

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON**

**LISA BEAN,**

Plaintiff,

v.

**ELIZABETH SUZANNE SAZIE, et al.,**

Defendants.

Case No. 3:12-cv-2166-SI

**OPINION AND ORDER**

Lisa Bean, *pro se*.

Ellen F. Rosenblum, Attorney General, Robert E. Sullivan, Senior Assistant Attorney General, and Rachel E. Bertoni, Assistant Attorney General, OREGON DEPARTMENT OF JUSTICE, 1162 Court Street NE, Salem, OR 97301. Of Attorneys for Defendants.

**Michael H. Simon, District Judge.**

From May 2010 through April 2012, Plaintiff was an inmate in the Coffee Creek Correctional Facility (“CCCF”) operated by the Oregon Department of Corrections (“ODOC”). Plaintiff originally was represented by counsel when she filed this lawsuit against several employees of the ODOC. In her complaint, Plaintiff asserts two claims. First, Plaintiff alleges that Defendants violated 42 U.S.C. § 1983 by subjecting her to cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments when they denied and delayed providing

Plaintiff with necessary medical treatment. Second, Plaintiff alleges that Defendants are liable for common law medical negligence.

On June 22, 2016, Defendants moved for summary judgment and to stay discovery. Plaintiff's counsel requested an extension of time to respond, explaining that Plaintiff was in the process of obtaining expert reports. Plaintiff added, "[i]f that does not materialize, Plaintiff will have to explore other options." ECF 59 at 2. The Court granted Plaintiff's request and allowed Plaintiff to have until January 11, 2017, to respond to Defendants' motion for summary judgment. On October 28, 2016, Plaintiff's counsel moved to withdraw, stating only that Plaintiff has terminated her counsel's attorney-client relationship. On November 4, 2016, the Court allowed Plaintiff's counsel to withdraw and gave Plaintiff until April 4, 2017, to respond to Defendants' motion for summary judgment. Plaintiff neither responded to Defendants' motion for summary judgment nor requested any further extensions of time. For the reasons that follow, Defendants' motion for summary judgment is granted, and Defendants' motion to stay discovery is denied as moot.

### **STANDARDS**

A party is entitled to summary judgment if the "movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party has the burden of establishing the absence of a genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The court must view the evidence in the light most favorable to the non-movant and draw all reasonable inferences in the non-movant's favor. *Clicks Billiards Inc. v. Sixshooters Inc.*, 251 F.3d 1252, 1257 (9th Cir. 2001). Although "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge . . . ruling on a motion for summary judgment," the "mere existence of a scintilla of evidence in support of

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the plaintiff's position [is] insufficient . . . ." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252, 255 (1986). "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citation and quotation marks omitted).

A court may not grant summary judgment by default. *Heinemann v. Satterberg*, 731 F.3d 914, 916-17 (9th Cir. 2013). When a party fails to respond to a fact asserted by the movant, a court may:

- (1) give an opportunity to properly support or address the fact;
- (2) consider the fact undisputed for purposes of the motion;
- (3) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or (4) issue any other appropriate order.

Fed. R. Civ. P. 56(e). By amendment passed in 2010, this rule incorporated the "deemed admitted" practice of many courts—when a party fails to respond to an asserted fact, that fact may be "deemed admitted" (*i.e.*, accepted as undisputed). *Heinemann*, 731 F.3d at 917.

Accepting a proposed fact as undisputed, however, does not mean that summary judgment automatically follows. After considering the facts that the court has found undisputed for want of a response and those that cannot genuinely be disputed based on the movant's evidence, a court must still determine the appropriate legal consequences. *Id.*

## **BACKGROUND**

Plaintiff was incarcerated at CCCF until April 26, 2012. Sometime after Plaintiff was released, she was diagnosed by her private health care providers with a bacterial infection and a hernia with possibly enlarged organs. Plaintiff's healthcare providers began treating Plaintiff for her infection and hernia.

Defendants are six employees of the ODOC. Plaintiff alleges that shortly after beginning her incarceration, she complained to CCCF's medical staff about acute abdominal pain and

distress. Plaintiff also alleges that on December 4, 2010, she fell and fractured her left wrist. Plaintiff asserts that Defendants denied and delayed providing her with necessary digestive treatment and wrist surgery in violation of her constitutional rights and state tort law.

