UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ERIC ZACHARY ANDERSON,

Plaintiff,

v.

M. SOKOLOFF and JOHN DOE #2,

Defendants.

Case No. 15-cv-01854-YGR (PR)

ORDER GRANTING DEFENDANT SOKOLOFF'S MOTION FOR SUMMARY JUDGMENT; AND DISMISSING WITHOUT PREJUDICE REMAINING CLAIM AGAINST DEFENDANT JOHN DOE #2

I. INTRODUCTION

Plaintiff Eric Zachary Anderson, a state prisoner, brought this *pro se* civil rights action under 42 U.S.C. § 1983, concerning prison staff's responses to his medical needs on a "layover" at San Quentin State Prison ("SQSP") during his transfer to Pelican Bay State Prison ("PBSP") in November of 2013. On October 6, 2015, the Court dismissed the complaint with leave to amend in order to give Plaintiff the opportunity to correct certain deficiencies. Dkt. 15. Thereafter, Plaintiff filed an amended complaint, which is the operative complaint in this action. Dkt. 16.

On April 20, 2016, the Court found that Plaintiff's amended complaint adequately alleged a cognizable Eighth Amendment claim of deliberate indifference to his serious medical needs against Defendants SQSP Registered Nurse M. Sokoloff and John Doe #2, who Plaintiff describes as "M. Sokoloff['s] co-worker on 11-12-13 in R&R." Dkt. 19 at 3-5 (citing Dkt. 16 at 3[1]). The Court dismissed Plaintiff's supervisory liability claim against Defendant John Doe #1 (described as "Medical Supervisor of M. Sokoloff"), because there is no vicarious liability under section

[1] Page number citations refer to those assigned by the Court's electronic case management filing system and not those assigned by the parties.

1983 and Plaintiff failed to include allegations showing that Defendant John Doe #1 personally was involved in the constitutional deprivation. *Id.* at 5-6 (citing *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989)). Finally, the Court dismissed Plaintiff's claims against the remaining Defendants who were listed in his original complaint, because Plaintiff failed to amend his claims against them in his amended complaint. *Id.* at 3. The Court then served the complaint upon Defendant Sokoloff and issued a briefing schedule for filing a dispositive motion. *Id.* at 6-9. The Court directed Plaintiff to provide the name of Defendant John Doe #2 by the date scheduled for Defendant Sokoloff to file a dispositive motion. *Id.* at 6. The Court warned Plaintiff that the failure to do so would result in the dismissal of any claims against Defendant John Doe #2 without prejudice to Plaintiff filing a new action against him or her.

To date, Plaintiff has not provided the name of Defendant John Doe #2, and the deadline to do so has passed. Therefore, Plaintiff's Eighth Amendment claim against Defendant John Doe #2 is DISMISSED without prejudice. The only remaining Defendant in this action is Defendant Sokoloff (hereinafter "Defendant").

First, the Court notes that the parties have presented an issue relating to Defendant's gender. Plaintiff explains in his amended complaint and at his deposition how Defendant participated in the alleged acts of deliberate indifference to serious medical needs during the layover at SQSP, albeit Plaintiff referred this Defendant by the wrong gender (she/her). Dkt. 16 at 7-10; Dkt. 43-2, Ex. A, Pl.'s Dep. 32:13-15, 74-10-14; Dkt. 53, Pl.'s Dep. 34:22-25, 35:6-10. Meanwhile, in his declaration, Defendant, who is a male, concedes to being the medical staff member who examined Plaintiff during the layover in SQSP. Sokoloff Decl. ¶¶ 4-21. Therefore, the Court need not further address the issue of Plaintiff using the wrong gender.

On January 20, 2017, Defendant filed the present motion for summary judgment on the grounds that he did not act with deliberate indifference to Plaintiff's serious medical needs, that he did not cause Plaintiff any deprivation of his constitutional rights, and that he is entitled to qualified immunity because a reasonable registered nurse in his position could have believed his conduct was lawful. Dkt. 43. On March 31, 2017, Plaintiff filed an opposition to Defendant's motion. Dkt. 48. On April 20, 2017, Defendant filed a reply to the opposition and evidentiary

objections to Plaintiff's evidence submitted in support of the opposition. Dkts. 51, 52.

For the reasons discussed below, Defendant's motion for summary judgment is GRANTED.

II. FACTUAL BACKGROUND[2]

Unless otherwise noted, the following facts are not disputed by the parties.

