

1
2
3
4
5
6
7
8
9
10
11

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HERRON A. ADAMS,
Plaintiff,

v.

LINA MANGLICMOT, et al.,
Defendants.

Case No. 19-cv-07952-HSG

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

Re: Dkt. No. 22

12
13
14
15
16
17

INTRODUCTION

This is a federal civil rights action filed pursuant to 42 U.S.C. § 1983 by a pro se state prisoner. Plaintiff, an inmate at California Training Facility (“CTF”), alleges that defendants were deliberately indifferent to his serious medical needs by failing to assign him a lower bunk. (ECF No. 1.)¹ The Court GRANTS defendants’ motion for summary judgment (“Motion”). (ECF No. 22.)

18
19
20
21
22
23
24
25
26

FACTUAL BACKGROUND

This suit arises from defendants’ decision not to assign plaintiff a lower bunk despite his history of seizures or to provide pain medication to control his seizures. Plaintiff contends that RN Manglicmot was deliberately indifferent to his serious medical needs when she failed to inform custody staff that plaintiff required a lower bunk assignment, despite knowing that plaintiff suffered from seizures. He also argues that RN Anudokem was deliberately indifferent when she made inappropriate comments to plaintiff and refused to provide him his prescribed pain medication. Defendants counter that (1) plaintiff fails to show that defendants were deliberately indifferent to his medical needs; and (2) they are entitled to qualified immunity. The following

27
28

¹ Defendants provided plaintiff with the required warnings under *Rand v. Rowland*, 154 F.3d 952, 962–63 (9th Cir. 1998) (en banc). (ECF No. 22-29.)

1 facts are undisputed unless specifically noted otherwise.

2 A. Allegations Against Manglicmot and Anudokem²

3 Plaintiff has a documented medical history of suffering from seizures. (Gieschen Decl.,
4 Ex. B, ECF No. 22-9.) Plaintiff’s medical records from an appointment at San Quentin State
5 Prison (SQSP) on February 21, 2018, show that plaintiff was receiving seizure medication.
6 (Gieschen Decl., Ex. C, ECF No. 22-10.) Plaintiff was transferred from SQSP to CTF’s Receiving
7 and Release Facility on February 28, 2018. (Compl. ¶ 4, ECF No. 1; Lozano Decl ¶ 6, ECF No.
8 22-26.) Prior to his transfer to CTF, plaintiff’s last seizure took place in January of 2017.
9 (Gieschen Decl., Ex. B.)

10 When an inmate arrives at one California Department of Corrections and Rehabilitation
11 (“CDCR”) facility from another CDCR facility, medical screening staff is expected to review the
12 inmate’s medical records and search for a CDCR 1845 Disability Placement Program Verification
13 form (“Form 1845”) and/or a CDCR 7410 Comprehensive Accommodation Chrono (“Form
14 7410”). (Gieschen Decl. ¶ 7, ECF No. 22-7.) Form 1845 documents an inmate’s disabilities and
15 Form 7410 documents an inmate’s special accommodations irrespective of disability. (*Id.* ¶ 8.)
16 Form 7410 documents such things as a lower bunk accommodation based on a history of seizures.
17 (*Id.*) At the time plaintiff arrived at CTF, there was no Form 1845 or Form 7410 associated with
18 plaintiff. (*Id.* ¶ 12.) Under CDCR and California Correctional Health Care Services (“CCHCS”)
19 policies and procedures, only physicians have the authority to decide whether an inmate should be
20 assigned a lower bunk and to issue or change an accommodation chrono. (*Id.* ¶ 6.) Other medical
21 professionals, including nurses, do not have that authority. (*Id.*)

22 Defendant RN Manglicmot conducted plaintiff’s initial medical screening on February 28,
23 2018. (*Id.* ¶ 5.) Plaintiff contends that he informed Manglicmot that he suffered from seizures
24 and needed a lower bunk chrono, to which she responded that lower bunks are for people with
25 broken bones or who have had surgery. (Pl.’s Dep. 20:19-21:13, ECF No. 27.) When plaintiff
26 mentioned the seizures again, plaintiff states that Manglicmot responded that plaintiff should shut
27

28 ² The parties provide substantially more facts than presented below. The Court recites only the facts relevant to the claims.

