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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Aaron Joseph Bishop,  
10 Plaintiff,  
11 v.  
12 Siji Thomas, et al.,  
13 Defendants.  
14

No. CV 19-01757-PHX-JAT (JFM)

**ORDER**

15 Plaintiff Aaron Joseph Bishop, who is currently confined in Arizona State Prison  
16 Complex (ASPC)-Eyman, Cook Unit in Florence, Arizona, brought this civil rights action  
17 pursuant to 42 U.S.C. § 1983. (Doc. 1.) Defendant Thomas moves for summary judgment,  
18 and Plaintiff opposes.<sup>1</sup> (Docs. 47, 52.)

19 **I. Background**

20 Upon screening Plaintiff’s Complaint (Doc. 1) pursuant to 28 U.S.C. § 1915A(a),  
21 the Court determined that Plaintiff stated an Eighth Amendment medical care claim against  
22 Defendant Nurse Practitioner Siji Thomas in Count One based on her alleged failure to  
23 provide Plaintiff with adequate pain medication and ordered Defendant Thomas to answer.  
24 (Doc. 6.) The Court dismissed the remaining Defendants. (*Id.*)

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28 <sup>1</sup> 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. 49.)

1     **II.     Summary Judgment Standard**

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

8             If the movant fails to carry its initial burden of production, the nonmovant need not  
9     produce anything. *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Co., Inc.*, 210 F.3d 1099,  
10    1102-03 (9th Cir. 2000). But if the movant meets its initial responsibility, the burden shifts  
11    to the nonmovant to demonstrate the existence of a factual dispute and that the fact in  
12    contention is material, i.e., a fact that might affect the outcome of the suit under the  
13    governing law, and that the dispute is genuine, i.e., the evidence is such that a reasonable  
14    jury could return a verdict for the nonmovant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S.  
15    242, 248, 250 (1986); *see Triton Energy Corp. v. Square D. Co.*, 68 F.3d 1216, 1221 (9th  
16    Cir. 1995). The nonmovant need not establish a material issue of fact conclusively in its  
17    favor, *First Nat’l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 288-89 (1968); however,  
18    it must “come forward with specific facts showing that there is a genuine issue for trial.”  
19    *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (internal  
20    citation omitted); *see Fed. R. Civ. P. 56(c)(1)*.

21            At summary judgment, the judge’s function is not to weigh the evidence and  
22    determine the truth but to determine whether there is a genuine issue for trial. *Anderson*,  
23    477 U.S. at 249. In its analysis, the court must believe the nonmovant’s evidence and draw  
24    all inferences in the nonmovant’s favor. *Id.* at 255. The court need consider only the cited  
25    materials, but it may consider any other materials in the record. Fed. R. Civ. P. 56(c)(3).

26     **III.    Relevant Facts**

27            On April 10, 2013, Plaintiff had a left knee MRI performed while he was confined  
28    at the Pinal County Correctional Facility, and the results showed large baker’s

1 cysts/popliteal cysts (fluid-filled cysts behind the knee) with loose bodies, chondromalacia  
2 (damage to the cartilage under the kneecap), and extensive degeneration of the patella,  
3 femoral, and lateral tibiofemoral joints. (*See* Doc. 53-1 at 38 (Pl.’s Ex. C); Doc. 53-2 at  
4 14–17, 22 (Pl.’s Ex. D).) On April 30, 2013, Dr. Andre Jones went over the results of the  
5 MRI with Plaintiff, and Dr. Jones noted that there was no obvious meniscal or ligamentous  
6 injuries, but there was extensive degenerative joint disease. (*Id.* at 24.) Dr. Jones showed  
7 Plaintiff exercises he could do on his own and administered a cortisone injection. (*Id.*) Dr.  
8 Jones noted that if this did not help, Plaintiff “may need to consider knee replacement  
9 surgery.” (*Id.*) A few weeks prior, on April 2, 2013, Dr. Jones recommended Naproxen  
10 (NSAID) for pain management and narcotic medication “only if needed. It is up to the  
11 facility if they allow controlled substances.” (*Id.* at 25.)