A. Stabbing Incident at California State Prison-Sacramento ("CSP-SAC")

On November 11, 2013, Plaintiff was stabbed by fellow inmates sometime between 11:30 a.m. and 12:00 p.m. at CSP-SAC, where Plaintiff previously was incarcerated. Dkt. 43-2, Ex. A, Pl.'s Dep. 14:8-15. Plaintiff alleges he was jumped from behind by multiple inmates while he was on the yard exercising. *Id.* 14:16-25. Plaintiff also alleges that an officer in the tower shot and hit his upper right shoulder with a 40 millimeter rubber bullet. *Id.* 17:6-14. After the incident, Plaintiff was wheeled to the Correctional Treatment Center ("CTC") at CSP-SAC and received Tylenol-3, two shots of morphine, and eight stitches in his right arm and abdomen. *Id.* 17:17-18:12. Plaintiff was not taken to an outside medical facility. *Id.* 18:13-14. Plaintiff received a prescription for Tylenol-3. *Id.* at 19:1-3. He was given one dose of Tylenol-3 on-site, but he could not receive any other doses because this medication had to be administered by a nurse, as inmates are not permitted to possess narcotic medication. *Id.* 19:1-3, 19:16 - 20:9.

The following morning, on November 12, 2013 at 7:30 a.m., Plaintiff left CSP-SAC to be transferred to PBSP. *Id.* 20:10-21. A nurse at CSP-SAC administered Tylenol-3 before he was transported. Dkt. 54, Ex. A, Pl.'s Dep. 21:17-24. Plaintiff did not ask to be seen by medical staff

[2] This Order contains many shortcuts and acronyms. Here, in one place, they are:

ASU	Administrative Segregation Unit
CSP-SAC	California State Prison-Sacramento
CTC	Correctional Treatment Center
eUHR	Electronic Unit Health Record
MAXOR	Maxor National Pharmacy Services Corporation (Online Pharmacy System)
MAR	Medication Administration Record
PBSP	Pelican Bay State Prison
SQSP	San Quentin State Prison
TTA	Treatment and Triage Area ("TTA") (Equivalent to Emergency Room)
Tylenol-3/T3	Tylenol-3 with codeine

before leaving CSP-SAC. Dkt. 43-2, Ex. A, Pl.'s Dep. 23:15-17.

B. Layover at SQSP

On November 12, 2013, while en route to PBSP, the bus Plaintiff was riding made an overnight stop at SQSP. *Id.* 25:22-25.

On that date, Defendant was assigned to the Reception Center at SQSP. Sokoloff Decl. ¶ 3. His primary responsibility that evening was to assess the medical condition of newly convicted inmate/patients who were to remain at SQSP. *Id.*

At approximately 5:35 p.m., Defendant was informed that a "layover"[3] patient (Plaintiff) was complaining of pain. *Id.* ¶ 4. At 5:45 p.m., after Defendant completed his duties with another patient he had been examining/treating, he attended to Plaintiff. *Id.* Defendant normally would call an officer to open an inmate's cell door to examine him, pursuant to California Department of Corrections and Rehabilitation ("CDCR") policy. *Id.* ¶ 6. However, Plaintiff "appeared impatient and aggravated" and insisted that Defendant examine him immediately. *Id.* Before Defendant could call an officer to open his holding cell door, Plaintiff proceeded to display the wounds he received during an altercation in which he was involved at CSP-SAC. *Id.* Defendant asked if any of Plaintiff's wounds resulted from an injury during transportation, but Plaintiff "made it clear that they were not." *Id.* ¶ 7. Defendant then completed a CDCR form 7219, Medical Report of Injury or Unusual Occurrence and, under "Brief Statement in Subject's Words of the Circumstances of the Injury or Unusual Occurrence," Defendant indicated the following: "Ø Unusual Occurrence," which means "No Unusual Occurrence." *Id.*; Dkt. 43-2, Ex. C. Defendant claims that the reason for documenting "No Unusual Occurrence" on Plaintiff's CDCR form 7219 "was to indicate that it did not appear that there were any issues during transport." Sokoloff Decl. ¶ 28. Defendant claims that he "was not trying to conceal the fact that [Plaintiff] had pre-existing injuries." *Id.* Defendant claims that "[t]here would be no reason for [him] to do this, since [he] did document all of [Plaintiff's] pre-existing injuries on his progress note . . . ." *Id.* Based on Defendant's observation and Plaintiff's narrative, it appeared that Plaintiff "had various puncture wounds,

[3] Plaintiff was classified as a "layover" patient because his stay at SQSP was for less than twenty-four hours. Sokoloff Decl. ¶ 5.

contusions, abrasions and lacerations affecting his torso and upper and lower extremities." *Id.* ¶ 8. Defendant claims that all of Plaintiff's wounds, "[a]lthough numerous," appeared "superficial with no evident drainage and no signs or symptoms of infection." *Id.* Defendant observed that Plaintiff had one laceration that had been treated recently with eight sutures. *Id.* However, Defendant "did not see any active bleeding, blood-soaked bandages, or any other physical signs of injury subsequent to the sutures which would necessitate further medical care." *Id.* ¶ 9. Defendant believed Plaintiff's wounds had "obviously been well attended to," and Defendant asked Plaintiff what type of treatment he was seeking. *Id.*