1 up because she knows how to do her job. (*Id.*) On screening plaintiff, Manglicmot marked
2 plaintiff as “High Priority.” (Gieschen Decl. ¶ 16.) High priority patients are expected to be seen
3 by a physician within 1 to 7 days. (*Id.*)

4 Plaintiff later arrived at Facility E, where he was assigned an upper bunk. (Pl.’s Dep. 65:8-
5 66:7.) On March 1, 2018, at approximately 3:30 a.m., plaintiff suffered a grand mal seizure and
6 fell from the top bunk onto the concrete floor, biting his tongue, and suffering pain in his head,
7 back, shoulder, elbow, ankle, and thumb. (Compl. ¶¶ 19-20.) Plaintiff was transferred to a lower
8 bunk on March 2, after the officer on duty spoke with a physician and was told to assign plaintiff a
9 lower bunk because of his seizure. (Pl.’s Dep. 72:5-19.)

10 On August 17, 2018, plaintiff suffered a second grand mal seizure, landing on his back and
11 hitting his head on the concrete. (Compl. ¶ 36.) Plaintiff was taken to the hospital where he
12 received a CT Scan and was prescribed Tylenol. (Pl.’s Dep. 30:7-18.) Upon returning from the
13 hospital, plaintiff was seen by RN Anudokem who attempted to take plaintiff’s vitals. (Pl.’s Dep.
14 30:20-21.) Plaintiff states that Anudokem was unable to get a reading and told plaintiff he was a
15 dead man and should be sent to the morgue. (*Id.* 30:21-22.) Plaintiff responded that he found the
16 comment offensive, to which Anudokem replied that plaintiff was a “smart ass” and therefore
17 would not receive his pain medication. (*Id.* 30:22-31:19.) Plaintiff further states that Anudokem
18 purposefully did not put plaintiff’s Tylenol prescription in the system. (*Id.*) Anudokem’s medical
19 notes from August 17, 2018, show that her treatment plan included “Tylenol for pain”. (Gieschen
20 Decl., Ex. F, p. 7.)

21 B. New Theory Against Manglicmot

22 In his opposition, plaintiff raises a new factual allegation not in the complaint. He now
23 claims that upon his transfer to CTF, he observed transportation custody staff personally hand
24 Manglicmot his five-day supply of seizure medication, which she deliberately refused to process
25 in the computer.³ (*See* ECF No. 26 at 4-6.)

26

27 ³ Plaintiff referenced a medication episode during his deposition, without alleging that he observed
28 Manglicmot receive his medication and intentionally refuse to process it. The relevant testimony is
as follows:

1 **PROCEDURAL BACKGROUND**

2 Plaintiff filed his complaint on December 4, 2019, naming numerous defendants. (ECF
3 No. 1.) The Court ordered partial service finding that plaintiff stated cognizable claims for
4 deliberate indifference to his serious medical needs against defendants Manglicmot, Lozano,
5 Hardian, Anudokem, Deluna and Coleman. (ECF No. 4.) Following discovery, defendants filed
6 this Motion. (ECF No. 22.) Plaintiff filed an Opposition, in which he conceded that summary
7 judgment should be granted as to defendants Lozano, Hardian, Deluna and Coleman. (ECF No.
8 26 at 3.) Defendants filed a Reply (ECF No. 28), plaintiff filed a Supplemental Opposition to the
9 Motion (ECF No. 29), a Sur-Reply (ECF No. 30), and a Supplemental Declaration in Support of
10 his Opposition (ECF No. 32).

11 **STANDARD OF REVIEW**

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

18 The party moving for summary judgment bears the initial burden of identifying those
19 portions of the pleadings, discovery and affidavits which demonstrate the absence of a genuine
20

21 [W]hen I go to get my medication, my seizure medications not there, all my other
22 medication is there. When I go to get my medication they say, “You’re not on
23 seizures.” They say, “Look, you don’t have nothing in here with no seizures.’ They
24 send me back to my cell.”

25 . . .

26 I’m telling her I told the COs, “Hey, I have seizures. I just came in.” But they had
27 my other medication, but they didn’t have my seizure medication. My seizure
28 medication came with me, all my medication came with me from San Quentin. So
I think that because I was trying to tell her to put me on the lower bunk she thought
I was trying to tell her how to do her job and she got kind of -- it went kind of bad
from there.

(Pl.’s Dep. 20:8-21:25).

1 order for deliberate indifference to be established, there must exist both a purposeful act or failure
 2 to act on the part of the defendant and harm resulting therefrom. *McGuckin v. Smith*, 974 F.2d
 3 1050, 1060 (9th Cir. 1992) (overruled on other grounds, *WMX Technologies, Inc. v. Miller*, 104
 4 F.3d 1133, 1136 (9th Cir. 1997) (en banc)).

