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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA

6
7 VERNON DOWDY,
8 Plaintiff,

9 v.

10 REGISTERED NURSE NAM, et al.,
11 Defendants.

Case No. 5:21-cv-05609 EJD (PR)

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

(Docket No. 32)

United States District Court
Northern District of California

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14 Plaintiff, a state prisoner proceeding *pro se*, filed this civil rights action pursuant to
15 42 U.S.C. § 1983 against prison officials at the Salinas Valley State Prison (“SVSP”). Dkt.
16 No. 1.¹ The Court found the complaint stated cognizable claims against SVSP nurses Nam
17 Tran, Frances Ssempebwa,² and P. Guillen³ for violation of Plaintiff’s constitutional right
18 to adequate medical care under the Eighth Amendment. Dkt. No. 8 at 2. The Court
19 ordered service of the complaint on Defendants and ordered Defendants to file a motion
20 for summary judgment or other dispositive motion. *Id.* at 3. Before Defendants filed their
21 motion for summary judgment, Plaintiff’s claim against nurse Tran was dismissed based
22 on counsel’s formal suggestion of death. Dkt. No. 31, citing Dkt. Nos. 25, 25-1.

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25 ¹ All page references herein are to the Docket pages shown in the header to each document
and brief cited, unless otherwise indicated.

26 ² Plaintiff identified this Defendant as “Frances,” Dkt. No. 1 at 6-7 ¶ 18, and the Court
accordingly ordered service of the complaint on “Frances,” Dkt. No. 8 at 2. The parties now agree
27 that this Defendant is Francis Ssempebwa. Dkt. No. 32 at 5; see also Dkt. No. 32-10 at 12 (at
deposition, Plaintiff uses male pronouns for nurse Ssempebwa).

28 ³ In his declaration, this Defendant identifies him/herself as “P. Guillen.” Dkt. No. 32-3.

1 Defendants⁴ filed a motion for summary judgment on the grounds that Plaintiff
2 received constitutionally adequate medical care, they are entitled to qualified immunity,
3 and Plaintiff’s claim for damages against Defendants in their official capacity are barred
4 by the Eleventh Amendment. Dkt. No. 32 at 6. Plaintiff filed opposition. Dkt. No. 43.
5 Defendants replied. Dkt. No. 45.

6 For the reasons set forth below, Defendants’ motion for summary judgment on the
7 grounds that they were not deliberately indifferent to Plaintiff’s serious medical needs is
8 GRANTED.

9
10 **DISCUSSION**

11 **I. Statement of Facts**^{5 6}

12 **A. Overview**

13 On May 17, 2020, Plaintiff injured his right hand by slamming it down on a
14 concrete table during a card game. Dkt. No. 32-10 at 8-9. The next morning, May 18,
15 2020, the hand was swollen and painful. Id. at 7. Plaintiff sought and began receiving
16 medical care the same day, May 18, 2020. Dkt. No. 32-1 at 3 ¶ 9; Dkt. No. 32-10 at 9-10;
17 id. at 10 (Plaintiff testified that when he informed prison staff of his condition “[s]he
18 immediately called medical. And I was in medical five minutes later, ten minutes later.”).
19 Plaintiff’s complaint incorrectly alleges this date as May 8, 2020. Dkt. No. 1 at 5.
20 Plaintiff agreed in his deposition that May 18, 2020 was the day he first sought medical
21 attention for the injury he had sustained the previous day. Dkt. No. 32 at 7 n.1; Dkt. No.
22 32-10 at 7, 9-10, 23-24. Thus, Plaintiff’s allegation in his complaint that his broken hand
23 was ignored from May 8 to May 20, 2020, Dkt. No. 1 at 8-9 ¶ 22, is inaccurate.

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26 ⁴ Unless otherwise noted, the Court’s use of the term “Defendants” refers to Defendants
Ssempebwa and Guillen.

27 ⁵ The following facts are not disputed unless otherwise stated.

28 ⁶ The undisputed factual record of the nursing care allegedly provided by deceased
Defendant Nam Tran is included in the Statement of Facts, to provide a coherent narrative.

1 There are other instances in which Plaintiff’s allegations flatly contradict his
2 medical history and the declarations of his medical providers. Some of these
3 contradictions have been reconciled by the parties; others have not.

4 As for the hand injury, it was ultimately determined that Plaintiff had fractured the
5 lower part of his pinky finger. Dkt. No. 32-1 at 4 ¶ 12. Over the next six months, Plaintiff
6 received care from several nurses and physicians at SVSP, as well as an off-site orthopedic
7 surgeon. Id. at 3-7.

8 Plaintiff alleges that the Defendant nurses each failed to provide adequate pain
9 medication in the days shortly after his injury. Dkt. No. 1 at 4-8. In this time frame,
10 Plaintiff was simultaneously experiencing pain of withdrawal from a drug addiction,
11 although the record contains contradictory evidence of whether and to what extent Plaintiff
12 made this clear to his medical providers. Dkt. No. 1 at 9-10 ¶ 24 (complaint alleges
13 Defendants humiliated Plaintiff for his drug addiction); Dkt. No. 32-6 at 17 (Plaintiff’s
14 May 22, 2020 request for health care services for pain from broken finger as well as drug
15 withdrawal); Dkt. No. 32-10 at 13 (Plaintiff’s deposition testimony that he did not
16 specifically ask for medical intervention for drug withdrawal); Dkt. No. 32-11 at 6
17 (Plaintiff’s grievance dated May 21, 2020 complained of inadequate pain medication for
18 his broken finger and also drug withdrawal). The care and pain medication that each of the
19 Defendants did or did not provide to Plaintiff must be seen in the comprehensive context
20 of the ongoing medical care Plaintiff received.

