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

Sammy T. Williams,
Plaintiff,

v.

Charles L. Ryan, et al.,
Defendants.

No. CV 17-03625-PHX-DGC (MHB)

ORDER

Plaintiff Sammy T. Williams, who is currently confined in Arizona State Prison Complex (ASPC)-Lewis, brought this civil rights action pursuant to 42 U.S.C. § 1983. (Doc. 1.) The Parties cross-move for summary judgment.¹ (Docs. 32, 36.)

I. Background

In his Complaint, Plaintiff relevantly alleged as follows. Plaintiff is a chronic care inmate with multiple sclerosis (MS), is in a wheelchair, wears a metal leg brace for stability, and is in constant pain.

In Count One, Plaintiff alleges that he took Gabapentin, but when his prescription expired, Defendants Elijah and Ndemanu refused to renew it and requested that he pick an alternative antidepressant, but none of those medications would have been equal to Gabapentin in controlling Plaintiff's neuropathy.

....

¹ The Court provided notice to Plaintiff pursuant to *Rand v. Rowland*, 154 F.3d 952, 962 (9th Cir. 1998) (en banc), regarding the requirements of a response. (Doc. 38.)

1 In Count Two, Plaintiff alleges that he had a serious fall in which he injured his hip
2 and exacerbated his prior spine injuries, but Defendants Elijah and Ndemanu refused to
3 discuss Plaintiff's pain or treatment with him, and have refused to give him the results of
4 x-rays of his cervical and lumbar areas.

5 In Count Three, Plaintiff alleges that after his fall, he requested an MRI, but Corizon
6 will only provide an x-ray from a machine that does not work properly, that Elijah and
7 Ndemanu refused to order an MRI for Plaintiff's hip, that Defendant Ende took Plaintiff
8 off the doctor's line and refused to discuss medical issues or pain-related issues with
9 Plaintiff, and that Defendant Corizon refuses to authorize follow-up care ordered by a
10 doctor outside the prison regarding Plaintiff's MS protocol.

11 In Count Four, Plaintiff alleges that he needs a back brace to stabilize his spinal
12 column, but Defendant Ende refused to discuss the issue with Plaintiff, and Corizon refuses
13 to provide proper care because it wants to increase its profit margin.

14 On screening under 28 U.S.C. § 1915A(a), the Court determined that Plaintiff stated
15 Eighth Amendment claims based on constitutionally deficient medical care against Corizon
16 in Counts One through Four, against Defendants Elijah and Ndemanu in Counts One
17 through Three, and against Defendant Ende in Counts Two through Four. (Doc. 8 at 7.)
18 The Court dismissed the remaining claims and Defendants. (*Id.* at 7-9.)

19 **II. Summary Judgment Standard**

20 A court must grant summary judgment "if the movant shows that there is no genuine
21 dispute as to any material fact and the movant is entitled to judgment as a matter of law."
22 Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The
23 movant bears the initial responsibility of presenting the basis for its motion and identifying
24 those portions of the record, together with affidavits, if any, that it believes demonstrate
25 the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323.

26 If the movant fails to carry its initial burden of production, the nonmovant need not
27 produce anything. *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Co., Inc.*, 210 F.3d 1099,
28 1102-03 (9th Cir. 2000). But if the movant meets its initial responsibility, the burden shifts

1 to the nonmovant to demonstrate the existence of a factual dispute and that the fact in
2 contention is material (a fact that might affect the outcome of the suit under the governing
3 law), and that the dispute is genuine (the evidence is such that a reasonable jury could
4 return a verdict for the nonmovant). *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248,
5 250 (1986); *see Triton Energy Corp. v. Square D. Co.*, 68 F.3d 1216, 1221 (9th Cir. 1995).
6 The nonmovant need not establish a material issue of fact conclusively in its favor, *First*
7 *Nat'l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 288-89 (1968), but must “come
8 forward with specific facts showing that there is a genuine issue for trial,” *Matsushita Elec.*
9 *Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (internal citation omitted).

10 At summary judgment, the judge’s function is not to weigh the evidence and
11 determine the truth, but to determine whether there is a genuine issue for trial. *Anderson*,
12 477 U.S. at 249. The court must believe the nonmovant’s evidence and draw all inferences
13 in the nonmovant’s favor. *Id.* at 255.

14 **III. Facts**

15 Plaintiff is an inmate in the custody of the Arizona Department of Corrections.
16 Defendant Corizon provides healthcare to the inmates. Defendant Ndemanu, Elijah, and
17 Ende were employees of Defendant Corizon at all times relevant to the allegations in this
18 action.