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

10 A plaintiff must show that his doctors or nurses embarked on a course of “medically
 11 unacceptable” treatment in “conscious disregard of an excessive risk to [his] health.” *Toguchi v.*
 12 *Chung*, 391 F.3d 1051, 1058-60 (9th Cir. 2004). A claim of medical malpractice, negligence
 13 related to medical problems, or a difference of opinion between a prisoner patient and a medical
 14 doctor, is not enough to make out a violation of the Eighth Amendment. *Id.*; *Franklin v. Oregon*,
 15 662 F.2d 1337, 1344 (9th Cir. 1981). “[A]n inadvertent [or negligent] failure to provide adequate
 16 medical care alone does not state a claim under § 1983.” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th
 17 Cir. 2006) (alternation in original) (citation and quotation marks omitted). Even if prison officials
 18 know of a substantial risk to an inmate’s health, they may not be found liable if they responded
 19 reasonably to the risk, even if the harm was not averted. *Farmer*, 511 U.S. at 844-45.

20 A. RN Manglicmot

21 Plaintiff alleges that Manglicmot failed to inform the on-duty supervisor that his medical
 22 condition required that he be assigned a lower bunk, despite his documented history of seizures.
 23 He asserts that Manglicmot’s indifference caused harm to him when he fell from the top bunk on
 24 March 1, 2018, after experiencing a grand mal seizure. In his opposition papers, plaintiff raised
 25 the new factual allegation that Manglicmot deliberately failed to process his seizure medication
 26 after receiving it from transportation staff.⁴ Plaintiff has not shown evidence that Manglicmot’s

27 _____
 28 ⁴ The Court finds that plaintiff’s new theory should be disregarded as both untimely and
 unexhausted. See *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1292 (9th Cir. 2000) (“[A] new

1 actions amounted to deliberate indifference.

2 The Court first notes that the risk of harm due to falling from a top bunk during a seizure is
3 an objectively serious risk of harm. *See Ramos v. Monteiro*, No. CV 06-0832-GAF JTL, 2009 WL
4 1370998, at *14-15 (C.D. Cal. May 14, 2009) (finding that plaintiff had adequately alleged that,
5 based on his medical condition, an upper bunk posed a substantial risk to his safety to support a
6 claim of deliberate indifference).

7 However, with respect to the subjective prong of a deliberate indifference claim, plaintiff
8 has not shown facts that Manglicmot knew that denying plaintiff a lower bunk presented a
9 substantial risk of serious harm to plaintiff, but nonetheless deliberately disregarded that risk. *See*
10 *Farmer*, 511 U.S. at 837-39. Plaintiff did not have a Form 1845 or Form 7410 on file, which
11 would have documented any bed accommodations. In fact, plaintiff concedes that he did not have
12 such an accommodation: “[t]here was no accommodation chrono in . . . [the] file for a low bunk
13 assignment[.]” (ECF No. 26 at 16.) Without a documented lower bunk accommodation,
14 Manglicmot, as an RN, was not in a position to assign plaintiff a lower bunk. Manglicmot’s
15 medical notes show that she did, however, consider plaintiff a high priority to meet with a

16
17
18 theory of liability at the summary judgment stage would prejudice the defendant who faces
19 different burdens and defenses under this second theory of liability.”) (citations omitted). The
20 Court’s obligation to read the pleadings liberally in *pro se* cases extends to facts actually contained
21 in the pleadings, but does not confer any right to present new facts and theories at the opposition
22 stage. Plaintiff’s passing reference during his deposition to a medication issue when he was
23 transferred to CTF also failed to plead this claim sufficiently. Although the Court must construe
24 *pro se* pleadings liberally, “[p]ro se litigants must follow the same rules of procedure that govern
25 other litigants.” *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987); *Wasco Prods., Inc. v.*
26 *Southwall Techs., Inc.*, 435 F.3d 989, 992 (9th Cir. 2006) (“Simply put, summary judgment is not
27 a procedural second chance to flesh out inadequate pleadings.”) (internal quotations omitted);
28 *Ortiz v. Lopez*, 688 F.Supp.2d 1072, 1082 (E.D. Cal. 2010) (“[A] plaintiff cannot oppose summary
judgment based on a new theory of liability because it would essentially blind side the defendant
with a new legal issue after the bulk of discovery has likely been completed.”).