After a "rapid and lengthy narrative," Plaintiff responded that he needed pain medication. *Id.* ¶ 10. Plaintiff claimed that Tylenol-3 with codeine ("Tylenol-3" or "T3") had been prescribed by a physician at CSP-SAC. *Id.* Plaintiff was insistent that Defendant administer this medication immediately. *Id.* Defendant informed Plaintiff that the passing of prescription medication was not part of his job duties that evening, but he would look into the matter and see that Plaintiff received any medication for which SQSP had an order. *Id.* Plaintiff did not ask Defendant Sokoloff for any medical care or treatment other than pain medication. *Id.* ¶ 12. Plaintiff indicated that "he had no need of wound care or bandage/dressing changes" and that "his only concern was pain medication." *Id.* Defendant claims that after Plaintiff requested Tylenol-3, Defendant "wrote t3 on [Plaintiff's] 7219 as a memo to [himself] to look specifically for that medication for [Plaintiff] based on his request." *Id.* ¶ 30.

C. Plaintiff's Request for Pain Medication and Defendant's Response

In his amended complaint, Plaintiff claims that Defendant failed to provide him with pain management treatment for his injuries from the stabbing incident, stating:

> I asked for my medication that the [doctor] in C.S.P. SAC prescribed me after getting my stitches Tylenol Three with Cod[e]ine. I was to get six a day and hadn[']t received anything. [Defendant] seemed irritated with my pleas for medical help. After approx. 2 and a half hours of pleading for medical attention, [Defendant] came to my holding cell and said "O Rite [sic] already I get it your [sic] in pain and need your T3's." And [Defendant] wrote T3 on my body chart in order to make me think [Defendant] was going to get my meds. However, what [Defendant] really did was falsify my CDCR 7219 body chart to say I had no wounds at all in order for [Defendant] to not have to tend to my medical needs.

Dkt. 16 at 8-9.

Meanwhile, Defendant's version is significantly different than Plaintiff's version. Defendant claims he had worked in the Inmate/Patient Transfers Department for approximately two years. Sokoloff Decl. ¶ 13. He was familiar with all the methods by which the medication Plaintiff was seeking would have been documented. *Id.* Defendant checked Plaintiff's transfer paperwork. *Id.* If a narcotic had been ordered at another institution, a Medication Administration Record ("MAR") should have been included. *Id.* It was not. *Id.* Furthermore, a Physicians' Order and a progress note documenting recent treatment should also have been present, but no such order or note was included in Plaintiff's paperwork. *Id.* Defendant checked CDCR's online Pharmacy System, MAXOR. *Id.* No orders for narcotics were documented for Plaintiff in MAXOR. *Id.* Defendant checked the electronic Unit Health Record ("eUHR"). *Id.* There was no evidence of emergency medical treatment or a prescription for a narcotic. *Id.* It was well after hours, but Defendant called CSP-SAC to see if anyone had a record of this medication order. *Id.* There was no answer at the CSP-SAC Pharmacy. *Id.* Defendant spoke with the "third watch nursing supervisor," who could not provide useful information regarding whether Plaintiff had a prescription for Tylenol-3. *Id.* She told Defendant that the "Transfer Nurse" had left for the day. *Id.*

Defendant "spent well over two hours researching [Plaintiff's] claim of a prescription for a narcotic, but found no record in any resource [he] accessed." *Id.* ¶ 14. Defendant "performed a check of *all* available resources." *Id.* (emphasis in original). Therefore, Defendant returned to speak with Plaintiff at that point. *Id.* ¶ 15. Defendant explained that he could find no record of an order for a narcotic having been written for Plaintiff and, therefore, he could not administer Tylenol-3. *Id.* Plaintiff would not accept the fact that Defendant could not administer the narcotic without a doctor's order and insisted that Defendant "reexamine his wounds and, based on [Defendant's] assessment, administer the narcotic accordingly." *Id.* ¶¶ 15-16.

Pursuant to state approved nursing protocols, Defendant offered Plaintiff the choice of

"Tylenol, Naproxsyn [sic],[4] or Ibuprofen," which were within Defendant's scope of practice to administer. *Id.* ¶ 16. Defendant advised Plaintiff that the care he was requesting was beyond what he was licensed to provide due to the fact that the request was for narcotics. *Id.* ¶ 18. Defendant advised Plaintiff that, if his pain persisted or increased, he could choose another option: "call man down." *Id.* In using the "Man Down" protocol, Plaintiff would be alerting custody that he had an Urgent/Emergent medical condition requiring immediate medical attention. *Id.* ¶ 19. He then would be taken to the Treatment and Triage Area ("TTA") (CDCR's equivalent of an Emergency Room), where his condition could be assessed more thoroughly and, if appropriate, a narcotic then could be administered under the supervision of a doctor. *Id.* Plaintiff declined to use this protocol. *Id.*

After explaining to Plaintiff the "Man Down" procedures, Defendant did not have any further interaction with Plaintiff for the remainder of the evening. *Id.* ¶ 21.

