

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

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

JOE TOMAS ORCASITAS, JR.,  
CDCR #J-36909,  
  
Plaintiff,  
  
v.  
  
DOCTOR KO, M.D.,  
  
Defendant.

Case No. 21-cv-143-MMA (RBB)  
  
**ORDER DENYING DEFENDANT’S  
MOTION TO DISMISS**  
  
[Doc. No. 8]

Plaintiff Joe Tomas Orcasitas, Jr. (“Plaintiff”), a California inmate proceeding *pro se*, brings this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff alleges that Defendant Dr. Ko (“Defendant”) violated his Eighth Amendment right to adequate medical care. *See* Doc. No. 1 (“Compl.”). Defendant moves to dismiss Plaintiff’s claim pursuant to Federal Rule of Civil Procedure 12(b)(6). *See* Doc. No. 8. Defendant’s motion is accompanied by a certification indicating that Plaintiff was properly served at his current institutional address with copies of the moving papers. *See id.* at 3.<sup>1</sup> Plaintiff has not filed a response in opposition to Defendant’s motion, and the time for doing so

---

<sup>1</sup> All citations to electronically filed documents refer to the pagination assigned by the CM/ECF system.

1 has expired. *See* CivLR 7.1.e.2. For the reasons set forth below, the Court **DENIES**  
2 Defendant’s motion to dismiss.

3 **I. BACKGROUND**<sup>2</sup>

4 Plaintiff alleges that nearly 730 days prior to filing of this complaint, he suffered a  
5 right knee injury while exercising at California State Prison Centinela (“Centinela”).  
6 Compl. at 3. Plaintiff’s knee was extremely swollen and causing him pain. *See id.*  
7 Several days later, the swelling had subsided, but Plaintiff was still experiencing  
8 significant pain. *See id.* Plaintiff sought medical attention to address the injury. *See id.*  
9 Plaintiff explained his pain to Defendant, a Centinela physician, and Defendant asked  
10 Plaintiff to perform several movements while Defendant observed. *See id.* After  
11 discussing the pain and observing Plaintiff’s movements, Defendant directed Plaintiff to  
12 stay off his leg, restrict his movements, and take pain medicine (Ibuprofen) to help  
13 control any pain. *See id.* Plaintiff then explained to Defendant that he previously injured  
14 the same knee in 1987, surgery was performed on his knee that year, and he was  
15 experiencing the same pain and limited range of motion that he experienced at the time of  
16 his previous knee injury. *See id.* Consequently, Plaintiff asked Defendant to perform an  
17 MRI “to verify that no ligaments in [his] knee had been return.” *Id.* According to  
18 Plaintiff, Defendant responded that “M.R.I.’s [sic] are too expensive,” and the service  
19 would not be performed at that time. *Id.* Plaintiff immediately filed a medical grievance  
20 and later filed a government claim. *See id.* at 3–4. Plaintiff is still “suffering daily with  
21 severe, deep, acheing [sic], knee pain,” and he is “walking around with torn, or partially  
22 torn ligaments in [his] right knee” that are undiagnosed because Defendant failed to  
23 perform a “proper medical exam.” *Id.* at 4.

---

24  
25  
26 <sup>2</sup> This description of events is taken from the Complaint and the attached exhibits, and is not to be  
27 construed as findings of fact by the Court. However, because this case comes before the Court on a  
28 motion to dismiss, the Court must accept as true all material allegations in the complaint and must also  
construe the complaint, and all reasonable inferences drawn therefrom, in the light most favorable to  
Plaintiff. *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002).

1 Based on these allegations, Plaintiff brings an Eighth Amendment inadequate  
2 medical care claim against Defendant. Defendant moves to dismiss Plaintiff’s claim for  
3 failure to state a plausible claim upon which relief could be granted. Plaintiff has not  
4 filed a response in opposition to the motion.