29 Plaintiff also concedes that he did not administratively exhaust this claim. (ECF No. 30.)
30 He states that in place of a grievance, he filed a healthcare services request about his seizure
31 medication and received the medication shortly after. (*Id.*) He also states that he was told by a
32 fellow inmate that he did not need to file a grievance concerning the matter. (*Id.*) These
33 explanations fail to adequately show that administrative remedies were “effectively unavailable to
34 him.” *See Albino v. Baca*, 747 F.3d 1162, 1172 (9th Cir. 2014). Considering that plaintiff filed
35 twenty grievances during his time at CTF and filed at least five grievances concerning the matters
36 in this case (*see* Martin Decl. ¶¶ 9-10, ECF No. 22-14), the Court is not persuaded by plaintiff’s
37 explanation for his failure to exhaust this claim.

1 physician.

2 In addition, plaintiff's medical records establish that he suffered a seizure in January of
3 2017, over a year prior to his transfer to CTF, which took place on February 28, 2018. CCHCS
4 Guidelines state that an inmate qualifies for a bottom bunk as follows: "[p]atients with a
5 documented motor seizure in the last year or a reduction or change of seizure medication within
6 the last six months." (Gieschen Decl., Ex. A, p. 3.) Thus, while it is true that plaintiff's history of
7 seizures was well-documented in his medical files, the Guidelines show that he was not
8 necessarily entitled to a bottom bunk based on those records.

9 Plaintiff takes issue with Manglicmot's harsh and dismissive response to his request for a
10 lower bunk, and her failure to speak with a supervisor following his requests. However, the record
11 reflects that Manglicmot marked plaintiff as a high priority patient to see a physician, and that
12 nothing in plaintiff's medical records conclusively established that he was entitled to a lower bunk
13 accommodation. At most, Manglicmot's failure to speak with a physician during plaintiff's initial
14 medical screening amounted to negligence. *See Jett*, 439 F.3d at 1096; *Walter v. Lancaster State*
15 *Prison Med. Dep't*, No. CV 09-3932, 2010 WL 2680535, at *6 (C.D. Cal. May 27, 2010) (medical
16 personnel's "failure to check Plaintiff's medical file based on his statements about his medical
17 condition and assign him a lower bunk amounts, at most, to negligence."), *report and*
18 *recommendation adopted*, No. CV 09-3932, 2010 WL 2680537 (C.D. Cal. July 1, 2010)).

19 Plaintiff argues that he was assigned a lower bunk at SPSC and at Santa Rita County Jail,
20 showing that he should have received a lower bunk at CTF. He explains that he did not have any
21 forms establishing his lower bunk assignment at SPSC because "you can just go into the cell and
22 get on the lower bunk[.]" (ECF No. 26 at 22.) Regarding his records from Santa Rita County
23 Jail, plaintiff attaches a document that states "Lower Level/Lower Bunk Restriction," "Date
24 Added 05/22/2017," "Date Removed 10/03/2017". (ECF No. 32 at 5.) While plaintiff appears to
25 have been assigned lower bunks in the past, there is nothing in the record showing that plaintiff
26 had an active lower bunk accommodation at the time he was transferred to CTF. Without more,
27 there are no facts in the record suggesting that Manglicmot knew of and disregarded "an excessive
28 risk to inmate health or safety" in failing to assign plaintiff a lower bunk, or speak with a

1 supervisor on his behalf. *Farmer*, 511 U.S. at 837.

2 Plaintiff also points to the CDCR and CCHCS Health Care Department Operations Manual
3 which says “[a] provider may initiate a request for an accommodation based on medical necessity.
4 . . .” (*See* ECF No. 26 at 49.) As an initial matter, there is no Section 1983 liability for violating
5 prison policy unless doing so also violates a specific constitutional right. *See Cousins v. Lockyer*,
6 568 F.3d 1063, 1070 (9th Cir. 2009) (“there is no § 1983 liability for violating prison policy.
7 [Plaintiff] must prove that [the officials] violated his constitutional right.”) In addition, this policy
8 leaves it up to the provider to determine whether to initiate a request for an accommodation but
9 does not mandate any action. As already explained, Manglicmot’s failure to initiate a request for
10 an accommodation was, at most, an act of negligence.

