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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

BRYAN E. RANSOM,

Plaintiff,

v.

DEPARTMENT OF CORRECTIONS AND  
REHABILITATION, et al.,

Defendants.

Case No. 1:11-cv-0068-AWI-MJS (PC)

**FINDINGS AND RECOMMENDATION  
TO GRANT DEFENDANT M. DHAH'S  
MOTION FOR SUMMARY JUDGMENT**

**(ECF No. 137)**

**FOURTEEN-DAY OBJECTION  
DEADLINE**

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. The case proceeds on First Amended Complaint (“FAC”) Eighth Amendment medical indifference claims against Defendants Greaves, Bondoc, Punt, Madina, Swingle, Neubarth, Corea and Dhah. (ECF Nos. 20, 21, 26.) Pending before the Court is Defendant Dhah’s March 18, 2016, motion for summary judgment. (ECF No. 137.) Though Plaintiff was required to file an opposition or a statement of non-opposition to this motion within twenty-one days from the date of service, see E.D. Cal. Local Rule 230(*l*), he has not responded to the motion or sought an extension of time to do so. Accordingly, the Court deems the matter submitted.



1 **II. PLAINTIFF'S ALLEGATIONS<sup>1</sup>**

2 Plaintiff, who at all relevant times was housed at California State Prison in  
3 Corcoran, California ("CSP-Cor"), suffers from Hepatitis-C ("Hep-C"). "On numerous  
4 occasions," he complained to Defendant Dhah about pain in his hands and wrists  
5 following the discontinuation of his prescription of Tramadol, a pain reliever.<sup>2</sup> Though  
6 Dhah noted the pain and swelling in Plaintiff's hands and wrists, he refused to prescribe  
7 effective pain medication. This refusal "served no legitimate penological interests or  
8 institutional/medical goal."

9 **III. STATEMENT OF FACTS<sup>3</sup>**

10 During the relevant period in this case, Manjit Dhah worked as a Nurse  
11 Practitioner and Physician's Assistant at CSP-Cor where he was involved with providing  
12 healthcare to patients with Hep-C. In this role, Dhah was familiar with CDCR treatment  
13 guidelines for healthcare treatment for those patients.

14 Dhah was involved in Plaintiff's treatment on the following nine days: October 24,  
15 2008; November 14, 2008; November 18, 2008; November 20, 2008; March 25, 2010;  
16 June 30, 2010; September 1, 2010; November 12, 2010; and March 24, 2011.

17 Of these nine days, Dhah personally saw Plaintiff on only five days: November  
18 14, 2008; June 30, 2010; September 1, 2010; November 12, 2010; and March 24, 2011.

19 **A. November 14, 2008**

20 On November 14, 2008, Dhah saw Plaintiff for a chronic care follow-up of Hep-C  
21 and hypertension. Though Plaintiff had no symptoms or complaints, he wanted  
22 treatment for his Hep-C. Plaintiff told Dhah that he underwent a liver biopsy in 2006, but  
23 Dhah did not see a record of the biopsy in the chart. Dhah ordered a blood stool test to  
24 be performed, sought a copy of the 2006 liver biopsy, and ordered a battery of tests  
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26 <sup>1</sup> The Court includes only those allegations relevant to Plaintiff's claim against Defendant Dhah.

27 <sup>2</sup> Tramadol is a controlled substance analgesic medicine used to treat moderate to severe pain and is sometimes  
used when a patient has not responded to more traditional pain medications.

28 <sup>3</sup> These facts, which are undisputed unless noted otherwise, are taken from Defendant's Statement of Undisputed  
Facts and Plaintiff's discovery response and deposition testimony. (ECF No. 137-8.)

1 needed for Hep-C treatment evaluation. Plaintiff did not complain of joint pain on that  
2 day.

3 **B. June 30, 2010**

4 On June 30, 2010, Dhah saw Plaintiff for a follow-up of his history of occasional  
5 headaches. Plaintiff did not complain of joint pain on that day and did not have a  
6 headache on that day.

7 **C. September 1, 2010**

8 On September 1, 2010, Dhah saw Plaintiff for a follow-up for Hep-C and high  
9 blood pressure. Dhah's review of Plaintiff's medications revealed an old prescription for  
10 Gabapentin. Plaintiff said this prescription was for joint pain that he experienced in the  
11 past, but it did not work for him and he had not been taking it. Plaintiff agreed to a  
12 discontinuation of the prescription. In discussing his health that day, Plaintiff indicated  
13 that he did, among other exercises, two hundred jumping jacks; he had occasional  
14 headaches that were "not bad"; and he had no dizziness or vision issues. Dhah's  
15 physical examination did not reveal any tenderness or deformities in Plaintiff's hands.  
16 Based on this examination and his conversation with Plaintiff, Dhah discontinued the  
17 Gabapentin prescription and ordered a 3-month supply of Tylenol, a standard  
18 medication for inmates with occasional headaches and for patients with a history of joint  
19 pains.