At 8:30 p.m. on November 12, 2013, Defendant drafted a progress note documenting the aforementioned events and filed it with the Medical Records Department. *Id.*; Dkt. 43-2, Ex. D. In Plaintiff's declaration in support of his opposition, he argues that the progress note was fabricated by Defendant. Pl.'s Decl. ¶¶ 13-14. As explained below, Plaintiff does not support his contention with any admissible evidence. Plaintiff also attempts to submit evidence that Defendant violated a department policy because he was found "guilty" of certain claims related to "falsifying [Plaintiff's] [CDCR form] 7219." *Id.* ¶ 20, Ex. E. However, the Court also finds below that such a contention is not supported by admissible evidence and lacks foundation.

The progress note on the record is handwritten, and, to the best the Court can decipher Defendant's handwriting, it states:

> - I/P [Inmate/Patient] arrived as layover from CSP-SAC c/o [complaining of] [undecipherable] pain secondary to altercation <24 [hours] ago.
>
> - I/P presents [with] mult. puncture wounds (?), contusions and

[4] Naprosyn or Naproxen (generic name) is a nonsteroidal anti-inflammatory drug of the propionic acid class (the same class as ibuprofen) that relieves pain, fever, swelling, and stiffness. *See* https://en.wikipedia.org/wiki/Naproxen (last accessed on July 5, 2017).

> lacerations on [both] U&L [upper and lower] extremities and torso. Lacerations appear clean & well-scabbed superficial in nature excepting one laceration on right FA [forearm] receiving eight sutures. Ø [No] Bandage Dressing Present. Area appears moist [with] some swelling but Ø [no] sg [serosanguanous[5]] or purulent[6] drainage. Sutures intact [with] good approximation. Ø [No] redness or S/S [signs or symptoms of] infection. I/P c/o [complaining of] pain 10/10.
>
> - Alteration in comfort [secondary] to pain assoc. with recent altercation. [Undecipherable] Pain medication not on file in eUHR, MAXOR or transfer paperwork.
>
> - I/P offered Tyl[enol], Ibu[profen] or Naproxsyn [sic] . . . via Nursing Protocols. I/P refused [undecipherable]. I/P refused TX [treatment]. I/P advised to go Man-Down if pain persists or increases.
>
> - Copy to Med[ical] Records 11/12, 8:45PM [Defendant's signature]

Dkt. 43-2, Ex. D (brackets and footnotes added).

D. Transfer to PBSP

Plaintiff claims that Defendant improperly cleared him for transport to PBSP, stating as follows:

> [b]y not examining [his] wounds and falsifying [his] body chart [Defendant] knowingly cleared [him] for a nine hour bus ride in shackles[,] waist chains and cuffs locked in a two man [metal] cage with throbbing, bloody and puss[y] wounds that ultimately were worsened by continual battering of the hard plastic and [metal] cage around him . . . .

Dkt. 16 at 9.

Meanwhile, Defendant claims he did not see Plaintiff or have any interaction with him the following day, November 13, 2013, when Plaintiff was transported to PBSP. Sokoloff Decl. ¶ 21. Thus, Defendant claims he had no part in medically clearing Plaintiff for transportation. *Id.* Defendant conceded that he filled out a CDCR form 7219 but clarified that this form is "not a medical document," and it "is not used to clear inmate/patients for transport." *Id.* ¶ 29 (emphasis in original). Although the CDCR form 7219 is referred to as a "medical report," Defendant explains that "the instructions regarding its completion are very clear: all clinical data is to be

[5] Serosanguineous means comprising or relating to both serum and blood. *See* https://en.wiktionary.org/wiki/serosanguinous (last accessed on January 20, 2017).

[6] Purulent means leaking or seeping pus. *See* https://en.wiktionary.org/wiki/purulent (last accessed on June 29, 2017).

recorded on a separate form." *Id.* (emphasis added). The instruction at the bottom of the form confirms this, stating: "Medical data is to be included in progress note or emergency care record filed in UHR." *Id.*, Ex. C. The record shows that Defendant attempted to comply with such instructions by completing Plaintiff's progress note, as explained above. *Id.*, Ex. D.

The record shows that, prior to his arrival at SQSP, other members of the medical staff at CSP-SAC initially medically approved Plaintiff for transportation on November 12, 2013. Sokoloff Decl. ¶ 23; Dkt. 43-2, Ex. F. At 8:00 a.m. on November 12, 2013, Dr. Hankave and Registered Nurse D. Russell from CSP-SAC indicated there was "[n]o medical reason" to hold Plaintiff's transfer to PBSP. *Id.* According to Defendant, "[t]here is no CDCR policy requiring that medical staff 're-clear' an inmate for transfer if he is simply stopping overnight at an institution." Sokoloff Decl. ¶ 24. Defendant adds that "[a]lthough nursing staff can inform a physician if there appears to be a medical emergency based on any occurrences that happened during the transfer, or at a layover institution, [Defendant] did not see any such issues." *Id.* Further, the record provides no showing that Plaintiff "went 'Man Down' or requested any other assistance." *Id.*

