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2
3 IN THE UNITED STATES DISTRICT COURT
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA
5

6
7 GABRIEL RALPH REYES,
8 Plaintiff,
9 v.
10 MICHAEL SAYRE, MD, et al.,
11 Defendants.

Case No.: C 13-0620 CW (PR)

ORDER GRANTING DEFENDANTS'
MOTIONS FOR SUMMARY JUDGMENT

Doc. nos. 27, 30-32

12
13 Plaintiff Gabriel Ralph Reyes, a state prisoner currently
14 incarcerated at California State Prison—Sacramento, filed this
15 pro se civil rights action pursuant to 42 U.S.C. § 1983, alleging
16 constitutional violations by four individuals employed at Pelican
17 Bay State Prison (PBSP), where he was previously incarcerated.
18 Specifically, Plaintiff claims that a fourteen-day discontinuance
19 of Tylenol #3, which caused him to have withdrawal symptoms,
20 constitutes deliberate indifference to his serious medical needs.
21 Defendants filed four separate motions for summary judgment, which
22 are fully briefed. For the reasons discussed below, Defendants'
23 motions for summary judgment are GRANTED.

24 BACKGROUND

25 The following facts are from Plaintiff's verified complaint
26 and opposition and the parties' declarations and exhibits. Except
27 where noted, the facts are undisputed.
28

1 I. Dr. Williams

2 Plaintiff suffers from several chronic medical conditions,
3 including chronic pain. Williams Decl. ¶ 6; Reyes Decl. ¶ 2. For
4 his chronic pain, Plaintiff has been prescribed both narcotic and
5 non-narcotic medications and a pain patch. Id. Since April 21,
6 2009, Defendant Dr. Claire Williams, who was Plaintiff's primary
7 care provider (PCP), prescribed for Plaintiff's pain Tylenol #3
8 with Codeine, two tablets twice a day. Id. ¶ 10. Codeine is an
9 opioid that has a moderate potential for addiction. Id., Ex. G
10 (California Prison Health Care Services 2009 Pain Management
11 Guidelines) at 16.

12 On August 30, 2009, Plaintiff received a medical consultation
13 with a pain management specialist, Dr. Capitano. Williams Decl.
14 ¶ 8. Dr. Capitano recommended that Plaintiff be prescribed
15 Trileptal, a non-narcotic pain medication, starting at 50 mg to a
16 maximum of 600 mg per day. Id. On October 23, 2009, Dr. Williams
17 reviewed Dr. Capitano's recommendations and added Trileptal, 50 mg
18 a day, to Plaintiff's pain regimen. Id. ¶ 9. Dr. Williams
19 continued to see Plaintiff for follow-up visits and increased the
20 dosage of the Trileptal because Plaintiff reported that the lower
21 dosage was not helping his pain. Id. ¶¶ 10-13.

22 On April 2, 2010, Dr. Williams again examined Plaintiff. Id.
23 ¶ 14. Dr. Williams states that, prior to Plaintiff's visit, she
24 learned that the California Department of Corrections and
25 Rehabilitation (CDCR) had modified its statewide chronic pain
26 medication protocol in an effort to curb the overuse of narcotic
27 medications by inmates. Id. The new protocol involved limiting
28 the use of narcotic medications, such as Tylenol #3, and
substituting non-narcotic pain medications when medically

1 appropriate. Id. In accordance with this protocol, Dr. Williams
2 increased Plaintiff's Trileptal to 400 mg three times a day for
3 pain control, cancelled his prescription for Tylenol #3 and
4 scheduled a follow-up visit in two weeks. Id.; Reyes Decl. ¶ 11.
5 Dr. Williams' medical note for this visit states, "The use of Tyl.
6 #3 was discontinued by Sacramento so he is here for an alternate
7 treatment plan." Williams Decl., Ex. A at 453. Plaintiff
8 disputes that there was such a new pain management protocol
9 because Dr. Williams does not submit it as evidence.