20 Plaintiff's version of this appointment differs somewhat.<sup>4</sup> Plaintiff contends that he  
21 told Dhah he was experiencing chronic joint pain in his hands, wrists, and fingers, and  
22 that the Gabapentin was not helping with pain management. Plaintiff told Dhah that he  
23 was awaiting a decision from the Pain Management Committee to possibly reinstate  
24 Plaintiff's Tramadol prescription and asked if Dhah could expedite the process. When  
25 Dhah said he would prescribe Motrin, Plaintiff said that Tramadol was initially prescribed  
26 for him because Motrin and Tylenol proved ineffective. In response, Dhah told Plaintiff

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28 <sup>4</sup> Plaintiff's version of this appointment is gleaned from his Interrogatory responses and deposition testimony.

1 that Tramadol is no longer prescribed for pain and that the only medication he can  
2 prescribe now is Motrin or Tylenol. Plaintiff then inquired about medical marijuana,  
3 which irritated Dhah. Dhah laughed at Plaintiff and ordered an escorting officer to  
4 remove Plaintiff from the clinic.

5 Dhah denies laughing at Plaintiff, and he does not recall Plaintiff asking for  
6 medical marijuana. Even if Plaintiff did ask for medical marijuana, Dhah would not have  
7 been authorized to prescribe it. Similarly, prison healthcare guidelines in effect in 2010  
8 precluded Dhah from prescribing Tramadol to patients because of its addictive qualities  
9 and potential for misused. Plaintiff acknowledges that a nurse practitioner cannot  
10 prescribe a medication that he is not authorized to provide.

11 **D. November 12, 2010**

12 On November 12, 2010, Dhah saw Plaintiff for a follow-up for his Hep-C and high  
13 blood pressure. Plaintiff said he was “feeling fine” but wanted a prescription for antacids  
14 for occasional heartburn. Dhah prescribed a 2-month supply of antacids and ordered  
15 refills of Plaintiff’s high blood pressure medications. Other than heartburn, Plaintiff did  
16 not complain of any pain that day.

17 **E. March 24, 2011**

18 On March 24, 2011, Dhah saw Plaintiff one last time. Plaintiff complained of pain  
19 in his hands “every now & then,” but said he had not experienced trauma, numbness, or  
20 any radiation of pain to his wrists or forearms. Dhah’s examination of Plaintiff’s hands  
21 was normal. There were no deformities and the hands were non-tender to palpation.  
22 For Plaintiff’s occasional hand pain, Dhah recommended that he take Tylenol as  
23 needed.

24 **IV. ANALYSIS**

25 Where a prisoner’s Eighth Amendment claims arise in the context of medical  
26 care, the prisoner must allege and prove “acts or omissions sufficiently harmful to  
27 evidence deliberate indifference to serious medical needs.” Estelle v. Gamble, 429 U.S.  
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1 97, 106 (1976). An Eighth Amendment medical claim has two elements: “the  
2 seriousness of the prisoner’s medical need and the nature of the defendant’s response  
3 to that need.” McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1991), overruled on  
4 other grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (*en banc*).

5 A medical need is serious “if the failure to treat the prisoner's condition could  
6 result in further significant injury or the ‘unnecessary and wanton infliction of pain.’ ”  
7 McGuckin, 974 F.2d at 1059 (quoting Estelle, 429 U.S. at 104). Indications of a serious  
8 medical need include “the presence of a medical condition that significantly affects an  
9 individual's daily activities.” Id. at 1059-60. By establishing the existence of a serious  
10 medical need, a prisoner satisfies the objective requirement for proving an Eighth  
11 Amendment violation. Farmer v. Brennan, 511 U.S. 825, 834 (1994).