19 Plaintiff was diagnosed with multiple sclerosis (MS) in 2005. (Doc. 37 ¶ 1; Doc. 56
20 at 5 ¶ 1.) While there is no cure for MS, it is manageable through physical therapy and
21 appropriate medications that slow disease progression. (Doc. 37 ¶ 2; Doc. 56 at 5 ¶ 2.)
22 Prior to their first encounter, Dr. Itoro Elijah reviewed a Health Needs Request in which
23 Plaintiff requested renewal of various special needs orders (SNO). (Doc. 37 ¶ 3.) On
24 August 9, 2016, Elijah authorized SNOs for Plaintiff, including an ankle/foot orthotic,
25 cane, orthotic shoes, sunglasses, a shower chair, a left knee brace, wheelchair gloves, an
26 extra pillow, an extra blanket, a wheelchair cushion, a lower bunk assignment, no stairs, an
27 ADA shower, an ADA porter, and meals in his living quarters. (Doc. 37 ¶ 4; Doc. 56 at 6
28 ¶ 4.) Elijah also reviewed Plaintiff’s recent neurology records in which the specialist

1 recommended a repeat c-spine MRI, as well as Tecfidera, Gabapentin, Vitamin B12, and
2 methylprednisolone (a corticosteroid) for disease management. At the time, Plaintiff had
3 active prescriptions for Tecfidera and Gabapentin. (Doc. 37 ¶ 5; Doc. 56 at 6 ¶ 5.)

4 On August 17, 2016, Plaintiff and Elijah discussed Plaintiff's MS history. Plaintiff
5 reported chronic weakness in the right side, upper extremities and lower extremities, and
6 received his first dose of methylprednisolone the same day. Elijah entered a prescription
7 for daily Vitamin B12 injections and prescribed Fioricet for migraine management.
8 (Doc. 37 ¶ 6; Doc. 56 at 6 ¶ 6.)

9 On September 13, 2016, Plaintiff received an MRI of his spine and brain. (Doc. 37
10 ¶ 7; Doc. 56 at 6 ¶ 7.) On November 1, 2016, Plaintiff met with Elijah to discuss the results.
11 Elijah told Plaintiff that the previously seen plaques on his brain were unchanged from his
12 prior MRI and that the scan showed mild to moderate degenerative disc disease from C7-
13 T1 and spurs at C6-7. (Doc. 37 ¶ 8; Doc. 56 at 6 ¶ 8.) On December 14, 2016, Elijah
14 entered an offsite consult request for Plaintiff to follow-up with the neurologist. (Doc. 37
15 ¶ 9.) A week later, Elijah met with Plaintiff to go over the results of his recent thoracic,
16 lumbar, and knee x-rays. The examinations were "normal," save for "mild dextroscoliosis"
17 in the thoracic spine. (Doc. 37 ¶ 10.) Plaintiff reported neck and low back pains, especially
18 with exercise. (*Id.*) Elijah's examination did not reveal any appreciable changes to
19 Plaintiff's musculoskeletal system. (*Id.*)

20 Elijah opines that in his experience, the best approach to successfully and safely
21 treat back pain is to teach the patient exercises and stretches he can perform to target the
22 source of pain because stretching and strengthening exercise have no side effects, and
23 target exercises are often the most effective method to treat the cause of back pain rather
24 than masking symptoms. (*Id.* ¶ 11.) Elijah and Plaintiff discussed exercise to strengthen
25 Plaintiff's abdominals to reduce stress on his neck and back. She also instructed Plaintiff
26 to continue his current medications for pain control, which were Baclofen and Gabapentin.
27 (*Id.*) On January 24, 2017, Elijah reviewed the results of Plaintiff's neurology consult from
28 the previous day. The specialist recommended continuing Tecfidera and Baclofen, an

1 ankle/foot orthotic, and starting physical therapy. (*Id.* ¶ 12; Doc. 56 at 7 ¶ 12.) Elijah
2 entered a physical therapy consult request the same day. (Doc. 37 ¶ 13; Doc. 56 at 7 ¶ 13.)