10 Plaintiff states that, at his April 2, 2010 follow-up visit,
11 Dr. Williams told him that she was decreasing his Tylenol #3
12 pursuant to orders from Dr. Sayre, who, at that time, was Chief
13 Medical Officer (CMO) at PBSP. Reyes Opp. ¶ 9. Plaintiff states
14 that he told Dr. Williams that he needed Tylenol #3 to manage his
15 chronic pain and that his current regimen of medications was the
16 best he had experienced. Reyes Decl. ¶ 12. Plaintiff also
17 reminded Dr. Williams that he had been taking a high dose of
18 Tylenol #3 for a long time and, because of this, he was worried
19 about withdrawal symptoms and requested that she slowly reduce the
20 Tylenol #3. Id. ¶ 13. According to Plaintiff, Dr. Williams
21 replied, "I'm sorry, my hands are tied. The CMO is in charge. . .
22 I have an email from him ordering me to cancel your medication,"
23 and also said that she was not going to give Plaintiff anything
24 for withdrawal symptoms because, "that's the consequences of long
25 term use of Narcotic Pain Medication, now your [sic] just going to
26 have to pay the Piper." Id. ¶¶ 13, 15.

27 In her declaration, Dr. Williams states that the reason she
28 discontinued Plaintiff's Tylenol #3 was because of the new state
protocol, but she does not specifically dispute Plaintiff's

1 statements that she said Dr. Sayre ordered her to discontinue
2 Plaintiff's Tylenol #3 or that she told Plaintiff that withdrawal
3 symptoms were the consequences of his use of Tylenol #3. Williams
4 Decl. ¶ 14.

5 Immediately after Dr. Williams discontinued Plaintiff's
6 Tylenol #3, Plaintiff experienced pain and withdrawal symptoms
7 such as muscle cramps, loss of appetite, vomiting, severe
8 diarrhea, hallucinations, loss of sleep and hot and cold flashes.
9 Reyes Decl. ¶ 20. Plaintiff suffered like this for approximately
10 fourteen days. Id. ¶ 23. Plaintiff lost weight and was exhausted
11 physically and mentally. Id.

12 After forty-eight hours of suffering from withdrawal
13 symptoms, Plaintiff submitted a health care request form seeking
14 medical help. Id. ¶ 17. In response to this request, on April 5,
15 2010, Plaintiff was seen by Registered Nurse (RN) Heather
16 Williams. Id. ¶ 19. RN Williams noted that Plaintiff looked
17 strange and stated, "Reyes, are you OK? Can you sit up?" Id. RN
18 Williams left the room to consult with Dr. Adams. Id. at Ex. G.,
19 RN Williams' Progress Notes. When RN Williams returned, she
20 prescribed medication for Plaintiff's nausea and regular Tylenol
21 for Plaintiff's fever and pain. Id. ¶ 19. Plaintiff received a
22 two-day prescription, which did not help his symptoms. Id.

23 On April 16, 2010, fourteen days after Dr. Williams
24 discontinued Plaintiff's Tylenol #3 prescription, Dr. Williams saw
25 Plaintiff again and re-prescribed Tylenol #3. Id. ¶ 24.
26 According to Plaintiff, Dr. Williams stated, "It was a mistake to
27 take you off your medication the way that it was done." Id. That
28 night, Plaintiff received the same dosage of Tylenol #3 he had
been receiving before Dr. Williams discontinued it. Id.

1 Dr. Williams states that, when she saw Plaintiff on April 16,
2 2010 for a follow-up visit, he told her that his chronic pain was
3 not adequately controlled, that he was experiencing pain in his
4 upper back and arms and decreased sensation in his right
5 fingertips and that the increase in Trileptal had not helped him.
6 Williams Decl. ¶ 15. Dr. Williams states that, clinically, she
7 did not observe any adverse effects from the discontinuance of
8 Tylenol #3 for two weeks but, given Plaintiff's indication that he
9 was in pain, she decreased his Trileptal to 200 mg a day and
10 restarted him on Tylenol #3. Id. In her medical progress note,
11 Dr. Williams wrote, "The restrictions on Tyl. #3 have been lifted
12 and it is now up to the PCP if he wants to use it for long term
13 pain so I will decrease his Trileptal back to 200 mg . . . and
14 restart his Tyl. #3 at two BID." Id., Ex. A at 487.