At 6:35 p.m. on November 13, 2013, Registered Nurse Coleman from PBSP completed another CDCR form 7219 "for housing in ASU [Administrative Segregation Unit]." Dkt. 43-2, Ex. E. At 8:48 p.m., Registered Nurse Coleman completed a document entitled, "Physician's Progress Notes," which states:

> 7219 completed @ 1835 for housing in ASU. Inmate stated "no" when asked if he would like to make a statement. Inmate involved in stabbing 11/11/2013 at previous institution. 3 bandages to R arm, 1 bandage to hip, abrasion noted to back of R shoulder, scratches noted to R shoulder, mid back, and L side of back. Also noted 3 abrasions to L knee, and multiple scratches all over torso. Pre AdSeg [Administrative Segregation] screening completed, negative. Cleared for housing in ASU. RTC [return to custody] @ 1845.

Id. Although there were bandages, signs of abrasions, swelling, and scratches, there were no signs of an infection, active bleeding, or any other medical emergency upon arrival at PBSP, and he was cleared for housing. Sokoloff Decl. ¶ 22; Dkt. 43-2, Ex. E; Pl.'s Dep. 51:3-6, 52:17-24.

III. DISCUSSION

A. Standard of Review

Summary judgment is proper where the pleadings, discovery, and affidavits demonstrate that there is "no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). Material facts are those that may affect the outcome of the case. *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248 (1986). A dispute as to a material fact is genuine if there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving party. *Id.*

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

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

B. Evidence Considered

A district court may consider only admissible evidence in ruling on a motion for summary judgment. *See* Fed. R. Civ. P. 56(e); *Orr v. Bank of America*, 285 F.3d 764, 773 (9th Cir. 2002).

In support of Defendant's motion for summary judgment, Defendant has filed his own

declaration as well as a declaration from his attorney, along with supporting exhibits including Plaintiff's medical records. Dkt. 43-2.

Plaintiff verified his amended complaint and his declaration in support of his opposition by signing them under penalty of perjury. Dkts. 16, 48-1. Also in the record is Plaintiff's opposition, which is not signed under penalty of perjury, as well as various exhibits filed in support of his opposition. Dkts. 48, 48-2. Therefore, for the purposes of this Order, the Court will treat Plaintiff's amended complaint filed on October 16, 2015 as an affidavit in opposition to Defendant's motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. *See Schroeder v. McDonald*, 55 F.3d 454, 460 & nn.10-11 (9th Cir. 1995).

As mentioned, Defendant also filed an objection to Plaintiff's evidence in support of his opposition. Dkt. 52. Defendant asserts that certain paragraphs in Plaintiff's declaration, as well as his exhibits A through C and E through G, either: (1) are unsupported by any admissible evidence; (2) lack foundation; or (3) have not been authenticated. Although the Court discusses some of the evidence in question in its analysis, the Court also points out within its analysis why this evidence is not sufficient to defeat summary judgment. The Court concludes that even if any of Plaintiff's aforementioned evidence was admitted and accepted at face value, Defendant still would be entitled to judgment as a matter of law, as set forth below. Accordingly, Defendant's objections to Plaintiff's evidence are DENIED as moot. Dkt. 52.

C. Analysis

In his amended complaint, Plaintiff proffers that on November 12, 2013, Defendant refused to examine Plaintiff's injuries while he was at SQSP during the over-night layover. Dkt. 16 at 3, 7-10. Specifically, Plaintiff claims that Defendant: (1) failed to examine him, ignored his injuries, and falsified his CDCR form 7219 by failing to document his injuries; and (2) refused to provide him with his prescribed pain medication. *Id.* Plaintiff alleges that he was forced to endure his pain all night on his layover at SQSP with no medical treatment. *Id.* at 6. The next day, Plaintiff claims that Defendant improperly "cleared [him] for a nine hour bus ride in shackles and waist chains and cuffs locked in a two man met[al] cage with throbbing, bloody and pussing wounds that ultimately were worsened by continual battering of the hard plastic and met[al] cage

around [him] . . . ." *Id.* at 9.

Deliberate indifference to serious medical needs violates the Eighth Amendment's prohibition against cruel and unusual punishment. *See Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other grounds by WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc). The analysis of a claim of "deliberate indifference" to serious medical needs involves an examination of two elements: (1) a prisoner's serious medical needs; and (2) a deliberately indifferent response by the defendants to those needs. *McGuckin*, 974 F.2d at 1059.

A serious medical need exists if the failure to treat a prisoner's condition could result in further significant injury or the "wanton infliction of unnecessary pain." *Id.* (citing *Estelle*, 429 U.S. at 104). The existence of an injury that a reasonable doctor or patient would find important and worthy of comment or treatment; the presence of a medical condition that significantly affects an individual's daily activities; or the existence of chronic and substantial pain are examples of indications that a prisoner has a serious need for medical treatment. *Id.* at 1059-60 (citing *Wood v. Housewright*, 900 F.2d 1332, 1337-41 (9th Cir. 1990)).