Plaintiff further alleges that ultrasound tests were taken, but no extensive blood test or other diagnostic tests were performed. Plaintiff adds that she was treated for heartburn and acid reflux and given medications that did not adequately address her pain or medical concerns. Plaintiff also alleges that no X-rays were taken of her wrist for two weeks after her fall. Plaintiff further alleges that a physician named Dr. Knight, a hand specialist who is not a defendant, referred Plaintiff for a CT scan on February 9, 2011, which did not occur, and that an orthopedic surgeon named Dr. Becker (who also is not a defendant) provided a second opinion on two occasions, June 23, 2011, and July 6, 2011.

As alleged in Plaintiff's Complaint, Defendant Ridgley<sup>1</sup> treated Plaintiff for her abdominal and wrist injuries. Defendant Coffey, a registered nurse, was part of the Therapeutic Levels of Care Committee ("TLC") that denied approval of Plaintiff's surgery, after concluding that it was elective. (Plaintiff does not specify whether the surgery to which she refers was related to her abdominal concerns or her wrist injury.) Defendant Sazie, the Chief Medical Officer of CCCF, was part of the same TLC that denied approval of Plaintiff's surgery. On both June 21, 2011, and December 14, 2011, Dr. Sazie again denied approval of Plaintiff's surgery. Defendant Magi,<sup>2</sup> a nurse, allegedly negligently and needlessly snapped down Plaintiff's left wrist after removing it from a splint while examining Plaintiff, allegedly causing great pain and

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<sup>1</sup> In their motion for summary judgment, Defendants identify Defendant Ridgley as nurse practitioner Janet Ridgley.

<sup>2</sup> On June 22, 2016, Defendants informed the Court that Defendant Magi passed away in February, 2016.

exacerbation of Plaintiff's fractured wrist. Defendant Elliot, a nurse practitioner, also allegedly negligently treated Plaintiff during the course of 18 months and allegedly negligently affixed a splint, causing additional pain and discomfort. Defendant Shelton, ODOC's Chief Medical Officer, allegedly advised Plaintiff on November 29, 2011, that Plaintiff's fracture would not heal on its own due to the nature of the injury and Plaintiff's arthritis. On February 13, 2012, Shelton responded to a grievance appeal, allegedly stating that reconstructive surgery of Plaintiff's wrist was not approved by the TLC.

Plaintiff alleges that as a result of Defendants' actions and inactions she has suffered severe pain, suffering, limited range of motion, bone deformities due to long-term immobilization without surgical intervention, and likely permanent injury and irreversible impairment due to the delayed care to her digestive system and left broken wrist. In her Complaint, Plaintiff states that she continues to suffer from abdominal pain and discomfort.

In support of their motion for summary judgment, Defendants submitted declarations from Dr. Sazie, Dr. Eric Stephen Yao (an orthopedic surgeon), and Dr. Richard W. Brandes (a physician who is board-certified in internal medicine and gastroenterology). Dr. Sazie's declaration includes a detailed chronology of Plaintiff's relevant medical concerns and treatment, based on Plaintiff's ODOC medical records, which are attached to Dr. Sazie's declaration. Dr. Yao, in his declaration, concludes based upon his experience and training and his review of Plaintiff's medical records, that Plaintiff received appropriate evaluation and care for her reported injury to her left wrist. He adds that the evaluation and treatment of Plaintiff while she was in ODOC custody was consistent with the community standard of care. Dr. Brandes in his declaration concludes:

Based on the medical record of care provided while [Plaintiff] was in ODOC custody, [Plaintiff] received appropriate evaluation and

care for her reported acute abdominal pain, IBS [irritable bowel syndrome] and reflux (heartburn). A medically appropriate regime addressed her IBS-related constipation, specifically fiber, dicyclomine, and to increase her water intake.

Based on my expertise in gastroenterology, my opinion, to a reasonable degree of medical certainty, is that while she was within ODOC custody, appropriate measures, consistent with the community standard of care, were taken in the evaluation and treatment of [Plaintiff].