15 Dr. Williams states that, based upon her examination of
16 Plaintiff, his clinical presentations, her review of his record
17 and the nature of his chronic pain symptoms, the medical care he
18 received for his chronic pain complaints was proper and
19 appropriate. Id. ¶ 16.

20 II. Medical Guidelines

21 In support of his claims, Plaintiff submits the 2009 Pain
22 Management Guidelines from the State of California Prison Health
23 Care Services. Reyes Decl., Ex. G. Plaintiff cites page 8, which
24 indicates, "Physical dependence is a common feature of opioids,
25 corticosteroids, barbiturates, benzodiazepines and anti-
26 hypertensive's," and that "physical dependence is easily managed
27 by gradually tapering the drug if it is no longer needed." Ex. G
28 at 8. Plaintiff points to other guidelines which urge the
tapering of drugs that no longer meet treatment goals. See e.g.,

1 Ex. G at 13, 24, 36 ("If a patient has been on a significant dose
2 of opioid for more than a couple of weeks, when discontinuing
3 consider short taper of opioid to avoid withdrawal symptoms.").
4 The guidelines indicate that Codeine has a moderate addiction
5 potential. Id. at 16.

6 III. Dr. Sayre

7 Plaintiff states that, on April 2, 2010, Dr. Sayre, in his
8 role as CMO, instructed Dr. Williams to discontinue Plaintiff's
9 Tylenol #3. Reyes Decl. ¶¶ 13-15. Dr. Sayre declares that he did
10 not participate in Dr. Williams' April 2, 2010 decision to
11 discontinue Plaintiff's Tylenol #3 and that he was not involved in
12 Dr. Williams' decision to restart Plaintiff on Tylenol #3 two
13 weeks later. Sayre Decl. ¶ 10.

14 IV. J. Torrance

15 On April 4, 2010, Plaintiff submitted an Inmate Health Care
16 Appeal Form (602 appeal) seeking relief from the pain and
17 withdrawal symptoms he was experiencing. Reyes Decl. ¶ 32. J.
18 Torrance, a Licensed Vocational Nurse, and the Medical Appeal
19 Coordinator, screened out Plaintiff's 602 appeal on the ground
20 that it was duplicative of two previous 602 appeals Plaintiff had
21 filed. Id.

22 Torrance cites the California Code of Regulations to explain
23 that she can screen out a 602 appeal if it "duplicates an inmate's
24 previous appeal upon which a decision has been rendered or is
25 pending." Torrance Decl. ¶ 5 (citing California Code of
26 Regulations (CCR), tit. 15, § 3084.6(c)(2)). She cites another
27 regulation providing that a 602 appeal can be screened out if "the
28 appeal issue or complaint emphasis has been changed . . . to the
the extent that the issue is entirely new, and the required lower

1 levels of review and assessment have been circumvented." Id.
2 (citing CCR, tit. 15, § 3084.6(b)(16)).

3 Torrance states that, on April 4, 2010, Plaintiff submitted
4 his 602 appeal about the cancellation of his Tylenol #3 in which
5 he requested that he (1) be given relief; (2) be given proper pain
6 medication; (3) be given a written explanation of why the Tylenol
7 #3 had been cancelled; and (4) be compensated for his pain and
8 suffering. Id. ¶ 6. On April 12, 2014, Torrance reviewed
9 Plaintiff's 602 appeal. Id. ¶ 7. She noted that Plaintiff's 602
10 appeal history included two prior 602 appeals, filed on September
11 8, 2008 and December 17, 2009, where he also complained that he
12 was dissatisfied with his chronic pain management medication. Id.
13 ¶ 8. Torrance determined that Plaintiff's April 2010 appeal,
14 which sought changes to his chronic pain medication, was
15 duplicative of his prior 602 appeals and screened it out on that
16 basis. Id. ¶ 12.