Defendant does not dispute that Plaintiff's multiple injuries from the stabbing on November 11, 2013 amounted to serious medical needs. However, Defendant argues that Plaintiff fails to show that Defendant was deliberately indifferent to Plaintiff's serious medical needs during the course of the evaluation of his injuries during the layover at SQSP.

A prison official is deliberately indifferent if he or she knows that a prisoner faces a substantial risk of serious harm and disregards that risk by failing to take reasonable steps to abate it. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). In order to establish deliberate indifference, a plaintiff must show a purposeful act or failure to act on the part of the defendant and a resulting harm. *McGuckin*, 974 F.2d at 1060; *Shapley v. Nevado Bd. of State Prison Comm'rs*, 766 F.2d 404, 407 (9th Cir. 1985). Such indifference may appear when prison officials deny, delay, or intentionally interfere with medical treatment, or it may be shown in the way in which prison officials provided medical care. *See McGuckin*, 974 F.2d at 1062.

A claim of medical malpractice or negligence is insufficient to make out a violation of the

Eighth Amendment. *See Franklin v. State of Or., State Welfare Div.*, 662 F.2d 1337, 1344 (9th Cir. 1981); *Toguchi v. Chung*, 391 F.3d 1051, 1060 (9th Cir. 2004).

1. Alleged Failure to Examine, Falsification of Medical Records, and Improper Clearance for Transfer to PBSP

Here, the record does not support a claim of deliberate indifference on Plaintiff's contentions that Defendant failed to examine him, ignored his injuries, falsified his records to conceal his injuries, and improperly cleared him for transfer to PBSP.

First, the record shows that Defendant examined Plaintiff on November 12, 2013 beginning at 5:45 p.m., when Defendant first attended to Plaintiff after his arrival at SQSP. The evidence shows that Defendant indicated "No Unusual Occurrence" on Plaintiff's CDCR form 7219. Dkt. 43-2, Ex. C. However, as mentioned, Defendant states that the reason for documenting "No Unusual Occurrence" on Plaintiff's CDCR form 7219 "was to indicate that it did not appear that there were any issues during transport." Sokoloff Decl. ¶ 28. Even if Defendant was mistaken in his understanding of how to fill out the CDCR form 7219, Plaintiff has offered no evidence showing that Defendant's mistake amounted to a violation of his rights. *See Wood v. Housewright*, 900 F.2d 1332, 1334 (9th Cir. 1990) ("While poor medical treatment will at a certain point rise to the level of constitutional violation, mere malpractice, or even gross negligence, does not suffice.").

The record also supports Defendant's claim that he "was not trying to conceal the fact that [Plaintiff] had pre-existing injuries," *id.*, because Defendant documented these injuries in a medical progress note. *See* Dkt. 43-2, Ex. D. As mentioned above, Plaintiff contends that the progress note was fabricated by Defendant. Pl.'s Decl. ¶¶ 13-14. Defendant objects to Plaintiff's contention as lacking foundation and not supported by any admissible evidence. Dkt. 52 at 2 (citing Fed. R. Evid. 602). The Court agrees with Defendant, and it finds unavailing Plaintiff's argument that the progress report was fabricated. The record shows that Defendant has sworn under penalty of perjury that he has submitted a "true and accurate copy" of the progress note. Sokoloff Decl. ¶ 20. Plaintiff has provided no basis for the Court to infer a fabrication.

Furthermore, while Plaintiff attempts to submit evidence that Defendant violated a

department policy because he was found "guilty" of certain claims related to "falsifying [Plaintiff's] [CDCR form] 7219," *see* Pl.'s Decl. ¶ 20, Ex. E, such a contention does not amount to a constitutional violation. Plaintiff, who filed a 602 inmate appeal regarding Defendant's alleged misconduct during the November 12, 2013 layover, has attached a copy of the September 26, 2014 Director's level decision partially granting his appeal, which states as follows:

> Regarding your allegation of misconduct by RN Sokoloff at SQ during your layover on November 12, 2013. Your allegation, if true, would constitute a violation of Inmate Medical Services Policies and Procedures (IMSP&P), Volume 4, Chapter 2, Reception Health Care Policy and Procedure, and IMSP&P Volume 4, Chapter 3, Health Transfer Process that requires that the RN in R&R document the reception of a patient-inmate (PI) and his health care issues/needs with the reception of "each patient-inmate." Based on this a Modification Order is recommended as stated below.