5 **II. LEGAL STANDARD**

6 A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the  
7 sufficiency of the complaint. *See Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). A  
8 pleading must contain “a short and plain statement of the claim showing that the pleader  
9 is entitled to relief.” Fed. R. Civ. P. 8(a)(2). However, plaintiffs must also plead  
10 “enough facts to state a claim to relief that is plausible on its face.” Fed. R. Civ. P.  
11 12(b)(6); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard  
12 thus demands more than a formulaic recitation of the elements of a cause of action, or  
13 naked assertions devoid of further factual enhancement. *See Ashcroft v. Iqbal*, 556 U.S.  
14 662, 678 (2009). Instead, the complaint “must contain allegations of underlying facts  
15 sufficient to give fair notice and to enable the opposing party to defend itself effectively.”  
16 *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

17 In reviewing a motion to dismiss under Rule 12(b)(6), courts must assume the truth  
18 of all factual allegations and must construe them in the light most favorable to the  
19 nonmoving party. *See Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337–38 (9th Cir.  
20 1996). The court need not take legal conclusions as true merely because they are cast in  
21 the form of factual allegations. *See Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir.  
22 1987). Similarly, “conclusory allegations of law and unwarranted inferences are not  
23 sufficient to defeat a motion to dismiss.” *Pareto v. FDIC*, 139 F.3d 696, 699 (9th Cir.  
24 1998).

25 Where a plaintiff is appearing *pro se*, the court must construe the pleadings  
26 liberally and afford the plaintiff any benefit of the doubt. *See Thompson*, 295 F.3d at  
27 895; *Karim-Panahi v. L.A. Police Dept.*, 839 F.2d 621, 623 (9th Cir. 1988). In giving  
28 liberal interpretation to a *pro se* complaint, however, the court is not permitted to “supply

1 essential elements of the claim that were not initially pled.” *Ivey v. Bd. of Regents*, 673  
2 F.2d 266, 268 (9th Cir. 1982). “Vague and conclusory allegations of official  
3 participation in civil rights violations are not sufficient to withstand a motion to dismiss.”  
4 *Id.*; *see also Jones v. Cmty. Redevelopment Agency*, 733 F.2d 646, 649 (9th Cir. 1984)  
5 (finding conclusory allegations unsupported by facts insufficient to state a claim under  
6 section 1983). “The plaintiff must allege with at least some degree of particularity overt  
7 acts which defendants engaged in that support the plaintiff’s claim.” *Jones*, 733 F.2d at  
8 649 (internal quotation omitted).

### 9 **III. DISCUSSION**

10 Plaintiff alleges that Defendant violated his Eighth Amendment right to adequate  
11 medical care by acting with deliberate indifference to Plaintiff’s serious medical need, to  
12 wit, a knee injury. *See* Compl. at 4. Defendant filed a motion to dismiss this claim  
13 pursuant to Federal Rule of Civil Procedure 12(b)(6). As noted above, Plaintiff has not  
14 filed an opposition to Defendant’s motion to dismiss.<sup>3</sup>

15 Prisons must provide medical care for their prisoners. *See Estelle v. Gamble*, 429  
16 U.S. 97, 103 (1976). Failure to do so can amount to an Eighth Amendment violation  
17 under 42 U.S.C. § 1983. *See id.* at 105. To succeed on an Eighth Amendment claim for  
18 deficient medical care, a plaintiff must show “deliberate indifference” to his or her  
19 “serious medical needs.” *Id.* at 104. This includes “both an objective standard—that the  
20 deprivation was serious enough to constitute cruel and unusual punishment—and a  
21

---

22  
23 <sup>3</sup> The Ninth Circuit has held a district court may properly grant an unopposed motion to dismiss  
24 pursuant to a local rule where the local rule permits, but does not require, the granting of a motion for  
25 failure to respond. *See generally Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Civil Local Rule  
26 7.1.f.3.c provides: “If an opposing party fails to file the papers in the manner required by Civil Local  
27 Rule 7.1.e.2, that failure may constitute a consent to the granting of a motion or other request for ruling  
28 by the court.” As such, the Court has the option of granting Defendant’s motion to dismiss on the basis  
of Plaintiff’s failure to respond. However, in light of Plaintiff’s *pro se* status and the increasing  
obstacles *pro se* prisoners are facing due to the COVID-19 pandemic, the Court will not use its  
discretion to summarily grant defendant’s motion to dismiss for a failure to respond and will instead  
address the sufficiency of the Complaint.

1 subjective standard—deliberate indifference.” *Snow v. McDaniel*, 681 F.3d 978, 985 (9th  
2 Cir. 2012), *overruled in part on other grounds by Peralta v. Dillard*, 744 F.3d 1076 (9th  
3 Cir. 2014).