21 **B. Plaintiff’s Medical History**

22 Defendants’ records of Plaintiff’s medical history indicate he received medical care
23 at SVSP twice on May 18, 2022. Dkt. No. 32-1 at 10-11. The first time, at about noon,
24 Plaintiff was seen by a registered nurse who consulted with a physician (Dr. Paredes) who
25 in turn ordered an X-ray of Plaintiff’s hand. Id. at 3 ¶ 9; Dkt. No. 32-10 at 10-11; see also
26 Dkt. No. 1 at 5-6 ¶ 16 (Plaintiff’s complaint describing his first encounter with SVSP
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1 nurse). The nurse addressed Plaintiff’s pain by “utilizing nurse’s protocol for Tylenol.”⁷
2 Dkt. No. 32-1 at 3 ¶ 9. Plaintiff has repeatedly alleged this nurse was Defendant Tran.
3 Dkt. No. 1 at 5 ¶ 5 (complaint); Dkt. No. 32-10 at 11, 19, 20-21 (deposition testimony);
4 Dkt. No. 43 at 2 (response to motion for summary judgment); see also Dkt. No. 32-11 at 6
5 (Plaintiff’s grievance submitted May 21, 2020). However, Defendants have represented to
6 the Court that, to the best of their knowledge, Defendant Tran died on October 7, 2019.
7 Dkt. No. 25 at 1; Dkt. No. 25-1 at 2 ¶ 4. The medical records submitted by Defendants
8 identify a nurse named Hanhthuc Huynh as the person who provided nursing care to
9 Plaintiff on May 18, 2020. Dkt. No. 32-6 at 7, 15.

10 Plaintiff’s medical records indicate that a physician (Dr. Kumar), ordered
11 acetaminophen 650 mg for Plaintiff’s pain, up to six doses per day. Dkt. No. 32-1 at 3 ¶ 9
12 (Dr. Bright’s Declaration); Dkt. No. 32-6 at 7, 15 (Plaintiff’s pharmacy and medication
13 records show an order for medication entered on May 18, 2020 by Hanhthuc Huynh, RN
14 for Responsible Provider, Kim Kumar, CME). This dosage appears to be somewhat higher
15 than the 500 mg acetaminophen dosage in commercially available Tylenol. See
16 <https://www.tylenol.com/products/headache-muscle> .

17 Consistent with Defendants’ account of physician oversight, Plaintiff states that the
18 nurse he saw on May 18, 2020 told Plaintiff she needed to call the doctor to see what
19 needed to be done, left for a few minutes, and came back with information that he would
20 receive an X-ray and Tylenol for pain. Dkt. No. 1 at 6 ¶ 16. Also according to Plaintiff,
21 this nurse told him ““look, we are not fools, the doctor and I know that you broke your
22 hand so that you can get drugs from us, I can believe that you drugs addicts would go this
23 far to get a fix.”” Id. Plaintiff alleges he begged for help, and to be sent to the Correction
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26 ⁷ The record before the Court refers to this medication by both its commercial name
27 (Tylenol) and the two interchangeable names for its active ingredient (acetaminophen, also
28 known as paracetamol). See <https://en.wikipedia.org/wiki/Paracetamol> ;
<https://www.ncbi.nlm.nih.gov/books/NBK482369/> . The Court will use the terms for the
medication as they appear in the record but notes that they are one and the same
medication.

1 Treatment Center. Id. The nurse replied ““all you’re getting from me is Tylenol, go and
2 find your fix somewhere e[ls]e.”” Id.

3 Plaintiff alleges he was in severe pain for the next couple of days. Id. at 6 ¶ 17.
4 Plaintiff alleges that Defendants were deliberately indifferent to his actual medical needs,
5 and they were humiliating him for his drug addiction instead of providing medical
6 treatment for his broken hand. Id. at 9-10 ¶ 24.

7 According to his medical records, at about 7:25 p.m. on May 18, 2020 Plaintiff
8 again asked for medical assistance and a Licensed Vocational Nurse (LVN) named
9 Ramirez came to his cell to assess him. Dkt. No. 32-1 at 4 ¶ 10. Ramirez reported to
10 Defendant Ssempebwa, who is a registered nurse, that Plaintiff had vital signs within
11 normal range. Id. Defendant Ssempebwa determined that Dr. Paredes and Dr. Kumar had
12 already assessed Plaintiff’s pain and hand condition, and Plaintiff did not need emergency
13 care. Id. Defendant Ssempebwa himself declares that at about 7:25 p.m. on May 18, 2020,
14 LVN Ramirez responded to Plaintiff’s man-down call, took Plaintiff’s vital signs, assessed
15 Plaintiff, and called Defendant Ssempebwa. Dkt. No. 32-2 at 4 ¶ 10. Plaintiff was “alert,
16 oriented, and conscious with normal breathing, normal skin moisture and temperature,
17 normal capillary refill, and normal radial pulse. [Plaintiff’s] vital signs also showed within
18 normal range.” Id. at 4-5 ¶ 10. Defendant Ssempebwa determined that Plaintiff was not in
19 medical emergency, and his “swollen right hand and associated pain was already addressed
20 by physicians Paredes and Kumar with an order for x-rays and a prescription[] for pain-
21 management medications.” Id. at 5 ¶ 10.