Id.; *see also* Dkt. 16-1 at 28-29. The Modification Order indicated that the Chief Executive Officer at SQSP shall:

> - Accept this appeal as a staff complaint and ensure an adequate inquiry is conducted to address [Plaintiff's] allegations against RN Sokoloff of failing to obtain continuity in [Plaintiff's] medical care and failure to documents [his] health condition accurately during [RN Sokoloff's] intake of [Plaintiff] in R&R on November 12, 2013, pursuant to the requirement of the California Code of Regulations, Title 15, Section 3084.9(i).
> - Issue a Staff Complaint Response to [Plaintiff] regarding the findings from the Confidential Inquiry. [Plaintiff] may submit this Staff Complaint to the Inmate Correspondence and Appeals Brach (ICAB) if [he] is dissatisfied with the response.
> - Submit the date of acceptance and log number for this Staff Complaint Appeal to ICAB to demonstrate compliance with this order.

Id. Plaintiff has also attached a copy of the Second Level Response relating to the aforementioned staff complaint alleging that Defendant "failed to obtain continuity in his medical care and failed to document his health condition accurately during his intake of him in Receiving and Release (R&R) in November 12, 2013." Pl.'s Decl., Ex. E; Dkt. 48-2 at 66. The second level response indicates that, after an appeal inquiry was conducted, it was determined that "[s]taff did violate CDCR policy with respect to the issues raised." *Id.* The Court finds that Plaintiff has sufficiently presented evidence that Defendant had been found guilty of violating "CDCR policy." However,

such evidence does not establish a constitutional violation. *See Cousins v. Lockyer*, 568 F.3d 1063, 1070-71 (9th Cir. 2009) (violation of a prison regulation does not amount to a constitutional violation). At most, such a violation would amount to negligence, which is insufficient to state a claim for deliberate indifference. *See Franklin*, 662 F.2d at 1344; *Toguchi*, 391 F.3d at 1060; *McGuckin*, 974 F.2d at 1059 (mere negligence in diagnosing or treating a medical condition, without more, does not violate a prisoner's Eighth Amendment rights).

Finally, Plaintiff speculates that Defendant tried to conceal Plaintiff's injuries on the CDCR form 7219 in order for Plaintiff to be cleared for transfer. To the contrary, the record shows that CDCR form 7219 is not a medical document, and it is not used to clear inmate/patients for transport. Sokoloff Decl. ¶ 29; Dkt. 43-2, Ex. C. As explained above, the instructions on the bottom of the form regarding its completion states that "[m]edical data is to be included in progress note or emergency care record filed in UHR." Dkt. 43-2, Ex. C. Thus, medical data should be recorded on a separate form, which is what Defendant did when he completed Plaintiff's progress note. Dkt. 43-2, Ex. D. Moreover, Defendant claims that he "did not see any active bleeding, blood-soaked bandages, or any other physical signs of injury subsequent to the sutures which would necessitate further medical care." Sokoloff Decl. ¶ 9. As noted above, Defendant's progress notes confirm that the "[l]acerations appear[ed] clean & well-scabbed" and while there was one laceration that required sutures, the "[s]utures [were] intact [with] good approximation." *Id.*, Ex. D. Furthermore, Defendant noted: "Ø [No] redness or S/S [signs or symptoms of] infection." *Id.* The record shows also that Defendant had no role in Plaintiff's clearance to be transferred to PBSP, and Plaintiff has no evidence to indicate otherwise. Even if Defendant had been involved in clearing Plaintiff for transport, the record shows that the medical staff at CSP-SAC examined Plaintiff the day before he was transferred to SQSP and stated there was "[n]o medical reason" to hold his transfer to PBSP. Dkt. 43-2, Ex. F. When Plaintiff arrived at PBSP, the medical staff at PBSP cleared Plaintiff for housing. Dkt. 43-2, Ex. E. Therefore, no evidence exists showing that any medical conditions were ignored during Plaintiff's transfer.

The evidence shows that Defendant examined Plaintiff and documented his pre-existing injuries. Plaintiff has no evidence to support his claims that Defendant fabricated medical records

or was involved in any way in Plaintiff's allegedly "improper" clearance for transfer to PBSP. As such, Plaintiff has not set forth sufficient evidence for a reasonable jury to find that Defendant's actions were "medically unacceptable under the circumstances" or in "conscious disregard of an excessive risk to [his] health." *See Toguchi*, 391 F.3d at 1058-60.

2. Alleged Refusal to Provide Pain Medication

Plaintiff's allegations regarding Defendant's failure to provide him with Tylenol-3 appears to be based on his belief that Defendant had the ability to access Plaintiff's prescription for Tylenol-3 but simply failed to do so. Such is not the case, as explained below.

