

1 In accordance with the provisions of 28 U.S.C. §
2 636(b) (1) (C) and Local Rule 304, this court has conducted a de
3 novo review of this case. Having carefully reviewed the entire
4 file, the court finds the findings and recommendations to be
5 supported by the record and by proper analysis, except with
6 regard to the sufficiency of plaintiff's Eighth Amendment claim.

7 Under 42 U.S.C. § 1983, to maintain an Eighth Amendment
8 claim based on prison medical treatment, an inmate must show
9 "deliberate indifference to serious medical needs." Estelle v.
10 Gamble, 429 U.S. 97, 104 (1976). In the Ninth Circuit, the test
11 for deliberate indifference consists of two parts. Jett v.
12 Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) (internal citations
13 omitted). First, the plaintiff must show a serious medical need
14 by demonstrating that failure to treat a prisoner's condition
15 could result in further significant injury or the unnecessary and
16 wanton infliction of pain. Id. (internal citations and
17 quotations omitted.) Second the plaintiff must show that the
18 defendant's response to the need was deliberately indifferent.
19 Id. The second prong is satisfied by showing "(a) a purposeful
20 act or failure to respond to a prisoner's pain or possible
21 medical need and (b) harm caused by the indifference." Id.
22 Indifference "may appear when prison officials deny, delay or
23 intentionally interfere with medical treatment, or it may be
24 shown by the way in which prison physicians provide medical
25 care." Id. (internal citations omitted). However, an
26 inadvertent or negligent failure to provide adequate medical care
27 alone does not state a claim under § 1983. See id. (internal
28 citations omitted.)

1 Here, the plaintiff has alleged that defendant Tran
2 refused to issue him his prescribed Tylenol for pain related to
3 his cancer diagnosis on March 8, 2020, despite his obvious need
4 for it and the extreme pain he was experiencing. (See ECF No. 14
5 at 5-8.) Plaintiff alleges that defendant Tran repeatedly told
6 him that she did not care that he was in pain and refused to
7 carry out the doctor's order that plaintiff be prescribed Tylenol
8 as needed. (See id. at 8.) The Magistrate Judge correctly
9 points out that plaintiff only alleges a single instance of being
10 denied pain medication, which ordinarily "militates against a
11 finding of deliberate indifference." See Jett, 439 F.3d at 1096.

12 However, a single instance of deliberate indifference
13 to a serious medical need is not in all cases insufficient to
14 support a claim under the Eighth Amendment. For example, in
15 Clement v. Gomez, 298 F.3d 898, 902 (9th Cir. 2002), the Ninth
16 Circuit held that correctional officers could be liable for
17 deliberate indifference to serious medical needs for a single
18 instance where they knew that inmates had been exposed to pepper
19 spray but waited four hours before allowing them to leave their
20 cells to shower. Accordingly, even though plaintiff alleges only
21 a single instance of being denied his pain medication, the court
22 finds that plaintiff has sufficiently stated a cognizable claim
23 for deliberate indifference to serious medical need to overcome
24 dismissal of that claim at the screening stage.

25 Accordingly, IT IS HEREBY ORDERED:

26 1. The findings and recommendations filed June 11,
27 2021, are adopted in part; and

28 2. Plaintiff's claims for retaliation under the First

1 Amendment and deliberate indifference to serious medical needs
2 under the Eighth Amendment may proceed as against defendant Tran.
3 All other claims in plaintiff's complaint are dismissed without
4 leave to amend.

5 Dated: July 8, 2021



6 **WILLIAM B. SHUBB**
7 **UNITED STATES DISTRICT JUDGE**
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