17 On April 15, 2010, Plaintiff resubmitted his April 4, 2010
18 602 appeal, contending it was not duplicative. Id. ¶ 13.
19 Torrance noted Plaintiff's additional grounds for relief about his
20 need for medication to counteract his withdrawal symptoms, and
21 determined that it was a change in emphasis and a new issue in his
22 appeal. Torrance screened out Plaintiff's amended appeal on this
23 ground. Id.

24 On April 21, 2010, Plaintiff again resubmitted his April 4,
25 2010 appeal and Torrance advised Plaintiff that he must present
26 the new issues in a separate 602 appeal form. Id. ¶ 14.

27 Plaintiff states that Torrance knew that this was the only
28 602 appeal that Plaintiff submitted regarding his withdrawal
symptoms between April 2 and April 4, 2010 and, thus, it was

1 impossible for Torrance to think that it was a duplicate of any
2 other 602 appeal. Id. Plaintiff states that Torrance had three
3 opportunities to review, investigate and assess Plaintiff's
4 medical situation and, in each instance, she chose to disregard
5 Plaintiff's suffering, even after Plaintiff explained it to her.
6 Id.

7 V. J. Walker

8 J. Walker was Chief of the Office of the Third Level Appeals-
9 Health Care (OTLA) from July 1, 2009 to December 4, 2010 and is
10 currently retired. Walker Decl. ¶ 1. As Chief of the OTLA,
11 Walker was responsible for overseeing the review of Health Care
12 Appeals at the third level of review and responded to inmate
13 appeals after the inmate's specific institution had responded to
14 the appeal at the second level of review. Id. ¶ 3. Decisions at
15 the third level of review were approved by Walker or by a
16 designated manager within the OTLA. Id.

17 Walker notes that Plaintiff's April 4, 2010 602 appeal was
18 screened out three times at Plaintiff's prison as duplicative of
19 previous appeals and that Plaintiff appealed this decision to the
20 OTLA. Id. ¶ 11. On May 18, 2010, the OTLA reviewed Plaintiff's
21 appeal, agreed it was duplicative of his previous appeals and also
22 screened it out as not complying with CCR, title 15, section
23 3084.3(c)(2). Id., Ex. A at 893. Walker declares that, although
24 his printed name, as Chief of the OTLA, appears on the OTLA
25 decision, the review of Plaintiff's appeal was performed by an
26 OTLA Associate Health Program Advisor, whose signature appears on
27 the OTLA's decision. Id.¹ Walker declares that he was not

28 ¹ The OTLA decision appears to be signed by D. Sanchez, for
J. Walker, Chief. Walker Decl., Ex. A at 893.

1 involved in the decision regarding Plaintiff's 602 appeal and that
2 he was not aware, prior to being served with this lawsuit, that
3 Plaintiff had submitted a 602 appeal. Id.

4 Plaintiff states that Walker's name on the Third Level
5 Screen-Out Form indicates that she was the person signing off on
6 the decision to screen out his appeal and, thus, denied him the
7 medical care he needed. Reyes Decl. ¶ 35. Plaintiff states that
8 Walker was aware of the pain management guidelines that instructed
9 the tapering of narcotic medications and, thus, she was aware of
10 Plaintiff's suffering and did nothing to relieve it. Opp.
11 ¶¶ 15-16.

12 DISCUSSION

13 I. Motion for Summary Judgment

14 A. Legal Standard

15 Summary judgment is only proper where the pleadings,
16 discovery, and affidavits show there is "no genuine issue as to
17 any material fact and that the moving party is entitled to
18 judgment as a matter of law." Fed. R. Civ. P. 56(a). Material
19 facts are those which may affect the outcome of the case.
20 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A
21 dispute as to a material fact is genuine if the evidence is such
22 that a reasonable jury could return a verdict for the nonmoving
23 party. Id.