#### 4 **A. Objective Standard**

5 First, to satisfy the objective standard, a plaintiff must prove the existence of a  
6 serious medical need. *See Estelle*, 429 U.S. at 104. A serious medical need exists  
7 whenever failure to provide treatment “could result in further significant injury” or cause  
8 “the unnecessary and wanton infliction of pain.” *Jett v. Penner*, 439 F.3d 1091, 1096  
9 (9th Cir. 2006) (internal quotation marks omitted) (quoting *McGuckin v. Smith*, 974 F.2d  
10 1050, 1059 (9th Cir. 1992), *overruled in part on other grounds by WMX Techs., Inc. v.*  
11 *Miller*, 104 F.3d 1133 (9th Cir. 1997) (en banc)). “Indications that a plaintiff has a  
12 serious medical need include ‘the existence of an injury that a reasonable doctor or  
13 patient would find important and worthy of comment or treatment; the presence of a  
14 medical condition that significantly affects an individual’s daily activities; or the  
15 existence of chronic and substantial pain.’” *Colwell v. Bannister*, 763 F.3d 1060, 1066  
16 (9th Cir. 2014) (quoting *McGuckin*, 974 F.2d at 1059–60).

17 Plaintiff twisted his knee, which caused him to suffer from severe pain, restricted  
18 movement, and swelling. *See Compl.* at 3. Plaintiff asserts he “could barely walk at the  
19 time.” *Id.* Based upon these allegations, the Court finds that Plaintiff pleads specific  
20 facts sufficient to satisfy the objective requirement for a serious medical need under the  
21 Eighth Amendment.

#### 22 **B. Subjective Standard**

23 Second, to satisfy the subjective standard, “a prison official must have a  
24 ‘sufficiently culpable state of mind,’” which is one of “deliberate indifference” to inmate  
25 health or safety. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). “A prison official may  
26 be held liable under the Eighth Amendment for acting with ‘deliberate indifference’ to  
27 inmate health or safety only if he knows that inmates face a substantial risk of serious  
28 harm and disregards that risk by failing to take reasonable measures to abate it.” *Id.* at

1 825. Under this standard, “prison officials who actually kn[o]w of a substantial risk to  
2 inmate health or safety may be found free from liability if they respond[] reasonably to  
3 the risk, even if the harm ultimately [i]s not averted.” *Id.* at 844. *Farmer* makes clear  
4 that deliberate indifference “is shown adequately when a prison official is aware of the  
5 facts from which an inference could be drawn about the outstanding risk, and the facts  
6 permit us to infer that the prison official *in fact drew that inference*, but then consciously  
7 avoided taking appropriate action.” *Disability Rts. Mont., Inc. v. Batista*, 930 F.3d 1090,  
8 1101 (9th Cir. 2019) (emphasis added). Moreover, the standard requires more than mere  
9 misdiagnosis, medical malpractice, or even gross negligence. *See Wood v. Housewright*,  
10 900 F.2d 1332, 1334 (9th Cir. 1990). However, deliberate indifference “may appear  
11 when prison officials deny, delay or intentionally interfere with medical treatment, or it  
12 may be shown by the way in which prison physicians provide medical care.” *Hutchinson*  
13 *v. United States*, 838 F.2d 390, 394 (9th Cir. 1988) (citing *Estelle*, 429 U.S. at 104–05).

14       Liberally construing Plaintiff’s complaint, as the Court must do given his *pro se*  
15 status, *see United States v. Qazi*, 975 F.3d 989, 993 (9th Cir. 2020), Plaintiff adequately  
16 pleads sufficient factual content to “allow the court to draw a reasonable inference” of  
17 deliberate indifference by Defendant. *See Iqbal*, 556 U.S. at 678.

18       According to Plaintiff, he performed many movements during the examination,  
19 and Defendant set a treatment plan for Plaintiff that included rest, restriction of  
20 movement, and pain killers. *See Compl.* at 3. Defendant’s treatment plan thus was based  
21 upon his initial observation of Plaintiff’s range of motion. Plaintiff *then* explained to  
22 Defendant that he had previously injured the same knee in 1987, and knee surgery was  
23 consequently performed on his knee. *See id.* Plaintiff further explained that the pain and  
24 swelling he was experiencing after the present injury was the same as what he  
25 experienced with his 1987 knee injury. *Id.* Based upon this new information, Plaintiff  
26 asked Defendant to perform an MRI to confirm whether he retore the ligaments in his  
27 knee, to which Defendant denied Plaintiff’s request. *Id.* When Plaintiff provided  
28 additional details to Defendant about his right knee, he exposed Defendant to information

1 about Plaintiff's medical history that could change the risks to Plaintiff's health.

