez, spoke with him

1 about a request to change prison institutions to seek different
2 medical treatments for his back pain or a transfer for any other
3 medical purpose. Jacquez Decl. ¶ 5 & Ex. A.

4 Additionally, the undisputed evidence shows that, as Warden
5 or Chief Deputy Warden, Jacquez was not responsible for
6 determining the appropriate course of medical treatment for
7 inmates at PBSP, he is not a medical doctor, he has never
8 practiced medicine and he did not have the responsibility of
9 employing or dismissing any medical personnel. Jacquez Decl. ¶ 7.

10 Based on the above, summary judgment is GRANTED to Jacquez on
11 Plaintiff's claim of deliberate indifference.

12 III. Qualified Immunity

13 Defendants argue that they are entitled to qualified
14 immunity. In this case, Plaintiff seeks both injunctive relief
15 and money damages. "Qualified immunity is only an immunity from
16 suit for money damages, and does not provide immunity from a suit
17 seeking declaratory or injunctive relief." Hydrick v. Hunter, 669
18 F.3d 937, 939-40 (9th Cir. 2012). Accordingly, Defendants are not
19 entitled to qualified immunity on Plaintiff's injunctive relief
20 claims.

21 With respect to Plaintiff's damages claims, the defense of
22 qualified immunity protects "government officials . . . from
23 liability for civil damages insofar as their conduct does not
24 violate clearly established statutory or constitutional rights of
25 which a reasonable person would have known." Harlow v.
26 Fitzgerald, 457 U.S. 800, 818 (1982). A court considering a claim
27 of qualified immunity must determine whether the plaintiff has
28 alleged the deprivation of an actual constitutional right and

1 whether the right was clearly established, such that it would be
2 clear to a reasonable officer that his conduct was unlawful in the
3 situation he confronted. See Pearson v. Callahan, 555 U.S. 223,
4 236 (2009).

5 On the facts presented herein, viewed in the light most
6 favorable to Plaintiff, Defendants prevail as a matter of law on
7 their qualified immunity defense because the record establishes no
8 constitutional violation. Even if a constitutional violation did
9 occur, however, Defendants reasonably could have believed their
10 conduct was lawful. Specifically, it would not have been clear to
11 Defendants that they failed to take reasonable steps to abate a
12 substantial risk of harm to Plaintiff by providing him with the
13 above-described care and treatment for his back and leg pain and
14 other symptoms.

15 Accordingly, Defendants are entitled to qualified immunity,
16 and their motion for summary judgment is GRANTED for this reason
17 as well.

18 IV. Supplemental State Law Claims

19 In addition to Plaintiff's claims that Defendants acted with
20 deliberate indifference to his serious medical needs in violation
21 of the Eighth Amendment, he raises supplemental state law claims
22 of medical negligence.

23 The elements of a claim for professional negligence, also
24 referred to as medical malpractice, under California law, are:
25 "(1) the duty of the professional to use such skill, prudence, and
26 diligence as other members of his profession commonly possess and
27 exercise; (2) a breach of that duty; (3) a proximate causal
28 connection between the negligent conduct and the resulting injury;

1 and (4) actual loss or damage resulting from the professional's
2 negligence." Budd v. Nixen, 6 Cal.3d 195, 200 (1971), superseded
3 in part by Cal. Civ. Proc. Code § 340.6. Although prison
4 employees often enjoy immunity from state tort liability,
5 California law expressly provides: "Nothing in this section
6 exonerates a public employee who is lawfully engaged in the
7 practice of one of the healing arts under any law of this state
8 from liability for injury proximately caused by malpractice."
9 Cal. Gov't. Code § 845.6.

10 Defendants argue that the medical care they provided to
11 Plaintiff fell within the professional standard of care and that
12 they did not cause him injury. The evidence in the record,
13 described in detail above, supports the conclusion that Defendants
14 were not negligent in treating Plaintiff's back pain, knee pain
15 and left leg numbness. Alternatively, even if Defendants had been
16 negligent, Plaintiff has not presented evidence which shows that
17 he suffered a cognizable loss or damage related to their care or
18 lack thereof. Accordingly, Defendants' motion for summary
19 judgment on Plaintiff's medical negligence claims is GRANTED.

19 V. Motion for Appointment of Counsel

20 Plaintiff moves for the appointment of counsel to represent
21 him in this action. Because the Court has ruled in favor of
22 Defendants with respect to all claims against them, Plaintiff's
23 claim is moot and, therefore, is DENIED.

24 CONCLUSION

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

26 1. Defendants' motion for summary judgment is GRANTED with
27 respect to all claims brought against them. Docket no. 23.
28 Judgment shall be entered in favor of all Defendants and against

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Plaintiff.

2. Plaintiff's motion to compel is DENIED. Docket no. 26.

3. Plaintiff's motion for the appointment of counsel is DENIED. Docket no. 40.

The Clerk of the Court shall enter judgment and close the file.

This Order terminates Docket nos. 23, 26 and 40.

IT IS SO ORDERED.

Dated: 9/11/2013


CLAUDIA WILKEN
United States District Judge