24 The court will grant summary judgment "against a party who
25 fails to make a showing sufficient to establish the existence of
26 an element essential to that party's case, and on which that party
27 will bear the burden of proof at trial." Celotex Corp. v.
28 Catrett, 477 U.S. 317, 322-23 (1986). The moving party bears the
initial burden of identifying those portions of the record that

1 demonstrate the absence of a genuine issue of material fact. The
2 burden then shifts to the nonmoving party to "go beyond the
3 pleadings, and by his own affidavits, or by the 'depositions,
4 answers to interrogatories, or admissions on file,' designate
5 'specific facts showing that there is a genuine issue for trial.'" Id.
6 at 324.

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

14 A district court may consider only admissible evidence in
15 ruling on a motion for summary judgment. Fed. R. Civ. P.
16 56(c); Orr v. Bank of America, 285 F.3d 764, 773 (9th Cir. 2002).
17 A verified complaint may be used as an opposing affidavit under
18 Rule 56, as long as it is based on personal knowledge and sets
19 forth specific facts admissible in evidence. Schroeder v.
20 McDonald, 55 F.3d 454, 460 & nn.10-11 (9th Cir. 1995).

21 B. Deliberate Indifference to Serious Medical Needs

22 Plaintiff argues Defendants were deliberately indifferent to
23 his serious medical needs by completely discontinuing his Tylenol
24 #3 prescription for fourteen days without tapering it off to
25 prevent him from experiencing withdrawal symptoms. He argues that
26 Defendants were also deliberately indifferent by failing to
27 prescribe any treatment for his withdrawal symptoms.
28

1 1. Deliberate Indifference Legal Standard

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

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

20 A prison official is deliberately indifferent if he knows a
21 prisoner faces a substantial risk of serious harm and disregards
22 that risk by failing to take reasonable steps to abate it. Farmer
23 v. Brennan, 511 U.S. 825, 837 (1994)(equating the standard with
24 that of criminal recklessness). The prison official must not only
25 "be aware of facts from which the inference could be drawn that a
26 substantial risk of serious harm exists," but he "must also draw
27 the inference." Id. In order for deliberate indifference to be
28 established, therefore, there must be a purposeful act or failure

1 to act on the part of the defendant and resulting harm. McGuckin,
2 974 F.2d at 1060.

3 Deliberate indifference may be shown when prison officials
4 deny, delay, or intentionally interfere with medical treatment, or
5 it may be shown in the way in which they provide medical care.
6 Id. at 1062. Neither a difference of opinion between a prisoner-
7 patient and prison medical authorities regarding treatment, nor a
8 difference of medical opinion as to the need to pursue one course
9 of treatment over another is sufficient to establish deliberate
10 indifference. Toguchi v. Chung, 391 F.3d 1051, 1059-61 (9th Cir.
11 2004). In order to prevail on a claim involving choices between
12 alternative courses of treatment, a plaintiff must show that the
13 course of treatment the doctors chose was medically unacceptable
14 under the circumstances, and they chose this course in conscious
15 disregard of an excessive risk to the plaintiff's health. Id. at
16 1058. A claim of mere negligence related to medical problems is
17 insufficient to state a deliberate indifference claim. Id.;
18 Franklin v. Oregon, 662 F.2d 1337, 1344 (9th Cir. 1981).

19 2. Analysis

20 Defendants do not argue that Plaintiff does not have a
21 serious medical need for treatment for his chronic pain. Rather,
22 they argue that the discontinuance of his Tylenol #3 prescription
23 for fourteen days does not constitute deliberate indifference.

