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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE VENTURA JUAREZ, Plaintiff-Appellant, v. CARMEN BUTTS, CMO; J. RACKLEY, Warden; M. HLAING, Doctor; R. ATIENZA; BHATIA; CHRISTINE MONKS, Defendants-Appellees.	No. 20-17467 D.C. No. 2:15-cv-01996-JAM-DB MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
John A. Mendez, District Judge, Presiding

Submitted November 4, 2022**
San Francisco, California

Before: WALLACE, O'SCANNLAIN, and FERNANDEZ, Circuit Judges.

Plaintiff Jose Juarez, an inmate at the California Health Care Facility in Stockton ("CHCF"), appeals from the district court's entry of summary judgment

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

in favor of Defendants, various medical doctors who work for CHCS. As the facts are known to the parties, we repeat them only as necessary to explain our decision.

I

The district court did not abuse its discretion in concluding Juarez failed to demonstrate "good cause" for a fourth extension of time to object to the magistrate judge's report and recommendation. *See* Fed. R. Civ. P. 6(b)(1). Juarez's third requested extension was filed five months after the magistrate judge issued her recommendation that the district court grant Defendants' motion for summary judgment. In partially granting the third requested extension, the magistrate judge explained that her summary-judgment recommendation "was based largely on [Juarez's] failure to present facts sufficient to show defendants acted with deliberate indifference to his medical care." The magistrate judge advised that Juarez should not "require[] extensive legal research to file objections." And Juarez had the relevant record documents; indeed, he *produced* many of those documents, including his own medical records. Thus, when almost a month later Juarez asked for a fourth extension of "up to 180 days," he flouted not only the magistrate judge's guidance but her admonition that "no further extensions [would] be granted." Juarez submitted no evidence to support his assertion "that during the six months [he] had to complete objections, he ha[d] been unable to obtain legal or other materials through a paging system or other means in order to prepare those

objections." "[U]nder the circumstances," we are not "convinced firmly that the reviewed decision lies beyond the pale of reasonable justification" so as to constitute an abuse of discretion. *See Harman v. Apfel*, 211 F.3d 1172, 1175 (9th Cir. 2000).

II

Juarez fails to develop any argument on the merits of his Eighth Amendment deliberate-indifference claims in his opening brief. Accordingly, any such arguments "are deemed abandoned." *See Acosta-Huerta v. Estelle*, 7 F.3d 139, 144 (9th Cir. 1992).

Even if we were to exercise our discretion to review these claims because they were discussed in the answering brief, *see Brown v. Rawson-Neal Psychiatric Hosp.*, 840 F.3d 1146, 1148–49 (9th Cir. 2016), we would conclude the district court properly granted summary judgment regarding Juarez's Eighth Amendment claims.

To prevail on a deliberate-indifference claim, a prisoner must prove "acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." *See Estelle v. Gamble*, 429 U.S. 97, 106 (1976). The "test for 'deliberate indifference' under the Eighth Amendment" is the "subjective recklessness standard as used in the criminal law." *See Farmer v. Brennan*,

511 U.S. 825, 839–40 (1994). In other words, the alleged tortfeasor must consciously disregard "a substantial risk of serious harm." *Id.* at 839.

Juarez presented no evidence beyond his bare speculation that any Defendant consciously disregarded any such substantial risk. Instead, as the magistrate judge correctly observed, the record is replete with evidence contradicting Juarez's claim. The record demonstrates that Defendants consistently exercised their independent medical judgment, grounded in their assessment of Juarez's medical history and their own personal observations; when treating Juarez, among other things, they prescribed *some* tramadol (though not the amount Juarez asserts he needs), advised Juarez to go to physical therapy, and referred him to an orthopedic surgeon. Juarez's mere disagreement with Defendants' medical judgment is insufficient on its own to sustain his claim. *See Franklin v. State of Or., State Welfare Div.*, 662 F.2d 1337, 1344 (9th Cir. 1981) ("A difference of opinion between a prisoner-patient and prison medical authorities regarding treatment does not give rise to a § 1983 claim."); *Cafasso, U.S. ex. rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1061 (9th Cir. 2011) ("To survive summary judgment, a plaintiff must set forth non-speculative evidence of specific facts, not sweeping conclusory allegations.").

III

Juarez fails to advance any arguments in his opening brief on the merits of his First Amendment retaliation claims. Accordingly, such arguments "are deemed abandoned." *See Acosta-Huerta*, 7 F.3d at 144.

Even if we were to exercise our discretion to review these claims because they were discussed in the answering brief, *see Brown*, 840 F.3d at 1148–49, we would conclude the district court properly granted summary judgment regarding Juarez's First Amendment claims. At the threshold, as the magistrate judge noted, Juarez failed to exhaust his administrative remedies as to his First Amendment claims.

On the merits, we have explained: "Within the prison context, a viable claim of First Amendment retaliation entails five basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2) because of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal." *Rhodes v. Robinson*, 408 F.3d 559, 567–68 (9th Cir. 2005) (footnote omitted).

The record contains no evidence of the second element: causation. *See Brodheim v. Cry*, 584 F.3d 1262, 1271 (9th Cir. 2009) (explaining that retaliatory animus must be a substantial driver of the tortfeasor's conduct). As with his

Eighth Amendment claims, Juarez offers only his bare speculation that any Defendant's actions were substantially driven by a desire to retaliate against Juarez for his protected speech. Juarez's only argument on this point is his assertion that in June 2017 Defendant Dr. Atienza told him, "[T]here is nothing wrong with you and you are not in pain, I will not going to give [*sic*] you anything, I don't care what[] you are doing, if you have a case or whatever, while you are in this building with me you don't have nothing c[o]ming." Given the months-long gap between the alleged statement and the complained-of conduct—Dr. Atienza's October 2017 decision to prescribe *some* tramadol, though not the amount Juarez alleges he needed—the district court properly concluded that no reasonable juror could infer retaliatory animus from Dr. Atienza's ambiguous reference to "a case." As for Defendants Drs. Bhatia and Hlaing, our review of the record confirms the magistrate judge's conclusion, adopted by the district court, that there is "no factual basis" upon which a factfinder could determine either had acted with retaliatory motives.

* * *

The judgment of the district court is **AFFIRMED.**[1]

[1] Juarez's motion "to serve[]" Defendants (Dkt. No. 27) is **GRANTED in part and DENIED as moot in part.** The portion of the motion that seeks permission to "add more pages to [Juarez's] reply brief" is **GRANTED.** The remainder of the motion is **DENIED as moot.** Juarez's declaration for entry of "default" (Dkt. No. 29) is **DENIED.**