12 In 2015, Plaintiff had a left knee MRI, and the results showed (1) advanced  
13 patellofemoral and mild medial and lateral compartment osteoarthritis, and (2) ossific  
14 fragments likely representing loose bodies within the posterior left knee/popliteal fossa.  
15 (*See id.* at 24.)

16 Plaintiff was admitted to the Arizona Department of Corrections on September 13,  
17 2017.<sup>2</sup>

18 On September 20, 2018, Plaintiff saw Defendant Thomas at sick call for complaints  
19 of left knee pain that Plaintiff described as 8/10. (Doc. 53-1 at 8 (Pl.’s Ex. C).) Upon  
20 examination, Defendant Thomas noted “left knee tenderness on palpation. [McMurray]  
21 test positive. [L]imited flexion. [U]nable to squat.” (*Id.*)<sup>3</sup> Defendant Thomas renewed  
22 Plaintiff’s Tramadol prescription and advised him to do quadriceps strengthening  
23 exercises. (*Id.* at 9.)

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26 <sup>2</sup> *See* Arizona Department of Corrections Inmate Datasearch,  
27 <https://corrections.az.gov/public-resources/inmate-datasearch> (search inmate number  
“074645”) (last visited Dec. 2, 2020).

28 <sup>3</sup> McMurray’s test is used to determine the presence of a meniscal tear in the knee,  
and positive findings on this test can indicate a compromised meniscus. *See*  
[https://www.physio-pedia.com/McMurrays\\_Test](https://www.physio-pedia.com/McMurrays_Test) (last visited Nov. 30, 2020).

1           On January 25, 2019, Defendant Thomas ordered Tramadol 50mg three times per  
2 day with an expiration date of January 29, 2019 to treat Plaintiff’s left knee pain. (Doc.  
3 48-1 at 5, 8 (Def.’s Ex. A).) It was noted that Ibuprofen had been ineffective at treating  
4 Plaintiff’s pain. (*Id.* at 9.) At the time, Tramadol was a non-formulary medication that  
5 was used for short term pain management and required approval from Corizon Utilization  
6 Management. (Doc. 53 at 46–47 (Pl.’s Ex. B).)<sup>4</sup> Tramadol is a Schedule IV drug, which  
7 is a controlled substance, and according to prison guidelines at the time, was not considered  
8 for long-term use for pain management. (Doc. 53-2 at 56 (Pl.’s Ex. E).) For pain caused  
9 by osteoarthritis and degenerative joint disease, the first line of pain management was  
10 NSAIDs or Tylenol, home exercise, weight management, and activity modification. (*Id.*)  
11 If these treatment modalities failed, physical therapy was the next option. (*Id.* at 57.)

12           On January 28, 2019, Plaintiff was seen by Defendant Thomas at sick call with  
13 complaints of left knee pain and swelling. (Doc. 48-2 at 2 (Def.’s Ex. B).) Plaintiff  
14 reported that his “knee locks up and [he] could not even move it.” (*Id.*) Plaintiff stated  
15 that he was unable to run, exercise, squat, or “do any thing [sic] heavy on it.” (*Id.*) Upon  
16 examination, Defendant Thomas noted “limited extension and flexion of left knee.  
17 [McMurray] test positive.” (*Id.*) Defendant Thomas assessed Plaintiff with possible  
18 meniscal injuries and possible osteoarthritis, and she submitted a consult request for a left  
19 knee MRI. (*Id.* at 5–6.) Defendant Thomas informed Plaintiff that “Tramadol cannot be  
20 renewed again due to policies of it to be not more than 10 days,” and she advised Plaintiff  
21 to take non-steroidal anti-inflammatory drugs (NSAIDs) or Tylenol for his pain, but  
22 Plaintiff refused and walked out. (*Id.* at 6.)

23           On February 7, 2019, Plaintiff had another sick call appointment with Defendant  
24 Thomas and again complained of left knee pain that was aggravated by walking or any  
25 movement. (Doc. 48-3 at 2 (Def.’s Ex. C).) Plaintiff reported that Tramadol “helped a  
26 little bit” with his pain. (*Id.*) Upon examining Plaintiff’s left knee, Defendant Thomas

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28           <sup>4</sup> Corizon was the Arizona Department of Corrections’ former contracted healthcare provider.