3 On February 8, 2017, Elijah informed Plaintiff that his recent MRI revealed
4 “stability of lesions,” and that his neurology follow-up was pending. (Doc. 37 ¶ 14;
5 Doc. 56 at 7 ¶ 14.) Elijah noted that Plaintiff had a pending appointment to obtain a foot
6 orthotic, had already begun physical therapy to address back pain, was on Gabapentin,
7 Baclofen, Vitamin B12, and Tecfidera to manage his MS, that his MS-related seizures were
8 well-managed with Keppra, and that his last seizure had occurred 2-3 years ago. (*Id.*)
9 Elijah entered a SNO for a wheelchair cushion and placed new orders for B12 injections.
10 (*Id.*) Plaintiff began physical therapy at USA Sports Physical Therapy the same day.
11 (Doc. 37 ¶ 15; Doc. 56 at 7 ¶ 15.)

12 On February 16, 2017, Plaintiff received two pairs of orthotic shoes, one pair for
13 “braces” and another pair “without braces.” (Doc. 37 ¶ 16; Doc. 56 at 7 ¶ 16.) On
14 February 20, 2017, Elijah ordered a Gabapentin serum blood test to ascertain the levels of
15 Gabapentin in Plaintiff’s system. (Doc. 37 ¶ 17; Doc. 56 at 7 ¶ 17.) Gabapentin can be
16 effective in managing severe or chronic back pain due to spinal injury or dysfunction, but
17 is highly regulated in the correctional setting due to the potential for abuse, misuse, and
18 diversion. (Doc. 37 ¶ 18.) At the time, Corizon was carefully monitoring inmate
19 Gabapentin prescriptions due to widespread abuse of the drug, so inmates were given
20 periodic and random lab tests to ascertain their blood levels of the drug. Levels at or above
21 2.0 were deemed therapeutic, while levels below 2.0 were deemed non-therapeutic. (*Id.*
22 ¶ 19.) Plaintiff’s blood level was flagged as below normal level. He was on Gabapentin
23 1200 mg daily for over a year at that time, so his levels should have been within normal
24 range. (Doc. 37 ¶ 20.)

25 On March 9, 2017, Plaintiff returned to USA Sports Physical Therapy where he
26 reported that his back pain was resolving. The therapist recommended continuing a home
27 exercise program. (Doc. 37 ¶ 24; Doc. 56 at 8 ¶ 24.)
28

1 Due to the low blood level test for Gabapentin, Elijah discontinued the prescription
2 on March 30, 2017. (*Id.* ¶ 21.) At the time, Plaintiff still had active prescriptions for
3 Fioricet, Baclofen, and Ibuprofen for pain and muscle spasms, as well as Lamotrigine and
4 Topimirate for epileptic seizures. (Doc. 37 ¶ 22; Doc. 56 at 8 ¶ 22.)

5 Sometime between March 20, 2017 and May 21, 2017, Plaintiff was transferred
6 from the Barchey Unit to the Bachman Unit. (Doc. 37 ¶ 26; Doc. 56 at 8 ¶ 26.) On May 21,
7 2017, Plaintiff presented to the Nurse's line requesting a back brace and Ibuprofen. Elijah
8 denied the request for a back brace because Plaintiff was already provided a back brace,
9 but another doctor approved the Ibuprofen prescription. (Doc. 37 ¶ 25.) Plaintiff asserts
10 that he had lost his back brace and still needed another. (Doc. 56 at 8 ¶ 25.)²

11 On June 29, 2017, Plaintiff saw NP Ndemanu for routine chronic care to address
12 Hepatitis C and MS-related seizures. Plaintiff was continued on Tecifidera and Baclofen
13 per the specialist's recommendation. (Doc. 37 ¶ 27.) On August 2, 2017, Plaintiff
14 presented to NP Ndemanu complaining of spasms in his neck, back, and right leg, requested
15 reinstatement of Gabapentin, renewal of SNOs, including a shower chair, a lower bunk, an
16 ADA shower/porter and indoor work only. (*Id.* ¶ 28.) NP Ndemanu renewed all of
17 Plaintiff's SNOs and ordered Baclofen, which treats muscle spasms in patients with MS
18 and spinal cord injury/disease. Ndemanu did not order any additional medications. (*Id.*)
19 Ndemanu was aware that Plaintiff's Gabapentin prescription was discontinued due to sub-
20 therapeutic lab results, and she offered tricyclic antidepressants, including Elavil and
21 Pamelor, which she believed were highly effective at treating neuropathic pain and were
22 non-addictive. (*Id.* ¶¶ 29-30.) Plaintiff rejected trials of Elavil and Pamelor. (*Id.* ¶ 30.)