Defendant provided adequate care to Plaintiff. Even if Plaintiff did not receive the pain medication he requested, the record shows that Defendant took efforts to confirm whether Plaintiff was prescribed Tylenol-3. Defendant checked Plaintiff's transfer paperwork to see if there was an MAR, Physician's Order, or progress note, but to no avail. Defendant could not find such a prescription when he checked CDCR's online pharmacy system, MAXOR, and Plaintiff's eUHR. Finally, Defendant called CSP-SAC to try to speak with the pharmacy and transfer nurse but was unable to get a hold of them because it was after hours. Defendant's efforts to confirm Plaintiff's prescription for Tylenol-3 are documented in the progress note, which stated, "However, pain medication not on file in eUHR, MAXOR or transfer paperwork." Dkt. 43-2, Ex. D. Moreover, the evidence demonstrates that after exhausting all avenues during the two-hour search for Plaintiff's prescription, Defendant returned to Plaintiff to report his inability to find the prescription. Defendant then explained that he could not administer the Tylenol-3, because he could not find any record of an order for a narcotic having been prescribed for Plaintiff.

Plaintiff speculates that Defendant *did* find the prescription for Tylenol-3, as evidenced by the fact that he wrote "T3" on his CDCR form 7219, and then refused to administer it. Dkt. 16 at 8-9. This theory has no merit. The record shows that Defendant wrote "T3" on Plaintiff's CDCR form 7219 as a memo to himself to look specifically for that medication for this patient based on his request. To the contrary, as explained, Defendant could *not* find a Tylenol-3 prescription in Plaintiff's eUHR, transfer paperwork or MAXOR system.

Because Defendant was unable to provide Plaintiff with Tylenol-3, he presented Plaintiff

with other options: (1) the choice of Tylenol, Naprosyn/Naproxen, or Ibuprofen, which were within Defendant's scope of practice to administer; or (2) using the "Man Down" protocol, where his condition could be assessed more thoroughly and, if appropriate, a narcotic then could be administered under the supervision of a doctor. However, Plaintiff declined both options. Therefore, considering the evidence in the light most favorable to Plaintiff, the Court finds it insufficient to raise a dispute of material fact that Defendant was deliberately indifferent to Plaintiff's serious medical needs. *Cf. Ortiz v. City of Imperial*, 884 F.2d 1312, 1314 (9th Cir. 1989) (summary judgment reversed where medical staff and doctor knew of head injury, disregarded evidence of complications to which they had been specifically alerted and, without examination, prescribed contraindicated sedatives).

Whether medical staff at CSP-SAC failed to include Plaintiff's prescription with his transfer papers or in his electronic medical records, this is not something for which Defendant, who was not on the medical staff at CSP-SAC, can be held liable. A defendant's "[l]iability under [42 U.S.C § 1983] arises only upon a showing of personal participation by the defendant." *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (citing *Fayle v. Stapley*, 607 F.2d 858, 862 (9th Cir. 1979)). Even if Defendant had been involved in failing to include the prescription, such an omission would at most amount to negligence, which is insufficient to state a claim for deliberate indifference. *See Franklin*, 662 F.2d at 1344; *Toguchi*, 391 F.3d at 1060; *O'Loughlin v. Doe*, 920 F.2d 614, 617 (9th Cir. 1990) (repeatedly failing to satisfy requests for aspirins and antacids to alleviate headaches, nausea, and pains is not constitutional violation; isolated occurrences of neglect may constitute grounds for medical malpractice but do not rise to level of unnecessary and wanton infliction of pain).

Even if Plaintiff claims he should have received different treatment, i.e., that Tylenol-3 should have been administered, he presents no evidence that Defendant was deliberately indifferent to his serious medical needs. Rather, Defendant: (1) examined Plaintiff as soon as he arrived at SQSP; (2) documented his pre-existing injuries; (3) conducted a two-hour search for Plaintiff's prescription for Tylenol-3; (4) informed Plaintiff of his inability to find such a prescription; and (5) provided other options to manage Plaintiff's pain during the limited

timeframe he was under Defendant's care. Thus, Plaintiff has failed to provide evidence regarding an essential element of this claim.

Accordingly, the Court GRANTS Defendant's motion for summary judgment.[7]

IV. CONCLUSION

For the foregoing reasons, Defendant Sokoloff's motion for summary judgment is GRANTED. Dkt. 43. Plaintiff's remaining Eighth Amendment claim against Defendant John Doe #2 is DISMISSED without prejudice to Plaintiff filing a new action against him or her.

The Clerk of the Court shall terminate all pending motions and close the file. All parties shall bear their own costs.

This Order terminates Docket No. 43.

IT IS SO ORDERED.

Dated: July 26, 2017

YVONNE GONZALEZ ROGERS
United States District Judge

[7] Defendant also is entitled to qualified immunity because a reasonable registered nurse could have believed that his conduct was lawful under the circumstances. *See Saucier v. Katz*, 533 U.S. 194, 201-02 (2001). A reasonable registered nurse could have believed that: (1) Defendant would not be on notice that filling out "No Unusual Occurrence" on the CDCR form 7219 would rise to a constitutional violation (especially in the absence of any medical emergency during transport); and (2) Defendant's denial of Plaintiff's request for Tylenol-3, based on a lack of a prescription for such medication, was medically acceptable and not an excessive risk to Plaintiff's health (especially in light of the fact that other pain medication and the "Man Down" protocol were offered as alternatives).