1 noted “less than 10 degree flexion. [T]enderness on palpation of knee joint, no swelling.  
2 [U]nable to perform all other assessments since he is not able to flex it.” (*Id.*) Defendant  
3 Thomas assessed Plaintiff with “possible ligamental or meniscal injury of the left knee”  
4 and prescribed analgesic balm and medical ice; she also placed an order for a knee sleeve.  
5 (*Id.* at 5–6.) Defendant Thomas advised Plaintiff to perform gradual stretching and range  
6 of motion exercises. Defendant Thomas noted that the MRI consult request was still  
7 pending. (*Id.* at 6.) Plaintiff refused Tylenol and NSAIDs again and renewed his request  
8 for Tramadol. (*Id.*)

9 On February 19, 2019, Plaintiff saw Defendant Thomas again regarding his knee  
10 pain. (Doc. 48-4 at 2 (Def.’s Ex. D).) Defendant Thomas noted that an MRI had been  
11 requested and that Plaintiff was refusing Tylenol or Ibuprofen. (*Id.*) Upon examining  
12 Plaintiff’s knee, Defendant Thomas noted “less than 10 degree flexion. [T]enderness on  
13 palpation of knee joint, no swelling. [U]nable to perform all other assessments since he is  
14 not able to flex it.” Defendant Thomas assessed Plaintiff with possible degenerative joint  
15 disease and possible osteoarthritis. (*Id.* at 5.) Defendant Thomas prescribed Tramadol  
16 50mg three times per day with an expiration date of February 28, 2019, and she submitted  
17 an orthopedics consult request. (*Id.* at 5–6, 8.) Defendant Thomas advised Plaintiff to  
18 continue his stretching and knee strengthening exercises. (*Id.* at 6.)

19 That same day, an alternative treatment plan (ATP) was issued in response to the  
20 MRI consult request Defendant Thomas had submitted. (Doc. 53-1 at 14 (Pl.’s Ex. C).)  
21 The ATP stated:

22 Notes indicate that there is acute worsening of chronic knee  
23 pain, but not findings that would necessitate MRI at this time.  
24 As it’s not clear how long ago [physical therapy] occurred and  
25 the pain worsened only 2 weeks ago, consider HEP [home  
26 exercise program], activity modification, and pharmacologics  
27 for pain control.

28 (*Id.*)

On March 21, 2019, Plaintiff was seen by Defendant Thomas, and Defendant  
Thomas informed Plaintiff that an ATP had been issued in response to the orthopedics

1 consult request that she had submitted. (Doc. 48-5 at 2 (Def.'s Ex. E).) Defendant Thomas  
2 advised Plaintiff that he was not being considered for an orthopedic consult based on his  
3 MRI results. (*Id.*)<sup>5</sup> The ATP was for Plaintiff to consider a physical therapy evaluation  
4 and Tylenols and NSAIDs for pain management. (*Id.*) Defendant Thomas submitted a  
5 physical therapy consult request. (*Id.* at 6.) Plaintiff stated that he did not want to take  
6 Tylenol or NSAIDs, so he continued with the analgesic balm for pain management. (*Id.*)  
7 Defendant Thomas advised Plaintiff to continue his stretching and knee strengthening  
8 exercises. (*Id.*)

9 On April 18, 2019, Plaintiff saw Defendant Thomas and complained that his left  
10 knee was swelling and locking up and that his pain was "at 10 now." (Doc. 48-6 at 2  
11 (Def.'s Ex. F).) Plaintiff reported that Tramadol was the only medication that helped with  
12 his pain and that he could not take Tylenol or NSAIDs because of an allergy. (*Id.*)  
13 Defendant Thomas examined Plaintiff's left knee and noted that there was minimal  
14 swelling, normal extension, tenderness on palpation of the patella, and limited flexion.  
15 (*Id.*) Defendant Thomas assessed Plaintiff with possible exacerbation of osteoarthritis. (*Id.*  
16 5.) Defendant Thomas prescribed Tramadol 50mg twice per day with an expiration date  
17 of April 27, 2019 and ordered medical ice for one week. (*Id.* at 6, 8.) Defendant Thomas  
18 noted that the physical therapy consult request was still pending, and she advised Plaintiff  
19 to continue his stretching exercises and quadriceps strengthening exercises. (*Id.*)

20 On April 29, 2019, Defendant Thomas renewed Plaintiff's analgesic balm  
21 prescription through August 26, 2019. (Doc. 48-7 at 5 (Def.'s Ex. G).)