23 On September 5, 2017, Plaintiff saw NP Ende and reported right hand weakness and
24 worsening back pain. (Doc. 37 ¶ 31.) NP Ende examined Plaintiff and noted greater
25 strength in his right hand than in his left. Ende entered a new prescription for Gabapentin,
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27 ² The Health Services Encounter note does not state that Plaintiff lost his back brace.
28 It does state that Plaintiff lost medications during his transfer. (Doc. 37-1 at 144.) It is not
clear whether Elijah knew that Plaintiff claimed he lost his back brace.

1 but the prescription was assigned an alternative treatment plan, with a recommend trial of
2 tricyclic antidepressants for neuropathy pain. (*Id.*) On September 8, 2017, Ende reviewed
3 Plaintiff's most recent MRI report and neurology records, which suggested Plaintiff's MS
4 was stable. Ende noted that Plaintiff had reported right-sided weakness during his January
5 23, 2017 neurology visit. (*Id.* ¶ 32.)

6 On November 2, 2017, Ende successfully reinstated Plaintiff's Gabapentin
7 prescription, and it has since been active. (Doc. 37 ¶ 33; Doc. 56 at 9 ¶ 33.) That same
8 day, NP Ende observed that Plaintiff was not wearing his prescribed leg braces.³ NP Ende
9 renewed several SNOs, including catheter supplies, a shower chair, a wheelchair, quad
10 canes, wheelchair gloves, an elbow support, a lower bunk, a metal knee brace, a full leg
11 brace with plastic/Velcro, UV glasses, and an extra blanket and pillow. (Doc. 37 ¶ 34;
12 Doc. 56 at 10 ¶ 34.) On November 30, 2017, Ende ordered a back brace and TENS unit
13 per Plaintiff's request to address his chronic low back pain and spasms. Plaintiff reported
14 that he lost his back brace during his move from Barchey to Bachman. (Doc. 37 ¶ 35;
15 Doc. 56 at 10 ¶ 35.) On December 7, 2017, Plaintiff received a back-support belt. (Doc. 37
16 ¶ 36; Doc. 56 at 10 ¶ 36.) On December 15, 2017, Plaintiff received a TENS unit. (Doc. 37
17 ¶ 37; Doc. 56 at 10 ¶ 37.)

18 On March 23, 2018, Plaintiff presented to NP Bass for his scheduled chronic care
19 appointment, where he denied worsening symptoms regarding his MS diagnosis. (Doc. 37
20 ¶ 38.) Plaintiff disagrees with this asserted fact because he "complained of problems."
21 (Doc. 56 at 10 ¶ 38.) NP Ndemanu and Ende do not recall Plaintiff ever complaining of a
22 hip injury or pain or requesting treatment for either. Plaintiff asserts that he constantly
23 complained of hip issues. (Doc. 37 ¶ 39; Doc. 56 at 10 ¶ 39.) Defendants assert that
24 Plaintiff never submitted an HNR regarding his hip between August 2016 and January
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28 ³ Plaintiff notes that he only wears leg braces when he walks, not when he is in a
wheelchair. (Doc. 56 at 10 ¶ 34.)

1 2018. Plaintiff asserts that “he has turned in HNRs on the hip injuries,” but does not cite
2 to any evidence to support this statement. (Doc. 37 ¶ 40; Doc. 56 at 10 ¶ 40.)⁴

3 **IV. Discussion**

4 Not every claim by a prisoner relating to inadequate medical treatment states a
5 violation of the Eighth Amendment. To state a § 1983 medical claim, a plaintiff must show
6 that the defendants acted with “deliberate indifference to serious medical needs.” *Jett v.*
7 *Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (quoting *Estelle v. Gamble*, 429 U.S. 97, 104
8 (1976)). A plaintiff must show (1) a “serious medical need” by demonstrating that failure
9 to treat the condition could result in further significant injury or the unnecessary and
10 wanton infliction of pain, and (2) the defendant’s response was deliberately indifferent.
11 *Jett*, 439 F.3d at 1096 (quotations omitted).

12 “Deliberate indifference is a high legal standard.” *Toguchi v. Chung*, 391 F.3d
13 1051, 1060 (9th Cir. 2004). A prison official must both know of and disregard an excessive
14 risk to inmate health – “the official must both be aware of facts from which the inference
15 could be drawn that a substantial risk of serious harm exists, and he must also draw the
16 inference.” *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). Deliberate indifference in the
17 medical context may be shown by a purposeful act or failure to respond to a prisoner’s pain
18 or possible medical need, as well as harm caused by the indifference. *Jett*, 439 F.3d at
19 1096. Deliberate indifference may also be shown when a prison official intentionally
20 denies, delays, or interferes with medical treatment or by the way prison doctors respond
21 to the prisoner’s medical needs. *Estelle*, 429 U.S. at 104-05; *Jett*, 439 F.3d at 1096.