2 Accordingly, the Court finds that Plaintiff sufficiently pleads that Defendant subjectively  
3 knew that he faced a substantial risk of serious harm.

4 Moreover, to establish that Defendant's actions amounted to deliberate  
5 indifference, Plaintiff must also allege that the course of treatment Defendant "chose was  
6 medically unacceptable under the circumstances" and that he "chose this course in  
7 conscious disregard of an excessive risk to [the prisoner's] health." *Jackson v. McIntosh*,  
8 90 F.3d 330, 332 (9th Cir. 1996). In other words, Plaintiff must allege "(a) a purposeful  
9 act or failure to respond to a prisoner's pain or possible medical need, and (b) harm  
10 caused by the indifference." *Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir. 2012)  
11 (citing *Jett*, 439 F.3d at 1096). As noted above, Defendant's diagnosis and treatment  
12 were based upon his exam of Plaintiff's knee, which occurred prior to his learning about  
13 Plaintiff's past knee injury and surgical history. And importantly, Plaintiff pleads that  
14 Defendant's decision to not prescribe an MRI was purely financial. *See* Compl. at 3.  
15 Further, Plaintiff is still experiencing daily knee pain over two years after his visit with  
16 Defendant. Based upon this, the Court can reasonably infer that Defendant inadequately  
17 responded to Plaintiff's possible medical needs after he learned Plaintiff had significant  
18 previous trauma to the same knee. Consequently, Plaintiff sufficiently pleads that  
19 Defendant was deliberately indifferent to his serious medical needs when he failed to  
20 provide further care to reasonably respond to Plaintiff's updated health risks.<sup>4</sup>

21 Because the Court can draw the reasonable inference that Defendant was  
22 deliberately indifferent to Plaintiff's serious medical needs based upon the facts Plaintiff  
23

---

24  
25 <sup>4</sup> As alleged by Plaintiff, Defendant's denial of the MRI request was based upon the notion that the  
26 service was too expensive. *See* Compl. at 3. As the Court previously mentioned, some courts have  
27 found that refusing to provide an MRI or other diagnostic service based solely upon budgetary concerns,  
28 rather than medical reasons, may state a facially valid Eighth Amendment claim. *See* Doc. No. 5. Here,  
the Court is not denying Defendant's motion to dismiss based solely upon Plaintiff's allegations that  
medical care was denied for financial reasons. Rather, this is one of many facts alleged that contribute  
to Plaintiff's allegations that Defendant did not reasonably respond to Plaintiff's health risk.

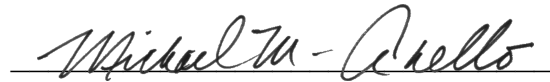
1 pleads, the Court finds that Plaintiff meets the subjective standard for the purposes of a  
2 Rule 12(b)(6) motion. Accordingly, dismissal of Plaintiff's Eighth Amendment claim at  
3 this stage of the proceedings would be improper.<sup>5</sup>

4 **IV. CONCLUSION**

5 Based on the foregoing, the Court **DENIES** Defendant's motion to dismiss. The  
6 Court **DIRECTS** Defendant to file a response within the time proscribed by Federal Rule  
7 of Civil Procedure 12(a)(4)(A).

8 **IT IS SO ORDERED.**

9 Dated: October 22, 2021

10 

11 HON. MICHAEL M. ANELLO  
12 United States District Judge

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26 <sup>5</sup> Defendant's remaining argument does not attack the sufficiency of Plaintiff's pleadings for the  
27 purposes of a Rule 12(b)(6) motion. Instead, Defendant argues that he is entitled to qualified immunity.  
28 *See* Doc. No. 8-1 at 11. Defendant's request for qualified immunity is premature at this stage of the  
proceedings and will be better addressed at summary judgment. Therefore, the Court declines to address  
this issue at this time.