22 On May 1, 2019, Defendant Thomas renewed Plaintiff's Tramadol prescription  
23 through May 15, 2019. (Doc. 48-8 at 5, 8 (Def.'s Ex. H).)

24 On May 6, 2019, Plaintiff was seen by Defendant Thomas at sick call, and Plaintiff  
25 reported that he was still having left knee pain and difficulty with walking and bearing  
26 weight on it, but the Tramadol and medical ice were helping. (Doc. 48-9 at 2 (Def.'s Ex.

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28 <sup>5</sup> It is not clear whether this statement is referring to Plaintiff's 2013 or 2015 MRI results.

1 I.) Upon examination, Defendant Thomas noted “mild swelling. [N]o effusion noted.  
2 [T]enderness on palpation of superior, inferior lateral and medial pole of patella. [L]imited  
3 extension and flexion.” (*Id.*) Defendant Thomas assessed Plaintiff with possible  
4 degenerative joint disease and possible osteoarthritis. (*Id.* at 5.) Defendant Thomas  
5 advised Plaintiff to continue doing stretching, range of motion exercises, and quadriceps  
6 strengthening exercises. (*Id.* at 6.) Defendant Thomas also extended Plaintiff’s Tramadol  
7 prescription through July 4, 2019. (*Id.* at 8.)

8 On May 9, 2019, Plaintiff saw Defendant Thomas again for left knee pain, and  
9 Plaintiff reported that he “feel[s] better now.” (Doc. 48-10 at 2 (Def.’s Ex. J).) Defendant  
10 Thomas noted that Plaintiff had limited range of motion in his left knee and tenderness on  
11 palpation of the patella. (*Id.*) Plaintiff was assessed with possible osteoarthritis. (*Id.* at 5.)  
12 Defendant Thomas advised Plaintiff “to do stretching and strengthening exercises for the  
13 quadriceps, and under “Plan Notes,” Defendant Thomas noted “will continue with same  
14 management follow up as needed.” (*Id.* at 6.)

#### 15 **IV. Eighth Amendment Standard**

16 To succeed on a § 1983 medical claim, a plaintiff must show (1) a “serious medical  
17 need” by demonstrating that failure to treat the condition could result in further significant  
18 injury or the unnecessary and wanton infliction of pain and (2) the defendant’s response  
19 was deliberately indifferent. *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006).

20 “Deliberate indifference is a high legal standard.” *Toguchi v. Chung*, 391 F.3d  
21 1051, 1060 (9th Cir. 2004). To act with deliberate indifference, a prison official must both  
22 know of and disregard an excessive risk to inmate health; as to the knowledge component,  
23 “the official must both be aware of facts from which the inference could be drawn that a  
24 substantial risk of serious harm exists, and he must also draw the inference.” *Farmer v.*  
25 *Brennan*, 511 U.S. 825, 837 (1994). Deliberate indifference in the medical context may be  
26 shown by a purposeful act or failure to respond to a prisoner’s pain or possible medical  
27 need and harm caused by the indifference. *Jett*, 439 F.3d at 1096. Deliberate indifference  
28 may also be shown when a prison official intentionally denies, delays, or interferes with

1 medical treatment or by the way prison doctors respond to the prisoner's medical needs.  
2 *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976); *Jett*, 439 F.3d at 1096.

3 Deliberate indifference is a higher standard than negligence or lack of ordinary due  
4 care for the prisoner's safety. *Farmer*, 511 U.S. at 835. "Neither negligence nor gross  
5 negligence will constitute deliberate indifference." *Clement v. Cal. Dep't of Corr.*, 220 F.  
6 Supp. 2d 1098, 1105 (N.D. Cal. 2002); *see also Broughton v. Cutter Labs.*, 622 F.2d 458,  
7 460 (9th Cir. 1980) (mere claims of "indifference," "negligence," or "medical malpractice"  
8 do not support a claim under § 1983). "A difference of opinion does not amount to  
9 deliberate indifference to [a plaintiff's] serious medical needs." *Sanchez v. Vild*, 891 F.2d  
10 240, 242 (9th Cir. 1989). A mere delay in medical care, without more, is insufficient to  
11 state a claim against prison officials for deliberate indifference. *See Shapley v. Nev. Bd. of*  
12 *State Prison Comm'rs*, 766 F.2d 404, 407 (9th Cir. 1985). The indifference must be  
13 substantial. The action must rise to a level of "unnecessary and wanton infliction of pain."  
14 *Estelle*, 429 U.S. at 105.