12 If a prisoner establishes the existence of a serious medical need, he must then  
13 show that prison officials responded to the serious medical need with deliberate  
14 indifference. Farmer, 511 U.S. at 834. In general, a prisoner evinces deliberate  
15 indifference by showing that prison officials denied, delayed, or intentionally interfered  
16 with medical treatment, or points the deficient way in which prison officials provided  
17 medical care. Hutchinson v. United States, 838 F.2d 390, 393-94 (9th Cir. 1988).  
18 However, “the indifference to his medical needs must be substantial. Mere 'indifference,'  
19 'negligence,' or 'medical malpractice' will not support this cause of action.” Broughton v.  
20 Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980) (citing Estelle, 429 U.S. at 105-  
21 06). See also Toguchi v. Soon Hwang Chung, 391 F.3d 1051, 1057 (9th Cir. 2004)  
22 (“Mere negligence in diagnosing or treating a medical condition, without more, does not  
23 violate a prisoner's Eighth Amendment rights.”); McGuckin, 974 F.2d at 1059 (same).  
24 Deliberate indifference is “a state of mind more blameworthy than negligence” and  
25 “requires 'more than ordinary lack of due care for the prisoner's interests or safety.’”  
26 Farmer, 511 U.S. at 835 (quoting Whitley v. Albers, 475 U.S. 312, 319 (1986)).  
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1           Mere differences of opinion between a prisoner and prison medical staff or  
2 between medical professionals as to the proper course of treatment for a medical  
3 condition do not give rise to a § 1983 claim. Toguchi, 391 F.3d at 1058; Jackson v.  
4 McIntosh, 90 F.3d 330, 332 (9th Cir. 1996); Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir.  
5 1989); Franklin v. Oregon, 662 F.2d 1337, 1344 (9th Cir. 1981).

6           There is no dispute here that Plaintiff's Hep-C and related joint pain amount to a  
7 serious medical need. The only question before the Court is whether Defendant Dhah's  
8 response to that need was deliberately indifferent. As to that question, the undisputed  
9 facts demonstrate that Plaintiff's claim against Defendant is premised on a mere  
10 difference of opinion as to the proper course of treatment. Though Plaintiff sought a  
11 renewal of his Tramadol prescription or an alternative treatment like medical marijuana,  
12 the evidence establishes that Defendant prescribed the only pain medication that he  
13 was authorized to provide. Plaintiff acknowledges that a nurse practitioner cannot  
14 prescribe a medication that he is not permitted to provide.

15           Additionally, in support of his motion, Dhah submits the declaration of Dr. Martin  
16 Sattah, a board certified internist who has consistently treated numerous patients with  
17 acute and chronic pain stemming from their contraction and treatment of HIV and/or  
18 Hep-C, including patients who have suffered from joint pain. Following review of  
19 Plaintiff's medical records and Dhah's provision of care, Dr. Sattah opines that Dhah  
20 appropriately responded to Plaintiff's medical history and complaints of pain, including  
21 ordering laboratory results, obtaining the liver biopsy results, and ordering  
22 recommended tests. Dr. Sattah also opines that the medications prescribed by Dhah  
23 were appropriate under the circumstances. Insofar as Plaintiff claims that Dhah refused  
24 to prescribe Tramadol, Dr. Sattah declares that any refusal would have been  
25 reasonable given the lack of indication by Plaintiff that his joint pains were severe,  
26 debilitating, or worsening on the dates he was seen by Dhah. Dr. Sattah thus concludes  
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1 that Dhah's treatment of Plaintiff was reasonable and clearly met the standard of care in  
2 the medical community.

3 In light of this evidence, the Court concludes that no reasonable trier of fact  
4 would find that Defendant's treatment of Plaintiff was deliberately indifferent. For these  
5 reasons, the Court will recommend that Defendant Dhah's motion for summary  
6 judgment be granted.

7 **V. CONCLUSION**

8 Based on the foregoing, IT IS HEREBY RECOMMENDED that:

- 9 1. Defendant Dhah's March 18, 2016, motion for summary judgment (ECF  
10 No. 137) be GRANTED; and  
11 2. Defendant Dhah be DISMISSED from this action.

12 The findings and recommendations will be submitted to the United States District  
13 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).  
14 Within fourteen (14) days after being served with the findings and recommendations,  
15 the parties may file written objections with the Court. The document should be  
16 captioned "Objections to Magistrate Judge's Findings and Recommendations." A party  
17 may respond to another party's objections by filing a response within fourteen (14) days  
18 after being served with a copy of that party's objections. The parties are advised that  
19 failure to file objections within the specified time may result in the waiver of rights on  
20 appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v.  
21 Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

22  
23 IT IS SO ORDERED.

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25 Dated: June 29, 2016

26 /s/ Michael J. Seng  
27 UNITED STATES MAGISTRATE JUDGE  
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