ECF 55, ¶¶ 14, 15. Based on this evidence, Defendants argue that they are entitled to summary judgment against both claims asserted by Plaintiff.

### **DISCUSSION**

The treatment that a prisoner receives in prison and the conditions of her confinement are subject to scrutiny under the Eighth Amendment. *Helling v. McKinney*, 509 U.S. 25, 31 (1993).

In *Farmer v. Brennan*, the Supreme Court explained:

The [Eighth] Amendment also imposes duties on these officials, who must provide humane conditions of confinement; prison officials must ensure that inmates receive adequate food, clothing, shelter, and medical care, and must take reasonable measures to guarantee the safety of the inmates[.]

511 U.S. 825, 832 (1994) (citations and quotations omitted). A prison official violates a prisoner's Eighth Amendment rights based on deliberate indifference only when the claim satisfies both an objective and subjective inquiry. *Farmer*, 511 U.S. at 834; *Lopez v. Smith*, 203 F.3d 1122, 1132-33 (9th Cir. 2000).

To meet the objective element, in the context of a claim for failure to provide medical care, a plaintiff must establish a "serious medical need." *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). A serious medical need is the kind of injury that "a reasonable doctor or patient would find important and worthy of comment or treatment; . . . that significantly affects an individual's daily activities; or [causes] chronic and substantial pain." *Lopez*, 203 F.3d at 1131 (citation

omitted). The subjective inquiry requires a showing that corrections officers acted with deliberate indifference to a plaintiff's serious medical needs. *Id.* at 1132. "[A] prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety . . . ." *Farmer*, 511 U.S. at 837.

In addition, the Ninth Circuit has held that "a difference of opinion between a physician and the prisoner—or between medical professionals—concerning what medical care is appropriate does not amount to deliberate indifference." *Hamby v. Hammond*, 821 F.3d 1085, 1092 (9th Cir. 2016) (quoting *Snow v. McDaniel*, 681 F.3d 978, 987 (9th Cir. 2012), *overruled in part on other grounds by Peralta v. Dillard*, 744 F.3d 1076, 1083 (9th Cir. 2014) (en banc)). Instead, "[t]o show deliberate indifference, the plaintiff 'must show that the course of treatment the doctors chose was medically unacceptable under the circumstances' and that the defendants 'chose this course in conscious disregard of an excessive risk to the plaintiff's health.'" *Id.* (quoting *Snow*, 681 F.3d at 988).

Defendants' medical experts, Dr. Yao and Dr. Brandes, have reviewed Plaintiff's relevant medical records. Based on those records, as well as on their training and experience, Dr. Yao and Dr. Brandes each concluded that Plaintiff "received appropriate evaluation and care for her reported injury" that was "consistent with the community standard of care." ECF 54, ¶13; ECF 55, ¶¶ 14, 15. Because Plaintiff has failed to respond to these conclusions reached by Defendants' experts, the Court considers these conclusions to be undisputed facts for purposes of Defendants' motion for summary judgment. *See* Fed. R. Civ. P. 56(e). These undisputed facts show that Defendants were not deliberately indifferent to Plaintiff's medical needs. Thus,

Plaintiff has failed to show a genuine issue of material fact, and summary judgment in favor of Defendants on Plaintiff's first claim is appropriate.

Defendants also move for summary judgment against Plaintiff's second claim, alleging common law medical negligence. Defendants argue that based on the undisputed facts, they were not negligent in treating Plaintiff's wrist condition or gastrointestinal complaints. Under the facts deemed admitted based on Plaintiff's failure to respond to Defendants' evidence along with the evidence submitted by Defendants, the Court agrees that summary judgment in favor of Defendants against Plaintiff's second claim also is appropriate. Thus, it is unnecessary for the Court to address Defendant's additional arguments, including Defendants' arguments under the sovereign immunity and qualified immunity doctrines.

### **CONCLUSION**

Defendants' Motion for Summary Judgment (ECF 53) is GRANTED, and Defendants' Motion to Stay Discovery (ECF 57) is DENIED AS MOOT.

**IT IS SO ORDERED.**

DATED this 17th day of July, 2017.

/s/ Michael H. Simon  
Michael H. Simon  
United States District Judge