## 15 **V. Discussion**

16 There is no dispute that Plaintiff's left knee injuries and associated chronic pain  
17 constituted serious medical needs. Thus, the Court must determine whether Defendant  
18 Thomas' response to Plaintiff's serious medical needs amounted to deliberate indifference.

19 On this record, the treatment that Defendant Thomas provided to Plaintiff did not  
20 constitute deliberate indifference. Plaintiff's medical records show that during each of her  
21 encounters with Plaintiff, Defendant Thomas responded to Plaintiff's left knee pain,  
22 including by renewing Tramadol when appropriate based on her professional judgment and  
23 prison policy. Based on her training and experience, Defendant Thomas did not believe  
24 that Tramadol was appropriate for long-term pain management, and when she suggested  
25 that Plaintiff try NSAIDs and/or Tylenol to manage his pain instead, Plaintiff refused.  
26 Plaintiff did not inform Defendant Thomas of his purported allergy to NSAIDs and Tylenol  
27 until April 18, 2019, and once he did, Defendant Thomas did not suggest these medications  
28 to Plaintiff anymore and consistently renewed Plaintiff's Tramadol from thereon.



1 Plaintiff's medical records show that Defendant Thomas also ordered a knee sleeve and  
2 medical ice, gave Plaintiff's strengthening and mobility exercises to perform, and  
3 submitted consult requests for an MRI, orthopedics, and physical therapy. The MRI and  
4 orthopedics consults were ultimately ATP'd by Utilization Management, but there is no  
5 evidence that Defendant Thomas could have overridden this decision.

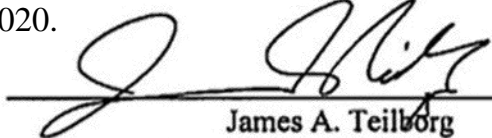
6 In response, Plaintiff contends that he informed Defendant Thomas several times  
7 that NSAIDs and analgesics did not give him any pain relief, that Defendant Thomas would  
8 only prescribe Tramadol for 4–10 days at a time, and that “each time Plaintiff was  
9 prescribed Tramadol there was a 2–5 day lag as the medication was shipped before any  
10 pain relief was given.” (Doc. 54 (Pl. Decl.) ¶¶ 2, 6, 7.) But there is no evidence that any  
11 lags in shipping the Tramadol to the pharmacy were caused by Defendant Thomas, and as  
12 previously discussed, Defendant Thomas based her initial decision to not renew Tramadol  
13 on her professional judgment that Tramadol was not an appropriate course of treatment for  
14 long-term pain management. Plaintiff refused to try anything other than Tramadol.  
15 However, once Plaintiff told Defendant Thomas that he was allergic to NSAIDs and  
16 Tylenol, Defendant Thomas began prescribing Tramadol again. Plaintiff is not qualified  
17 to make medical diagnoses or treatment decisions, and his disagreement with Defendant  
18 Thomas' course of treatment is not enough to create a genuine issue for trial. Absent facts  
19 showing that Defendant Thomas' response to Plaintiff's serious medical need was  
20 medically inappropriate and constituted deliberate indifference, summary judgment will be  
21 granted to Defendant Thomas.

22 **IT IS ORDERED:**

23 (1) The reference to the Magistrate Judge is withdrawn as to Defendant's Motion  
24 for Summary Judgment (Doc. 47).

25 (2) Defendant's Motion for Summary Judgment (Doc. 47) is **granted**, and the  
26 action is terminated with prejudice. The Clerk of Court must enter judgment accordingly.

27 Dated this 10th day of December, 2020.

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James A. Teilborg  
Senior United States District Judge