11 Finally, plaintiff argues that Manglicmot failed to take any action on his behalf “to get
12 back at plaintiff for trying to tell her . . . how to do her job.” (ECF No. 26 at 16.) That conclusion
13 is speculative, because he lacks any insight into Manglicmot’s subjective decision-making. *See*
14 *Nelson v. Pima Community College*, 83 F.3d 1075, 1081–82 (9th Cir. 1996) (“[M]ere . . .
15 speculation[does] not create a factual dispute for purposes of summary judgment.”) (citation
16 omitted)). And overall, there is nothing in the record which raises a genuine dispute of material
17 fact that Manglicmot knew plaintiff faced “a substantial risk of serious harm” but “disregard[ed]
18 that risk by failing to take reasonable steps to abate it.” *Farmer*, 511 U.S. at 837. Accordingly,
19 Manglicmot’s motion for summary judgment is GRANTED.

20 B. RN Anudokem

21 Plaintiff contends that Anudokem purposefully failed to process plaintiff’s prescription for
22 Tylenol, even though he was prescribed this medication at the hospital. (ECF No. 26 at 19.) He
23 also argues that Anudokem was required to document the medication in his health care record and
24 notify his primary care provider of any immediate medication or follow-up requirements. (*Id.*)
25 He contends that Anudokem failed to process the prescription because she was angry that plaintiff
26 spoke back to her. (*Id.*) Plaintiff has not shown evidence precluding summary judgment.

27 The medical records from plaintiff’s visit with Anudokem show that she entered “Tylenol
28 for pain” into plaintiff’s treatment plan. (Gieschen Decl., Ex. F.) In his opposition to the Motion,

1 plaintiff acknowledges that Anudokem put the Tylenol prescription in the system, but he argues
2 that she was required, under prison policy, to notify the primary care provider of any “immediate
3 medication or follow-up requirements.” (ECF No. 26 at 24.) As previously explained, there is no
4 Section 1983 liability for violating a prison policy unless doing so also violates a specific
5 constitutional right. *See Lockyer*, 568 F.3d at 1070. In addition, there is nothing in the record
6 showing that the Tylenol prescription was needed as an “immediate medication” or contained any
7 “follow-up requirements”. In fact, plaintiff provides no records pertaining to his August 17, 2018
8 visit to the hospital, at which the Tylenol was prescribed. These facts do not suggest that
9 Anudokem’s care was carried out with deliberate indifference to plaintiff’s needs.

10 Plaintiff also appears to link the fact that he did not receive Tylenol for 30 days with the
11 fact that Anudokem called him a “smart ass” and told him he would not receive his pain
12 medication. (*Id.*) However, plaintiff acknowledges that Anudokem was not in charge of
13 dispensing his medication, and he agrees that Anudokem did input Tylenol into his treatment plan.
14 (*See* ECF No. 26 at 18-19.) Thus, insofar as he did not receive his Tylenol medication, plaintiff
15 fails to provide competent evidence showing that it was due to Anudokem’s actions. To the extent
16 plaintiff is arguing that Anudokem was involved in a conspiracy to deny him Tylenol with the
17 prison employee in charge of dispensing his medication, that argument is speculative and
18 insufficient to raise a triable issue of fact. *See Nelson, supra*, 83 F.3d at 1081–82.

19 Finally, plaintiff argues that Anudokem displayed deliberate indifference when she called
20 him a “smart ass” and told him he would not get his medication. While plaintiff found her
21 comment offensive, he has not shown that Anudokem failed to respond to his medical needs
22 resulting in harm to him. Such a showing is necessary to state a claim of deliberate indifference.
23 *See McGuckin*, 974 F.2d at 1060 (explaining that in order for deliberate indifference to be
24 established, “there must be a purposeful act or failure to act on the part of the defendant” and
25 resulting harm.) There is simply nothing in the record to show that Anudokem prevented plaintiff
26 from receiving his Tylenol medication, or conspired with any other prison staff to prevent him
27 from receiving that medication. In sum, plaintiff has not shown evidence to preclude summary
28 judgment as to Anudokem. For these reasons, Anudokem’s motion for summary judgment is

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


GRANTED.⁵

CONCLUSION

Because plaintiff fails to show a genuine dispute of material fact, defendants' motion for summary judgment (ECF No. 22), is GRANTED. The Clerk shall enter judgment in favor of defendants, terminate ECF No. 22, and close the file.

IT IS SO ORDERED.

Dated: August 25, 2021


HAYWOOD S. GILLIAM, JR.
United States District Judge

United States District Court
Northern District of California

⁵ The Court need not address defendants' arguments as to qualified immunity because the Court has found that plaintiffs' constitutional rights were not violated.