22 Deliberate indifference is a higher standard than negligence or lack of ordinary due
23 care for the prisoner’s safety. *Farmer*, 511 U.S. at 835. “Neither negligence nor gross
24 negligence will constitute deliberate indifference.” *Clement v. California Dep’t of Corr.*,
25 220 F. Supp. 2d 1098, 1105 (N.D. Cal. 2002); *see also Broughton v. Cutter Labs.*, 622 F.2d

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27 ⁴ Plaintiff does cite a February 20, 2013 Medical Grievance Appeal Response which
28 purports to respond to a December 31, 2012 Grievance Appeal, which references that
Plaintiff fell in the shower on January 23, 2013. But it is unclear how this response is
relevant to Plaintiff’s claims against Defendants. (Doc. 48 at 32.)

1 458, 460 (9th Cir. 1980) (mere claims of “indifference,” “negligence,” or “medical
2 malpractice” do not support a claim under § 1983). “A difference of opinion does not
3 amount to deliberate indifference to [a plaintiff’s] serious medical needs.” *Sanchez v. Vild*,
4 891 F.2d 240, 242 (9th Cir. 1989). A mere delay in medical care, without more, is
5 insufficient to state a claim against prison officials for deliberate indifference. *See Shapley*
6 *v. Nevada Bd. of State Prison Comm’rs*, 766 F.2d 404, 407 (9th Cir. 1985). The
7 indifference must be substantial. The action must rise to a level of “unnecessary and
8 wanton infliction of pain.” *Estelle*, 429 U.S. at 105.

9 Additionally, to prevail on a claim against Corizon, as a private entity serving a
10 traditional public function, Plaintiff must meet the test articulated in *Monell v. Department*
11 *of Social Services of City of New York*, 436 U.S. 658, 690-94 (1978). *Tsao v. Desert*
12 *Palace, Inc.*, 698 F.3d 1128, 1139 (9th Cir. 2012) (applying *Monell* to private entities
13 acting under color of state law). Plaintiff must show that an official policy or custom
14 caused the constitutional violation. *Monell*, 436 U.S. at 694. To make this showing, he
15 must demonstrate that (1) he was deprived of a constitutional right; (2) Corizon had a
16 policy or custom; (3) the policy or custom amounted to deliberate indifference to Plaintiff’s
17 constitutional right; and (4) the policy or custom was the moving force behind the
18 constitutional violation. *Mabe v. San Bernardino Cnty., Dep’t of Pub. Soc. Servs.*, 237
19 F.3d 1101, 1110-11 (9th Cir. 2001). Further, if the policy or custom in question is an
20 unwritten one, the plaintiff must show that it is so “persistent and widespread” that it
21 constitutes a “permanent and well settled” practice. *Monell*, 436 U.S. at 691 (internal
22 quotation and citation omitted). “Liability for improper custom may not be predicated on
23 isolated or sporadic incidents. It must be founded upon practices of sufficient duration,
24 frequency and consistency that the conduct has become a traditional method of carrying
25 out policy.” *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996).

26 **A. Hip Injury**

27 Defendants assert that Plaintiff alleges that he had inadequate medical treatment
28 from an alleged fall that occurred “a couple months back” and that left him with

1 exacerbated hip and spinal issues, but the medical records are devoid of a single mention
2 of hip injury or pain and no Defendant has a recollection of Plaintiff complaining of a hip
3 injury or pain. (Doc. 36 at 10.) Defendants argue that there is likewise no evidence of any
4 exacerbation of Plaintiff's spinal issues. As a result, Defendants assert that Plaintiff has
5 not shown any serious medical need with respect to a hip injury, and summary judgment
6 should be granted as to Plaintiff's claims regarding his hip.

7 In response, Plaintiff asserts that there are "numerous Health Needs Requests" on
8 this subject, "most of [which] were ignored," and that Elijah and Ndemanu would not do
9 anything regarding an MRI of the hip. (Doc. 48 at 8.) Plaintiff does not attach any of the
10 alleged Health Needs Requests and does not cite any evidence that he complained to Elijah
11 and Ndemanu of hip pain. Plaintiff does not include any details about instances where he
12 complained to Elijah and Ndemanu about hip pain, what the date was, or what was said in
13 response to those complaints. Plaintiff's conclusory assertions that he complained and was
14 denied an MRI are not evidence demonstrating that he had a serious medical need. *See*
15 *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007) ("Conclusory,
16 speculative testimony in affidavits and moving papers is insufficient to raise genuine issues
17 of fact and defeat summary judgment."). Because there is no evidence in the record that
18 Plaintiff had a serious medical need from a hip injury, summary judgment will be granted
19 in favor of Defendants as to those claims.