24 a. Defendant Williams

25 The following facts regarding Plaintiff's claim against Dr.
26 Williams are undisputed: (1) Dr. Williams was treating Plaintiff
27 for many chronic ailments, including pain; (2) since April 2009,
28 Dr. Williams' treatment for Plaintiff's pain included Tylenol #3;
(3) in August 2009, pain specialist, Dr. Capitano, recommended

1 Trileptal for Plaintiff's pain; (4) on April 2, 2010, Dr. Williams
2 discontinued Plaintiff's prescription for Tylenol #3, increased
3 his prescription for Trileptal and scheduled him for a two-week
4 follow-up visit; (5) Dr. Williams was familiar with the fact that
5 Codeine is an opioid that is moderately addictive and that
6 Plaintiff could experience withdrawal symptoms from its complete
7 discontinuance; (6) on April 5, 2010, Plaintiff told RN Williams
8 that he was suffering from pain, nausea, fever and other
9 withdrawal symptoms, and RN Williams consulted with Dr. Adams who
10 prescribed regular Tylenol for Plaintiff's pain and medication for
11 his nausea; and (7) on April 16, 2010, fourteen days after Dr.
12 Williams discontinued Plaintiff's Tylenol #3, she re-prescribed it
13 for him at the original dosage.

14 There are few facts regarding this claim that are disputed.
15 The main one is whether Dr. Williams discontinued Plaintiff's
16 Tylenol #3 on the basis of a new state protocol requiring her to
17 do so. Dr. Williams' statements in her declaration and her
18 medical notes of her meetings with Plaintiff on April 2 and April
19 16, 2010, support her claim that the state had issued a new
20 protocol regarding discontinuing narcotic medications like Tylenol
21 #3. However, as Plaintiff points out, Dr. Williams does not
22 submit a copy of the state protocol. On Defendants' motion for
23 summary judgment, Plaintiff's evidence must be taken in the light
24 most favorable to him. Therefore, for purposes of this motion,
25 the Court assumes that a new state protocol did not exist.

26 However, even if a new state protocol did not exist,
27 Plaintiff's evidence has not raised a disputed issue of material
28 fact regarding whether Dr. Williams' treatment constituted
deliberate indifference.

1 Plaintiff's claim focusses on the fourteen days between April
2 2, 2010, when Dr. Williams' discontinued his Tylenol #3 and
3 increased his Trileptal and April 16, 2010, when she resumed the
4 Tylenol #3 and Trileptal at their previous dosages, during which
5 time Plaintiff experienced withdrawal symptoms. However, two days
6 after Dr. Williams discontinued the Tylenol #3, Dr. Adams treated
7 Plaintiff for the withdrawal symptoms. Twelve days later, when
8 Plaintiff informed Dr. Williams he was experiencing severe pain
9 and withdrawal symptoms, she re-instituted his previous pain
10 management regimen.

11 This evidence shows that on April 2, 2010, Dr. Williams was
12 trying another treatment regimen for Plaintiff's pain, just as
13 different pain treatment regimens had been prescribed for him in
14 the past. Along with this change in regimen, she scheduled a
15 follow-up visit in two weeks to evaluate it. When Dr. Williams
16 saw that the new regimen did not work, she immediately
17 reinstated the old regimen. Thus, even though the new regimen
18 did not work, the evidence shows that Dr. Williams' goal for the
19 new regimen was to treat Plaintiff's pain in a different way, not
20 to deny, delay or interfere with his treatment or to cause him
21 increased pain. That Dr. Williams immediately reinstated the
22 original regimen when she saw the new regimen was not working is
23 further evidence that she intended to treat Plaintiff's pain, not
24 to deny him treatment.