22 Plaintiff alleges that at noon on May 19, 2020 he called “man down.” Dkt. No. 1 at
23 7 ¶ 20. Plaintiff alleges Defendant Guillen responded and told Plaintiff: “They already
24 saw you this morning and they didn’t give you any drugs, what makes you think I am
25 going to give you any?” Id. at 8 ¶ 20; see also Dkt. No. 32-10 at 24 (Plaintiff’s deposition
26 testimony that the encounter on May 19, 2020 was the only time he sought medical
27 attention from Defendant Guillen). Plaintiff alleges he was still in severe pain. Dkt. No. 1
28 at 8 ¶ 20. Defendants do not have a record of this alleged interaction in Plaintiff’s medical

1 history. See Dkt. No. 32-1 at 4. Defendant Guillen has submitted a Declaration in which
2 he states he was assigned to work a different building on May 19, 2020, and furthermore
3 does not recall this interaction with Plaintiff. Dkt. No. 32-3 at 4 ¶ 13. Defendant Guillen
4 does not recall directing Plaintiff to take Tylenol, but nevertheless maintains that such a
5 response would have been appropriate because Plaintiff’s doctor was informed of a likely
6 fracture and had already ordered an X-ray and pain medication. Id. There is no record of
7 any other relevant care that Defendant Guillen provided to Plaintiff related to the broken
8 finger, or pain medication for the broken finger. Dkt. No. 32-1 at 3-7; see also Dkt. No.
9 32-10 at 24 (Plaintiff’s deposition testimony that he received no other medical treatment
10 from Defendant Guillen). In his response to Defendants’ motion for summary judgment,
11 Plaintiff continues to maintain that the alleged encounter of May 19, 2020 happened as
12 alleged in his complaint. Dkt. No. 43 at 2.

13 On May 20, 2020, an X-ray was taken. Dkt. No. 32-1 at 4 ¶ 12. The X-ray showed
14 a comminuted (i.e., multiple) fracture at the lower part of Plaintiff’s pinky finger. Id. Dr.
15 Paredes made an urgent request for orthopedic surgery services, which was approved, and
16 gave Plaintiff a 30-day prescription for a different pain medication (ibuprofen, also known
17 as Motrin). Id. at 4-5 ¶ 12. Another nurse (Shiple) changed Plaintiff’s splint and consulted
18 with another physician (Dr. Lam) who ordered a one-time dose of Tylenol with codeine
19 and continuation of other pain medications (Tylenol and Motrin). Id. at 5 ¶ 13. Plaintiff
20 testified he was satisfied with the pain medication he received from the doctor on May 20,
21 2020. Dkt. No. 32-10 at 18.

22 On May 21, 2020, Dr. Paredes informed Plaintiff of the plan to have an orthopedic
23 surgeon evaluate Plaintiff’s injury. Dkt. No. 32-1 at 5 ¶ 14.

24 Plaintiff alleges that “three days after Plaintiff saw Defendant RN Nam,” he called
25 “man down” which is an urgent request for medical attention. Dkt. No. 1 at 6 ¶ 18. This
26 would presumably have occurred on May 21, 2020 but the date as well as the event are in
27 question. Plaintiff alleges Defendant Ssempebwa responded to Plaintiff’s “man down,”
28 but did not take Plaintiff’s vital signs or examine Plaintiff’s hand. Id. at 6-7 ¶ 18. Plaintiff

1 alleges Defendant Ssempebwa said ““Oh, you are the guy who broke his hand on purpose[]
2 to try and get med to get high? Yeah you ain’t getting anything, go back to your cell.”” Id.
3 at 7 ¶ 18. However, Plaintiff’s medical history submitted by Defendants does not record
4 any care provided by Defendant Ssempebwa on May 21, 2020. Dkt. No. 32-1 at 5. Nor
5 does Defendant Ssempebwa’s Declaration recount any care provided by him on May 21,
6 2020. Dkt. No. 32-2. It is plausible that Plaintiff’s allegation may be a mis-dated,
7 duplicative reference to the role Defendant Ssempebwa played in responding to Plaintiff’s
8 “man down” call the evening of May 18, 2020. Plaintiff appears to concede as much in his
9 response to the motion for summary judgment, Dkt. No. 43 at 2, as well as his deposition
10 testimony, Dkt. No. 32-10 at 21-22.

11 On May 22, 2020, Plaintiff submitted a Health Care Services Request Form in
12 which he stated he was “in tremendous pain. Tylenol does not work plus I’m having
13 withdrawals from her[oi]n. I need something for the pain its driving me crazy.” Dkt. No.
14 32-6 at 17; Dkt. No. 32-1 at 5 ¶ 15. Defendant Ssempebwa reviewed the Request on May
15 23, 2020. Dkt. No. 32-6 at 17; Dkt. No. 32-1 at 5 ¶ 15; Dkt. No. 32-2 at 5 ¶ 15. An office
16 technician scheduled Plaintiff for a face-to-face visit the next business day, May 26, 2020,
17 but Plaintiff refused to see the nurse at the scheduled time. Dkt. No. 31-1 at 5 ¶ 15. There
18 is no allegation nor record of any other relevant care that Defendant Ssempebwa provided
19 to Plaintiff related to pain medication. Dkt. No. 32-1 at 3-7; Dkt. No. 32-2.

20 This concludes the record of relevant medical care provided by Defendants.
21 Plaintiff continued to receive medical care from other providers for his broken finger,
22 including pain medication. The Court summarizes the record of Plaintiff’s continuing
23 medical treatment for his broken finger, to provide overall context.

24 On June 3, 2020, Plaintiff was evaluated at San Joaquin General Hospital by an
25 orthopedic surgeon (Dr. Dowbak) who determined that Plaintiff’s finger was in a fairly
26 good alignment, examined Plaintiff’s X-ray, ordered a CT scan, gave Plaintiff another
27 splint, ordered exercises, and prescribed another pain medication (Tramadol) for two
28 weeks. Dkt. No. 32-1 at 5 ¶ 16. When Plaintiff returned to SVSP, another nurse evaluated

1 him and noted: (1) the plan of care was for Plaintiff to see his primary care provider within
2 5 days; and (2) Plaintiff had no actual or suspected pain. Id.

3 On June 8, 2020, Plaintiff had a telemedicine appointment with Dr. Paredas. Id. at
4 5 ¶ 18. Dr. Paredes ordered another pain medication (Mobic⁸) and advised Plaintiff to also
5 finish his previous pain prescription (tramadol). Id. Dr. Paredes made an urgent request
6 for another CAT scan, which was approved by Dr. Kumar. Id. at 6 ¶ 18. The CAT scan
7 was performed on June 18, 2020. Id. at 6 ¶ 19.

8 On September 30, 2020, Plaintiff was seen off-site by the orthopedic surgeon, Dr.
9 Dowbak. Id. at 6 ¶ 20. Dr. Dowbak ordered continued use of volar splint, exercises, and
10 pain medication (tramadol). Id. An SVSP nurse evaluated Plaintiff when he returned to
11 the prison. Id. at 6 ¶ 21. This nurse noted that Plaintiff had no actual or suspected pain. Id.

12 On October 6, 2020, Plaintiff had another telemedicine appointment with Dr.
13 Paredes. Id. at 6 ¶ 22. According to Dr. Paredes's notes, Plaintiff was in possession of
14 active medication to manage pain. Id.

15 On November 18, 2020, Plaintiff was seen off-site for a final time by Dr. Dowbak.
16 Id. at 6 ¶ 23. Dr. Dowbak prescribed Motrin. Id. at 7 ¶ 23. On his return to SVSP,
17 Plaintiff was seen by an SVSP nurse who noted that Plaintiff had no actual or suspected
18 pain. Id. at 7 ¶ 24.

19 On December 9, 2020, Plaintiff was seen by his primary care physician, Dr. Saravi
20 (apparently, no longer Dr. Paredes). Id. at 7 ¶ 26. Dr. Saravi assessed that Plaintiff's
21 finger had healed, Plaintiff had normal right hand function, and Plaintiff was cleared to
22 resume normal activities. Id.

23 **C. Plaintiff's Medication Records**

24 Of relevance to Plaintiff's claims against Defendants, Plaintiff's medical history
25 includes records of three separate medications provided to him between May 18, 2020 to
26 June 19, 2020. Dkt. No. 32-6 at 13-15.

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28 ⁸ This may be a mis-spelling of the Motrin medication Plaintiff was prescribed by Dr.
Paredes. See Dkt. No. 32-1 at 5 ¶ 13.

1 The medication acetaminophen was first prescribed for Plaintiff on May 18, 2020.
2 Id. at 15. The ordering physician was Kim Kumar, CME. Id. The prescription duration
3 was 3 days. Id. The “Action Personnel” was Hanhthuc Huynh. Id.

4 The medication “acetaminophen-codeine (Tylenol with Codeine #3 oral tablet)”
5 was prescribed for Plaintiff as a one-time, single dose, on May 20, 2020. Id. at 14. The
6 ordering physician was Phuc Lam, P&S. Id. The prescription was entered by Kimberlee
7 Carino, RN. Id.

8 The medication Ibuprofen (Motrin) was first prescribed for Plaintiff on May 20,
9 2020. Id. at 13. The ordering physician was Joseph Paredes P&S. Id. The prescription
10 was to continue with a “Stop Date” of June 8, 2020. Id. The “Action Personnel” was
11 Glenn Shiple, RN, and also Thanh Nguyen, Pharm. Id. On June 8, 2020, the prescription
12 was extended to June 19, 2020 by Dr. Paredes. Id. The “Action Personnel” for this
13 extended prescription was Joseph Paredes P&S. Id.

14 **II. Summary Judgment**

15 Summary judgment is proper where the pleadings, discovery and affidavits show
16 that there is “no genuine dispute as to any material fact and the movant is entitled to
17 judgment as a matter of law.” Fed. R. Civ. P. 56(a). A court will grant summary judgment
18 “against a party who fails to make a showing sufficient to establish the existence of an
19 element essential to that party’s case, and on which that party will bear the burden of proof
20 at trial . . . since a complete failure of proof concerning an essential element of the
21 nonmoving party’s case necessarily renders all other facts immaterial.” Celotex Corp. v.
22 Catrett, 477 U.S. 317, 322-23 (1986). A fact is material if it might affect the outcome of
23 the lawsuit under governing law, and a dispute about such a material fact is genuine “if the
24 evidence is such that a reasonable jury could return a verdict for the nonmoving party.”
25 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

26 Generally, the moving party bears the initial burden of identifying those portions of
27 the record which demonstrate the absence of a genuine issue of material fact. See Celotex
28 Corp., 477 U.S. at 323. Where the moving party will have the burden of proof on an issue

1 at trial, it must affirmatively demonstrate that no reasonable trier of fact could find other
2 than for the moving party. But on an issue for which the opposing party will have the
3 burden of proof at trial, the moving party need only point out “that there is an absence of
4 evidence to support the nonmoving party’s case.” Id. at 325. If the evidence in opposition
5 to the motion is merely colorable, or is not significantly probative, summary judgment may
6 be granted. See Liberty Lobby, 477 U.S. at 249-50.

7 The burden then shifts to the nonmoving party to “go beyond the pleadings and by
8 her own affidavits, or by the ‘depositions, answers to interrogatories, and admissions on
9 file,’ designate specific facts showing that there is a genuine issue for trial.” Celotex
10 Corp., 477 U.S. at 324 (citations omitted). If the nonmoving party fails to make this
11 showing, “the moving party is entitled to judgment as a matter of law.” Id. at 323.

12 The Court’s function on a summary judgment motion is not to make credibility
13 determinations or weigh conflicting evidence with respect to a material fact. See T.W.
14 Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n, 809 F.2d 626, 630 (9th Cir. 1987). The
15 evidence must be viewed in the light most favorable to the nonmoving party, and the
16 inferences to be drawn from the facts must be viewed in a light most favorable to the
17 nonmoving party. See id. at 631. It is not the task of the district court to scour the record
18 in search of a genuine issue of triable fact. Keenan v. Allen, 91 F.3d 1275, 1279 (9th Cir.
19 1996). The nonmoving party has the burden of identifying with reasonable particularity
20 the evidence that precludes summary judgment. Id. If the nonmoving party fails to do so,
21 the district court may properly grant summary judgment in favor of the moving party. See
22 id.; see, e.g., Carmen v. San Francisco Unified School District, 237 F.3d 1026, 1028-29
23 (9th Cir. 2001).

24 **A. Deliberate Indifference Standard**

25 Deliberate indifference to a prisoner’s serious medical needs violates the Eighth
26 Amendment’s proscription against cruel and unusual punishment. See Estelle v. Gamble,
27 429 U.S. 97, 104 (1976). A determination of “deliberate indifference” involves an
28 examination of two elements: the seriousness of the prisoner’s medical need and the nature

1 of the defendant’s response to that need. See McGuckin v. Smith, 974 F.2d 1050, 1059
2 (9th Cir. 1992), overruled in part on other grounds by WMX Technologies, Inc. v. Miller,
3 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc).

4 **1. Serious Medical Need**

5 A “serious” medical need exists if the failure to treat a prisoner’s condition could
6 result in further significant injury or the “unnecessary and wanton infliction of pain.”
7 McGuckin, 974 F.2d at 1059 (citing Estelle, 429 U.S. at 104). The existence of an injury
8 that a reasonable doctor or patient would find important and worthy of comment or
9 treatment; the presence of a medical condition that significantly affects an individual’s
10 daily activities; or the existence of chronic and substantial pain are examples of indications
11 that a prisoner has a serious need for medical treatment. Id. at 1059-60 (citing Wood v.
12 Housewright, 900 F.2d 1332, 1337-41 (9th Cir. 1990)).

13 **2. Deliberate Indifference**

14 A prison official is deliberately indifferent if he knows that a prisoner faces a
15 substantial risk of serious harm and disregards that risk by failing to take reasonable steps
16 to abate it. Farmer v. Brennan, 511 U.S. 825, 837 (1994). The prison official must not
17 only “be aware of facts from which the inference could be drawn that a substantial risk of
18 serious harm exists,” but he “must also draw the inference.” Id. If a prison official should
19 have been aware of the risk, but was not, then the official has not violated the Eighth
20 Amendment, no matter how severe the risk. Gibson, 290 F.3d at 1188.

21 In order for deliberate indifference to be established, therefore, there must be a
22 purposeful act or failure to act on the part of the defendant and resulting harm. See
23 McGuckin, 974 F.2d at 1060; Shapley v. Nevada Bd. of State Prison Comm’rs, 766 F.2d
24 404, 407 (9th Cir. 1985). Additionally, the defendant's actions must be the cause of the
25 injury suffered by the plaintiff. Conn v. City of Reno, 591 F.3d 1081, 1098 (9th Cir.
26 2010), reinstated as modified by 658 F.3d 897 (9th Cir. 2011); see id. at 1098-1102
27 (reversing grant of summary judgment to transporting police officers where children of
28 pre-trial detainee who committed suicide presented evidence that transporting police

1 officers (a) were subjectively aware the decedent was at acute risk of harm (suicide); (b)
2 failed to respond properly to that risk by informing jail officials; and (c) such failure was
3 both the actual and proximate cause of the decedent's suicide once at the jail). A finding
4 that the defendant's activities resulted in "substantial" harm to the prisoner is not
5 necessary, but the existence of serious harm tends to support an inmate's deliberate
6 indifference claims, Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) (citing McGuckin,
7 974 at 1060).

8 Once the prerequisites are met, it is up to the factfinder to determine whether
9 deliberate indifference was exhibited by the defendant. Such indifference may appear
10 when prison officials deny, delay, or intentionally interfere with medical treatment, or it
11 may be shown in the way in which prison officials provide medical care. See McGuckin,
12 974 F.2d at 1062 (delay of seven months in providing medical care during which medical
13 condition was left virtually untreated and plaintiff was forced to endure "unnecessary pain"
14 sufficient to present colorable § 1983 claim). Compare Lolli v. County of Orange, 351
15 F.3d 410, 420-21 (9th Cir. 2003) (applying subjective deliberate indifference test and
16 holding that a jury could infer that correctional officers' failure to provide medical care in
17 response to detainee's extreme behavior, sickly appearance and statements that he was
18 diabetic and needed food demonstrated deliberate indifference); and Clement v. Gomez,
19 298 F.3d 898, 905 (9th Cir. 2002) (jury could find deliberate indifference where officials
20 denied showers and medical attention to inmates who had been exposed to pepper-spray
21 where officials themselves were coughing and gagging and stepped outside for fresh air,
22 and the inmates made repeated requests for attention); with Peralta v. Dillard, 744 F.3d
23 1076, 1083-84 (9th Cir. 2014) (en banc) (jury can be instructed to consider whether
24 medical official lacked necessary resources when determining if medical official was
25 deliberately indifferent with respect to monetary damages).

26 The deliberate indifference standard does not require a showing that the prison
27 official acted with an improper motive, such as an intent to harm; it is enough that the
28 official acted or failed to act despite knowledge of a substantial risk of serious harm.

1 Edmo v. Corizon, 935 F.3d 757, 793 (9th Cir. 2019), reh’g en banc denied by 949 F.3d 489
2 (9th Cir. 2020) (prison doctor exhibited deliberate indifference when he knew of and
3 disregarded an excessive risk to plaintiff’s health by rejecting her request for GCS and then
4 never re-evaluating his decision despite evidence that plaintiff continued to suffer
5 clinically significant distress even though he provided other treatment to plaintiff).

6 “A difference of opinion between a prisoner-patient and prison medical authorities
7 regarding treatment does not give rise to a § 1983 claim.” Franklin v. Oregon, 662 F.2d
8 1337, 1344 (9th Cir. 1981). In order to prevail on a claim involving choices between
9 alternative courses of treatment, a plaintiff must show that the course of treatment the
10 doctors chose was medically unacceptable under the circumstances and that he or she
11 chose this course in conscious disregard of an excessive risk to plaintiff’s health. Toguchi,
12 391 F.3d at 1058. A prison medical officer without expertise in a specific field who denies
13 an inmate appeal for medical care after it was reviewed by two qualified medical officials,
14 does not demonstrate a wanton infliction of unnecessary pain. Peralta, 744 F.3d at 1086-
15 87.

16 A failure to provide treatment because administrative reasons prevented a prisoner
17 from being sent to a non-contracted facility would be a failure to provide treatment for
18 non-medical reasons, which is sufficient to generate a genuine issue of material fact as to
19 deliberate indifference on the part of the doctor failing to treat the patient. Jett, 439 F.3d
20 1097. In deciding whether there has been deliberate indifference to an inmate’s serious
21 medical needs, the court need not defer to the judgment of prison doctors or administrators.
22 Hunt v. Dental Dept., 865 F.2d 198, 200 (9th Cir. 1989). A prison medical officer without
23 expertise in a specific field who denies an inmate appeal for medical care after it was
24 reviewed by two qualified medical officials, does not demonstrate a wanton infliction of
25 unnecessary pain. Peralta, 744 F.3d at 1086-87.

26 **B. Defendant Ssempebwa**

27 Viewing the undisputed evidence in the light most favorable to Plaintiff, he has
28 failed to demonstrate that Defendant Ssempebwa disregarded any of Plaintiff’s serious

1 medical needs in the care he provided to Plaintiff. Defendant Ssempebwa: (1) received
2 LVN Ramirez’s report of Plaintiff’s vital signs and physical condition the evening of May
3 18, 2020 and assessed that Plaintiff was not in a medical emergency and his pain
4 medication had already been determined by physicians Paredes and Kumar, Dkt. No. 32-2
5 at 4-5 ¶ 10; (2) allegedly responded to another alleged “man down” call from Plaintiff on
6 or about May 21, 2020 and allegedly denied additional pain medication because he did not
7 want to provide anything for Plaintiff to “get high,” Dkt. No. 1 at 7 ¶ 18; and (3) reviewed
8 Plaintiff’s Health Care Services Request Form on May 23, 2020, and which resulted in
9 scheduling a face-to-face visit for May 26, 2020, at which time Plaintiff refused the visit.
10 Dkt. No. 32-6 at 17; Dkt. No. 32-1 at 5 ¶ 15.

11 Defendants implicitly acknowledge that Plaintiff’s broken finger was a serious
12 medical need, for which Plaintiff received medical attention from numerous medical
13 providers. Dkt. No. 32 at 14-16. Defendant Ssempebwa’s role in providing that care to
14 Plaintiff was somewhat limited relative to the overall effort. When Defendant Ssempebwa
15 assessed Plaintiff’s condition the evening of May 18, 2020, Plaintiff had already been
16 evaluated by Dr. Paredes and Dr. Kumar. The physicians had already prescribed pain
17 medication. Defendant Ssempebwa determined that Plaintiff was not in a medical
18 emergency such as might justify further immediate action. At that point in time, there
19 were no facts from which the inference of a substantial risk of serious harm could be
20 drawn, cf. Farmer, 511 U.S. 837, because Plaintiff was not in a medical emergency and his
21 pain medications had already been addressed by his physicians. Indeed, Plaintiff has failed
22 to demonstrate that Defendant Ssempebwa, as a nurse, would have had authority to
23 unilaterally change or override the pain medication prescribed by the two physicians.
24 Plaintiff’s medical history demonstrates that all his pain medications were prescribed by
25 physicians, except that his nurses were apparently authorized to provide Tylenol. Dkt. No.
26 32-1 at 3 ¶ 9 (nurse addressed Plaintiff’s pain by “utilizing nurse’s protocol for Tylenol”);
27 id. (Dr. Kumar ordered acetaminophen 650 mg on May 18, 2020); Dkt. No. 32-6 at 7, 15
28 (same); Dkt. No. 32-1 at 4-5 ¶ 12 (Dr. Paredes ordered ibuprofen on May 20, 2020); id. at

1 5 ¶ 13 (Dr. Lam ordered one-time dose of Tylenol with codeine on May 20, 2020); id. at 5
2 ¶ 16 (Dr. Dowbak ordered Tramadol on June 3, 2020); id. at 5 ¶ 18 (Dr. Paredes on June 8,
3 2020); id. at 6 ¶ 20 (Dr. Dowbak on September 30, 2020); id. at 7 ¶ 23 (Dr. Dowbak on
4 November 18, 2020).

5 Lacking authority to prescribe a different pain medication, Defendant Ssempebwa
6 cannot have caused Plaintiff’s alleged injury of having inadequate pain medication. See
7 Conn., 591 F.3d at 1098 (defendant’s actions must be the cause of the injury suffered by
8 plaintiff). Defendant Ssempebwa would have needed to consult with the physicians about
9 the pain medication, had he determined that Plaintiff was in a medical emergency the
10 evening of May 18, 2020. Such was not the case. Plaintiff was not in a state of medical
11 emergency. Plaintiff was next seen by his physicians on May 20, 2020. His physicians
12 adjusted Plaintiff’s pain medications at that time. Plaintiff’s disagreement with the nursing
13 care provided by Defendant Ssempebwa on May 18, 2020 does not give rise to a § 1983
14 claim. Franklin, 662 F.2d at 1344.

15 Plaintiff’s allegations about Defendant Ssempebwa’s alleged response to Plaintiff’s
16 “man down” call on or about May 21, 2020, might actually be referring to the same event
17 of May 18, 2020, since Defendant Ssempebwa does not recall a separate event on or about
18 May 21, 2020 and since Plaintiff’s medical history does not recite such an event. Plaintiff
19 himself seems to have conceded as much in his response to the motion for summary
20 judgment, Dkt. No. 43 at 2, as well as his deposition testimony, Dkt. No. 32-10 at 21-22.

21 Even if the Court presumes that Defendant Ssempebwa responded to another “man
22 down” call on May 21, 2020, Plaintiff’s medical history shows that Plaintiff’s pain
23 medication had been adjusted by his physicians as of May 20, 2020. Once again,
24 Defendant Ssempebwa would not have had authority to change or override the physicians’
25 prescriptions, nor any clear basis to recommend further changes. This allegation, alone or
26 in combination with the previous allegation, does not give rise to a § 1983 claim.
27 Franklin, 662 F.2d at 1344.

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1 Finally, Defendant Ssempebwa’s review of Plaintiff’s Health Care Services Request
2 Form on May 23, 2020 does not give rise to any § 1983 claim. Nothing in the record
3 indicates that Defendant Ssempebwa’s review resulted in any harm to Plaintiff.
4 McGuckin, 974 F.2d at 1060. Plaintiff himself refused the nursing visit that was scheduled
5 to occur on May 26, 2020.

6 There is no evidence Defendant Ssempebwa made decisions that were likely to
7 increase the risk of serious harm to Plaintiff, let alone that he *knew* he was increasing such
8 a risk. Plaintiff has also failed to demonstrate that Defendant Ssempebwa’s actions caused
9 a substantial risk of serious harm to Plaintiff. There is no evidence Defendant Ssempebwa
10 could have provided - or even had authority to provide - different pain medication that
11 would actually have better addressed Plaintiff’s pain. There is also no evidence that
12 Plaintiff’s asserted harms were sufficiently serious to implicate the Eighth Amendment.
13 Consequently, there is no triable factual issue from which a reasonable fact-finder could
14 conclude that Defendant Ssempebwa knowingly disregarded a substantial risk of serious
15 harm to Plaintiff in any of the care he provided to Plaintiff. Conn, 591 F.3d at 1098;
16 Franklin, 662 F.2d at 1344.

17 Viewing the record before the Court in the light most favorable to Plaintiff, he has
18 not shown a triable issue on the merits of his claim that Defendant Ssempebwa failed to
19 provide adequate pain medication in the course of providing nursing care to Plaintiff.
20 Keenan, 91 F.3d at 1279. Plaintiff has failed to show a genuine issue of material fact for
21 trial. Defendants’ motion for summary judgment on Plaintiff’s claim against Defendant
22 Ssempebwa will be GRANTED.

23 **C. Defendant Guillen**

24 Viewing the undisputed evidence in the light most favorable to Plaintiff, he has
25 failed to demonstrate that Defendant Guillen disregarded any of Plaintiff’s serious medical
26 needs in the care he allegedly provided to Plaintiff. Plaintiff’s allegations against
27 Defendant Guillen solely relate to Defendant Guillen’s alleged response to a “man down”
28 call from Plaintiff on May 19, 2020. Dkt. No. 1 at 7-8 ¶ 20. Defendant Guillen does not

1 recall this alleged event, was assigned to a different building that day, and the event is not
2 described in Plaintiff’s medical history. Dkt. No. 32-3 at 4 ¶ 13. Even if the Court
3 presumes that the interaction occurred as alleged by Plaintiff on May 19, 2020, Defendant
4 Guillen declares that the response allegedly provided to Plaintiff would have been
5 appropriate because Plaintiff’s physicians had already prescribed pain medication. Dkt.
6 No. 32-3 at 4 ¶ 13. Plaintiff has failed to show that Defendant Guillen was the cause of
7 any actual harm to Plaintiff, even if Defendant Guillen really did respond to a “man down”
8 call on May 19, 2020 as alleged by Plaintiff. See Conn, 591 F.3d at 1098; McGuckin, 974
9 F.2d at 1060.

10 Plaintiff has failed to come forward with significantly probative evidence sufficient
11 to convince a reasonable fact-finder that Plaintiff’s alleged May 19, 2020 encounter with
12 Defendant Guillen even happened. See Keenan, 91 F.3d at 1279. Any legal analysis of
13 Defendant Guillen’s alleged deliberate indifference during the apparently-imagined
14 encounter of May 19, 2020, would be purely speculative and pointless.

15 There is no significantly probative evidence in this record that Defendant Guillen
16 made any decisions that were likely to increase the risk of serious harm to Plaintiff, let
17 alone that he *knew* he was increasing such a risk. As with Defendant Ssempebwa, there is
18 no evidence that Defendant Guillen could have provided different pain medication that
19 would actually have better addressed Plaintiff’s pain. There is also no evidence that
20 Plaintiff’s asserted harms were sufficiently serious to implicate the Eighth Amendment.
21 Consequently, there is no triable factual issue from which a reasonable fact-finder could
22 conclude that Defendant Guillen knowingly disregarded a substantial risk of serious harm
23 to Plaintiff. Conn, 591 F.3d at 1098; Franklin, 662 F.2d at 1344.

24 Viewing the record before the Court in the light most favorable to Plaintiff, he has
25 not shown a triable issue on the merits of his claim that Defendant Guillen failed to
26 provide adequate pain medication in the course of providing nursing care to Plaintiff.
27 Keenan, 91 F.3d at 1279. Plaintiff has failed to show a genuine issue of material fact for
28

1 trial. Defendants' motion for summary judgment on Plaintiff's claim against Defendant
2 Guillen will be GRANTED.

3 **D. Remaining Defenses**

4 Defendants assert in the alternative that they are entitled to qualified immunity from
5 liability for civil damages. Dkt. No. 32 at 17-18. Because the Court will grant summary
6 judgment on Plaintiff's Eighth Amendment claims against each of the Defendants on other
7 grounds as discussed above, the Court does not reach Defendants' qualified immunity
8 argument. For the same reason, the Court need not reach Defendants' alternative argument
9 that the Eleventh Amendment bars official-capacity claims for damages against them. Dkt.
10 No. 32 at 18.

11

12 **CONCLUSION**

13 For the reasons stated above, Defendant's motion for summary judgment is
14 **GRANTED**. Dkt. No. 32. Plaintiff's claims against Defendants Ssempebwa and Guillen
15 are **DISMISSED** with prejudice.

16 The Clerk shall enter judgment and close the file.

17 This order terminates Docket No. 32.

18 **IT IS SO ORDERED.**

19 **Dated:** May 11, 2023

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EDWARD J. DAVILA
United States District Judge