20 **B. Medications**

21 Defendants assert that there is no evidence that Plaintiff's pain was treated with
22 deliberate indifference because Defendants appropriately responded to and treated
23 Plaintiff's low back and neuropathy pain. Defendants assert that Plaintiff would have
24 remained on Gabapentin if it were not for his low blood level, and that Elijah's decision to
25 discontinue Gabapentin was due to Corizon's policy and not because of deliberate
26 indifference. Plaintiff asserts that his blood level was not below normal range, and that his
27 blood draw of 1.9 was within normal range, but Plaintiff does not present any evidence
28 supporting these assertions. Nor does he present evidence that he is qualified to testify to

1 what the normal range should have been. Plaintiff likewise asserts that the attempts to
2 prescribe tricyclic antidepressants to treat his pain were inappropriate, but again presents
3 no evidence supporting this assertion.

4 When Gabapentin was discontinued, Plaintiff remained on Ibuprofen, Baclofen, and
5 Fioricet for pain. Plaintiff asserts that these medications were not equivalent to
6 Gabapentin, but he does not point to any evidence showing that the discontinuation of
7 Gabapentin for seven months and the offer of alternative tricyclic antidepressants was the
8 result of deliberate indifference to his serious medical needs. Although Plaintiff argues
9 that Gabapentin was the only available medication to treat his pain, he does not present
10 evidence demonstrating that this is true. Nor does he present evidence that regulating
11 Gabapentin in the correctional setting was unwarranted and the result of deliberate
12 indifference to his serious medical needs. Accordingly, summary judgment will be granted
13 in favor of Defendants regarding Plaintiff's claims that he was not prescribed appropriate
14 medications to treat his pain.

15 **C. Back Brace**

16 Defendants argue that Plaintiff has not shown deliberate indifference to his serious
17 medical needs based on the time he went without a back brace. Plaintiff was prescribed a
18 back brace on November 30, 2017. On May 21, 2017, Elijah denied Plaintiff's request for
19 a back brace, noting that he already had one. Plaintiff was later provided a back brace in
20 December 2017. There is no evidence in this record that Elijah's one-time denial of a
21 second back brace was the result of deliberate indifference to serious medical needs.
22 Specifically, there is no evidence that Elijah knew that Plaintiff claimed to have lost his
23 first back brace. Plaintiff has failed to show that the denial of a back brace was the result
24 of deliberate indifference to serious medical needs, and summary judgment will be granted
25 in favor of Defendants as to this claim.

26 **D. Corizon**

27 Defendants argue that there is no evidence that Corizon promulgated a custom or
28 policy that deprived Plaintiff of his civil rights, and the record shows that Plaintiff received

1 timely and continuing care for his serious medical needs. In response, Plaintiff asserts that
2 constant and severe pain “is proof enough” and that “delays and denials” show deliberate
3 indifference. Plaintiff does not point to any evidence demonstrating a pattern or practice
4 of failing to respond promptly and appropriately to his pain complaints or that he was
5 denied any other constitutionally-adequate medical care due to a custom or policy
6 promulgated by Corizon. Accordingly, summary judgment will be granted in favor of
7 Defendant Corizon.

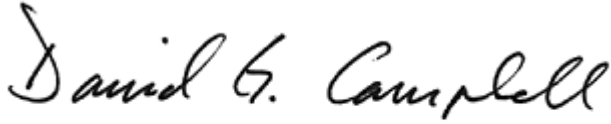
8 **IT IS ORDERED:**

9 (1) The reference to the Magistrate Judge is withdrawn as to Plaintiff’s Motion
10 for Summary Judgment (Doc. 32) and Defendants’ Motion for Summary Judgment
11 (Doc. 36).

12 (2) Plaintiff’s Motion for Summary Judgment (Doc. 32) is **denied**.

13 (3) Defendants’ Motion for Summary Judgment (Doc. 36) is **granted**, and the
14 action is terminated with prejudice. The Clerk of Court must enter judgment accordingly.

15 Dated this 20th day of May, 2019.

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20 David G. Campbell
21 Senior United States District Judge
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