25 Furthermore, the fact that Plaintiff wanted the Tylenol #3 to
26 be tapered off rather than discontinued at once means that he had
27 a difference of opinion with Dr. Williams. In order to prevail on
28 a claim involving choices of alternate courses of treatment,
Plaintiff must show that Dr. Williams' treatment plan was

1 medically unacceptable and chosen in conscious disregard of an
2 excessive risk to his health. See Toguchi, 391 F.3d at 1059-61.
3 Plaintiff's evidence fails to show this. The medical guidelines
4 Plaintiff submits only suggest an opioid like Tylenol #3 should be
5 reduced gradually; they do not require tapering. By scheduling a
6 follow-up visit in two weeks, Dr. Williams ensured that she would
7 be able to evaluate the results of the new regimen very soon after
8 she implemented it, so that if it did not work, she would be able
9 to change it, which she did. As stated above, Dr. Williams'
10 actions demonstrate care and concern for Plaintiff, not deliberate
11 indifference to his pain.

12 For all these reasons, Plaintiff has failed to raise a
13 disputed issue of material fact that Dr. Williams' treatment
14 constituted deliberate indifference to his serious medical needs.
15 Dr. Williams' motion for summary judgment is granted.

16 b. Other Defendants

17 Plaintiff's claim of deliberate indifference against Dr.
18 Sayre is based upon Plaintiff's statement that Dr. Sayre ordered
19 Dr. Williams to discontinue Plaintiff's Tylenol #3. Even taking
20 Plaintiff's evidence against Dr. Sayre as true, his claim against
21 Dr. Sayre fails because it is predicated upon his claim against
22 Dr. Williams. In other words, Dr. Sayre's order to Dr. Williams
23 to discontinue Plaintiff's Tylenol #3 does not constitute
24 deliberate indifference because, in following that order and
25 discontinuing the Tylenol #3, Dr. Williams was not deliberately
26 indifferent to Plaintiff's medical needs. Dr. Sayre cannot be
27 liable for ordering Dr. Williams to implement a medically
28 appropriate treatment plan. Dr. Sayre's motion for summary
judgment is granted.

1 Plaintiff's claims for deliberate indifference against J.
2 Torrance and J. Walker fail for the same reason. The claims are
3 predicated on the fact that these Defendants did not grant
4 Plaintiff's appeals challenging Dr. Williams' fourteen-day
5 discontinuance of his prescription for Tylenol #3. Because Dr.
6 Williams was not deliberately indifferent to Plaintiff's serious
7 need for chronic pain treatment by discontinuing his prescription
8 of Tylenol #3, Torrance and Walker could not be deliberately
9 indifferent by denying Plaintiff's 602 appeals about Dr. Williams'
10 behavior.

11 Furthermore, Plaintiff's claims against Torrance and Walker
12 fail for another reason. By the time Torrance and Walker denied
13 Plaintiff's appeals about Dr. Williams' behavior, she had re-
14 prescribed the Tylenol #3 so that there was no behavior for them
15 to remedy. This situation is distinguishable from one in which
16 there is an ongoing medical need and the inmate's appeal requests
17 a remedy for the ongoing problem. In the latter case liability
18 can be based on the denial of the appeal, just as it could be
19 based on the denial of a verbal request from the inmate. See Jett
20 v. Penner, 439 F.3d 1091, 1098 (9th Cir. 2006) (supervisor may be
21 liable for deliberate indifference to a serious medical need if he
22 or she fails to respond to a prisoner's request for help). Dr.
23 Williams' fourteen-day discontinuance of Plaintiff's prescription
24 for Tylenol #3 was not an ongoing medical need that could result
25 in the officers' liability for denying Plaintiff's appeals.
26 Therefore, Plaintiff's evidence against Torrance and Walker fails
27 to raise a disputed issue of material fact on this ground as well.
28 Torrance and Walker's motions for summary judgment are granted.

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CONCLUSION

For the foregoing reasons, the Court orders as follows:

1. Defendants' motions for summary judgment are GRANTED.

Docket nos. 27, 30-32.

2. The Clerk of the Court shall enter a separate judgment, terminate all motions and close the file.

3. This order terminates Docket nos. 27, 30-32.

IT IS SO ORDERED.

Dated: 9/8/2014



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE