

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

RAUL ARELLANO, JR.,  
  
Plaintiff,  
  
v.  
  
DR. K. DEAN, et al.,  
  
Defendants.

Case No.: 15-CV-2247 JLS (JLB)

**ORDER (1) GRANTING  
PLAINTIFF’S MOTION FOR  
RECONSIDERATION, AND  
(2) GRANTING IN PART AND  
DENYING IN PART DEFENDANTS’  
MOTION FOR SUMMARY  
JUDGMENT**

(ECF Nos. 77, 110)

Presently before the Court is Plaintiff Raul Arellano’s Motion for Reconsideration (“Mot.,” ECF No. 110). Plaintiff asks the Court to reconsider its August 6, 2019 Order Granting Defendants’ Motion for Summary Judgment. Defendants Dr. K. Dean and Nurse Practitioner (“NP”) S. Pasha did not file a response to Plaintiff’s Motion. The Court has reviewed Plaintiff’s instant Motion; Defendants’ Motion for Summary Judgment (“MSJ,” ECF No. 77); Plaintiff’s Second Amended Complaint (“SAC,” ECF No. 11) and Opposition to Defendants’ Motion for Summary Judgment (“Opp’n,” ECF No. 90); Defendants’ Reply in Support of their Motion for Summary Judgment (ECF No. 91); and

1 Plaintiff's Sur-Reply<sup>1</sup> ("Sur-Reply," ECF No. 98). Having carefully considered the  
2 Parties' arguments and the law, the Court (1) **GRANTS** Plaintiff's Motion for  
3 Reconsideration, and (2) **GRANTS IN PART AND DENIES IN PART** Defendants'  
4 Motion for Summary Judgment. This Order **SHALL AMEND AND SUPERSEDE** the  
5 Court's August 6, 2019 Order docketed at ECF No. 107.

### 6 **BACKGROUND**

7 The Court's August 6, 2019 Order ("Prior Order") contains a thorough and accurate  
8 recitation of the factual and procedural history in this case. *See* Prior Order at 2–14.<sup>2</sup> This  
9 Order incorporates by reference the background as set forth therein.

10 Relevant to this Motion, Plaintiff's SAC raises claims under 42 U.S.C. § 1983  
11 against Defendants Dr. Dean and NP Pasha for violations of the Eighth and Fourteenth  
12 Amendments. *See generally* SAC. Specifically, Plaintiff alleges that both Dr. Dean and  
13 NP Pasha (1) were deliberately indifferent to his serious medical need by failing to address  
14 adequately the alleged side effects Plaintiff experienced from the pain and seizure  
15 medications he was prescribed, in violation of the Eighth Amendment; and (2) were  
16 deliberately indifferent and denied equal treatment to Plaintiff by failing to prescribe  
17 Plaintiff orthopedic shoes to alleviate his pain, in violation of the Eighth and Fourteenth  
18 Amendments. *Id.* at 5–8, 10–11.

19 Defendants moved for summary judgment on January 10, 2019. *See generally* MSJ.  
20 The Court granted Defendants' motion in its entirety on August 6, 2019. *See generally*  
21 Prior Order. Plaintiff now asks the Court to reconsider its Prior Order. *See generally* Mot.

22 ///

23 ///

---

25 <sup>1</sup> To the extent the allegations contained in Plaintiff's SAC, Opposition, and Sur-Reply are within his  
26 personal knowledge, they are treated as affidavits in opposition to Defendants' Motion for Summary  
27 Judgment. *See Jones v. Blanas*, 393 F.3d 918, 923 (9th Cir. 2004).

28 <sup>2</sup> Pin citations to docketed materials refer to the CM/ECF page numbers electronically stamped at the top  
of each page.

1 **LEGAL STANDARD**

2 Federal Rule of Civil Procedure 59(e) permits a party to move a court to alter or  
3 amend its judgment. “A district court may grant a Rule 59(e) motion if it ‘is presented  
4 with newly discovered evidence, committed clear error, or if there is an intervening change  
5 in the controlling law.’” *Wood v. Ryan*, 759 F.3d 1117, 1121 (9th Cir. 2014) (internal  
6 quotation marks omitted) (quoting *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir.  
7 1999) (en banc)) (emphasis in original). Reconsideration is an “extraordinary remedy, to  
8 be used sparingly in the interests of finality and conservation of judicial resources.” *Kona*  
9 *Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). Ultimately, whether  
10 to grant or deny a motion for reconsideration is in the “sound discretion” of the district  
11 court. *Navajo Nation v. Norris*, 331 F.3d 1041, 1046 (9th Cir. 2003) (citing *Kona Enters.*,  
12 229 F.3d at 883). A party may not raise new arguments or present new evidence if it could  
13 have reasonably raised them earlier. *Kona Enters.*, 229 F.3d at 890 (citing *389 Orange St.*  
14 *Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999)).

15 **ANALYSIS**

16 Plaintiff does not raise any newly discovered evidence or intervening changes in the  
17 law. *See generally* Mot. The only basis for reconsideration, therefore, is clear error. After  
18 reviewing Plaintiff’s Motion and the law, the Court finds it necessary to reconsider its  
19 conclusion that Plaintiff failed to raise a genuine issue of material fact regarding Plaintiff’s  
20 claim that Dr. Dean was deliberately indifferent to Plaintiff’s serious medical need when  
21 Dr. Dean failed to respond to Plaintiff’s suicidal ideations. Accordingly, the Court  
22 **GRANTS** Plaintiff’s Motion for Reconsideration.

23 **I. Deliberate Indifference Claim Against Dr. Dean Regarding Suicidal Ideations**

24 The Court addresses first Plaintiff’s claim that Dr. Dean was deliberately indifferent  
25 to Plaintiff’s serious medical need when Dr. Dean failed to respond to Plaintiff’s  
26 complaints that his medication was causing, among other side effects, suicidal ideations.

27 It is a violation of the Eighth Amendment’s cruel and unusual punishments clause  
28 when prison officials are “deliberately indifferent” to a prisoner’s “serious medical needs.”

1 *Estelle v. Gamble*, 429 U.S. 97, 102–05 (1976). Such a violation “may appear when prison  
2 officials deny, delay or intentionally interfere with medical treatment, or it may be shown  
3 by the way in which prison officials provide medical care.” *Hutchinson v. United States*,  
4 838 F.2d 390, 394 (9th Cir. 1988) (citing *Estelle*, 429 U.S. at 105).

5 To demonstrate deliberate indifference, the plaintiff must show two things: (1) “a  
6 serious medical need by demonstrating that failure to treat a prisoner’s condition could  
7 result in further significant injury or the unnecessary and wanton infliction of pain”; and  
8 (2) “the defendant’s response to the need was deliberately indifferent.” *Jett v. Penner*, 439  
9 F.3d 1091, 1096 (9th Cir. 2006) (internal citations and quotations omitted). “This second  
10 prong . . . is satisfied by showing (a) a purposeful act or failure to respond to a prisoner’s  
11 pain or possible medical need and (b) harm caused by the indifference.” *Id.* “Deliberate  
12 indifference thus requires an objective risk of harm and a subjective awareness of that  
13 harm.” *Conn v. City of Reno*, 591 F.3d 1081, 1095 (9th Cir. 2010), *vacated*, 563 U.S. 915  
14 (2011), *opinion reinstated in relevant part*, 658 F.3d 897 (9th Cir. 2011) (citing *Farmer v.*  
15 *Brennan*, 511 U.S. 825, 837 (1994)). The Court “address[es] these requirements—serious  
16 medical need, indifference to that need, and harm caused by that indifference—each in  
17 turn.” *Id.*

#### 18 **A. *Serious Medical Need***

19 “A heightened suicide risk or an attempted suicide is a serious medical need.” *Conn*,  
20 572 F.3d at 1055. Plaintiff alleges that he told Dr. Dean that he was having suicidal  
21 ideations during a medical examination on May 20, 2014. SAC at 5. Dr. Dean does not  
22 dispute that such a statement would constitute a serious medical need. Thus, the Court  
23 finds Plaintiff’s suicidal ideations “satisf[y] the objective component of a serious medical  
24 need.” *Kamakeeaina v. City & Cty. of Honolulu*, No. CIV. 11-00770 JMS, 2014 WL  
25 1691611, at \*7 (D. Haw. Apr. 29, 2014), *aff’d sub nom. Kamakeeaina v. Maalo*, 680 F.  
26 App’x 631 (9th Cir. 2017) (finding statements made by plaintiff to the defendants that  
27 plaintiff was “ready to commit suicide” were sufficient to show a serious medical need).

28 ///

1           ***B. Indifference to That Need***

2           “To demonstrate the second prong—deliberate indifference—[P]laintiff[] must  
3 show that [Dr. Dean] w[as] (a) *subjectively aware* of the serious medical need and (b) failed  
4 to adequately respond.” *Conn*, 591 F.3d at 1096 (emphasis in original).

5           Here, Plaintiff alleges that he told Dr. Dean that his pain and seizure medications,  
6 Elavil and Kepra, were causing him to experience not only serious pain, lack of sleep,  
7 panic attacks, seizures, and dizziness, SAC at 5, but also suicidal thoughts. *Id.* Plaintiff  
8 alleges that when he informed Dr. Dean that he was “getting suicidal thoughts severe  
9 enough to try to kill [him]self every time [he took] this medication, she responded [with] a  
10 ‘laugh’ and sa[id:] ‘Don’t tell no one that, just do it.’” *Id.* at 8. After Plaintiff’s medical  
11 examination, Dr. Dean did not record in her medical notes that Plaintiff was having suicidal  
12 thoughts, did not refer Plaintiff for any further mental health treatment, and did not tell any  
13 of Plaintiff’s other doctors that he was having suicidal ideations. *See* Opp’n at 9. Plaintiff  
14 alleges that Dr. Dean did not record his side effects because she told Plaintiff that she  
15 believed “all inmates lie.” *Id.* at 10. Dr. Dean did not replace or suggest replacing Kepra  
16 and Elavil with other medication, but instead doubled the dosage of Elavil—against  
17 Plaintiff’s protestations—to treat Plaintiff’s pain.<sup>3</sup> SAC at 6, 10.

18           The Court finds Plaintiff’s allegations sufficient to raise a genuine issue of material  
19 fact as to whether Dr. Dean was deliberately indifferent to Plaintiff’s heightened risk of  
20 suicide. A finder of fact could conclude that Dr. Dean was aware of Plaintiff’s serious  
21 medical need, yet “chose to deny” him treatment to address his suicidal thoughts, “not  
22 because of an honest medical judgment, but on account of personal animosity.” *See*  
23 *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996). Indeed, “[e]vidence of an improper  
24

---

25  
26 <sup>3</sup> To be sure, Dr. Dean refutes Plaintiff’s allegations. Dr. Dean asserts that Plaintiff did not express any  
27 suicidal thoughts to her and that she “certainly never . . . told a patient expressing suicidal thoughts to ‘just  
28 do it,’ or any other words to that effect.” *See* Declaration of Dr. Kristin Dean ¶ 6, ECF No. 77-2. The  
Court cannot, however, weigh evidence or make credibility determinations in ruling on a motion for  
summary judgment, and any inferences drawn from the underlying facts must be viewed in the light most  
favorable to the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

1 or ulterior motive,” such as the alleged statements made by Dr. Dean, “can support a  
2 conclusion that [Dr. Dean] failed to exercise sound medical judgment but instead acted  
3 with a culpable state of mind.” *See George v. Sonoma Cty. Sheriff’s Dep’t*, 732 F. Supp.  
4 2d 922, 937 (N.D. Cal. 2010) (citing *Jackson*, 90 F.3d at 332); *see also Lisle v. Welborn*,  
5 933 F.3d 705, 717 (7th Cir. 2019) (holding that taunting prisoner for being unsuccessful in  
6 his suicide attempt and encouraging the prisoner to try again “could be deemed cruel  
7 infliction of mental pain and deliberate indifference to his risk of suicide, making summary  
8 judgment improper”).

9 Plaintiff’s allegations also are sufficient to raise a question of fact as to whether  
10 Dr. Dean’s response was adequate. Plaintiff alleges that Dr. Dean was subjectively aware  
11 of his suicidal ideations, yet failed to report this to any other official or to take any action  
12 to address his suicidal ideations. Opp’n at 4–5. Failure to report a prisoner’s suicidal  
13 ideations is not an adequate response to such a serious medical need. *See Conn*, 591 F.3d  
14 at 1098. “If [Plaintiff] proves that claim at trial . . . he will have shown that [Dr. Dean]  
15 w[as] deliberately indifferent to his serious medical needs.” *See Jackson*, 90 F.3d at 332.

16 The Court therefore concludes that Plaintiff’s “evidence [i]s sufficient to raise a  
17 genuine issue of material fact on whether ‘the course of treatment [Dr. Dean] chose was  
18 medically unacceptable under the circumstances,’ and whether [she] ‘chose this course in  
19 conscious disregard of an excessive risk’ to [Plaintiff]’s health.” *See Hamby v. Hammond*,  
20 821 F.3d 1085, 1097 (9th Cir. 2016) (Gould, J. concurring in part and dissenting in part)  
21 (quoting *Jackson*, 90 F.3d at 332).

### 22 **C. Harm**

23 Finally, the Court must determine (1) whether Plaintiff was harmed by Dr. Dean’s  
24 alleged deliberate indifference, and (2) “whether the alleged deliberate indifference was  
25 both an actual and a proximate cause of Plaintiff’s harm.” *J.M.M. v. Cty. of Los Angeles*,  
26 No. LACV1406529JAKFFMX, 2016 WL 11002595, at \*16 (C.D. Cal. Oct. 3, 2016)  
27 (quotations and alterations omitted) (citing *Castro v. Cty. of Los Angeles*, 797 F.3d 654,  
28 667 (9th Cir. 2015)). The answer to the first question is straightforward. Plaintiff

1 attempted suicide in March 2015. SAC at 7. Between the time Plaintiff was examined by  
2 Dr. Dean and his suicide attempt, Plaintiff alleges he suffered pain, lack of sleep,  
3 depression, and continuing suicidal ideations. Opp’n at 5. These allegations show Plaintiff  
4 suffered harm sufficient to defeat summary judgment.

5 The answer to the second question is less straightforward. “Conduct is an actual  
6 cause of injury ‘only if the injury would not have occurred “but for” that conduct.’”  
7 *J.M.M.*, 2016 WL 11002595, at \*16 (quoting *White v. Roper*, 901 F.2d 1501, 1505 (9th  
8 Cir. 1990)). Actual, or “but-for,” causation is “purely a question of fact.” *Robinson v.*  
9 *York*, 566 F.3d 817, 825 (9th Cir. 2009). “Once it is established that the defendant’s  
10 conduct has in fact been one of the causes of the plaintiff’s injury, there remains the  
11 question whether the defendant should be legally responsible for the injury”—in other  
12 words, whether the defendant’s actions were a proximate cause. *White*, 901 F.2d at 1506.  
13 While a defendant “‘is not the proximate cause of [the plaintiff]’s alleged injuries if another  
14 cause intervenes and supersedes their liability for the subsequent events[,] . . . foreseeable  
15 intervening causes . . . will not supersede the defendant’s responsibility.” *Conn*, 591 F.3d  
16 at 1100–01 (emphasis in original) (quoting *White*, 901 F.2d at 1506). “‘If reasonable  
17 persons could differ’ on the question of causation then ‘summary judgment is inappropriate  
18 and the question should be left to a jury.’” *Lemire v. Cal. Dep’t of Corr. & Rehab.*, 726  
19 F.3d 1062, 1080 (9th Cir. 2013) (quoting *White*, 901 F.2d at 1506).

20 Dr. Dean contends that “[t]here is no evidence that Plaintiff would have had any  
21 better outcomes if Dr. Dean had done anything differently, and therefore no evidence of  
22 causation of harm.” MSJ at 17. Dr. Dean contends that with regard to Plaintiff’s allegation  
23 concerning his suicidal thoughts, during the months that passed between when Dr. Dean  
24 saw Plaintiff and his attempted suicide, Plaintiff’s requests to change medication were also  
25 denied by Dr. Chau (his primary care physician) and Dr. Malhotra (a neurologist), who  
26 “were the two physicians to whom Dr. Dean would have had to refer Plaintiff” for a change  
27 of medication. *Id.* at 18. Because “[a]ll that Dr. Dean could have done . . . would have  
28 been to refer Plaintiff to a neurologist or for a follow up appointment,” and Plaintiff saw

1 both a neurologist and his primary care physician before he attempted suicide, Dr. Dean is  
2 not an actual or proximate cause of Plaintiff’s harm. *Id.*

3 Plaintiff alleges that despite telling Dr. Dean that he felt his medication was causing  
4 him severe side effects, including suicidal ideation, Dr. Dean failed to report those side  
5 effects in her medical notes, failed to suggest a change in medication, and failed to tell any  
6 of Plaintiff’s other physicians or specialists about his suicidal thoughts. *See* SAC at  
7 5–8; Opp’n at 4–5, 9–10; Sur-Reply at 2, 4–5. Plaintiff argues that although he did not  
8 attempt suicide until March of 2015—months after his May 2014 visit with Dr. Dean—  
9 “during the time [he] was taking Elavil and Keppra,” the medication continued to cause  
10 Plaintiff to “feel very hopeless, depressed, [and] wanting to kill [him]self.” Sur-Reply at  
11 4–5; *see* SAC at 5, 7. Plaintiff “tr[ie]d to control” the feelings “until March 2015 [when  
12 he] end[ed] up losing control and end[ed] up in [the suicide] infirmary.” Sur-Reply at 4;  
13 *see* SAC at 7.

14 Based on these facts, the Court is “satisfied . . . that [Plaintiff] presented sufficient  
15 evidence of actual and proximate causation to defeat summary judgment and give rise to a  
16 jury question whether [Dr. Dean’s actions] caused [Plaintiff]’s eventual [attempted]  
17 suicide.” *Conn*, 591 F.3d at 1098. With regard to actual cause, construing all the evidence  
18 in the light most favorable to Plaintiff, the Court finds that a reasonable juror could  
19 conclude that, despite the passage of several months between the May 2014 examination  
20 by Dr. Dean and Plaintiff’s attempted suicide, Dr. Dean’s failure to report Plaintiff’s  
21 suicidal thoughts or take action herself was a but-for cause of Plaintiff’s attempted suicide.  
22 Had Dr. Dean reported his suicidal ideations, Plaintiff may have received treatment that  
23 prevented his attempted suicide.

24 As for proximate cause, the Court finds that Plaintiff has “presented sufficient  
25 evidence of foreseeability that the question of proximate cause must be decided by a jury.”  
26 *Id.* at 1102. The Ninth Circuit’s decision in *Conn* is instructive. There, a pretrial detainee,  
27 Brenda Clustka, committed suicide while housed in the Washoe County Jail in Reno,  
28 Nevada. *Id.* at 1091. Two days before Clustka’s suicide, the defendant police officers



1 picked Clustka up in a paddy wagon after they found her intoxicated on the sidewalk. *Id.*  
2 at 1092. On the way to the jail, Clustka attempted suicide by wrapping her seatbelt around  
3 her neck; when the defendants stopped to intervene and restrain her, “[s]he yelled  
4 something to the effect of, “You lied to me. Just kill me. I’ll kill myself then.” *Id.* When  
5 they arrived at the jail, the defendants did not “notif[y] jail personnel that Clustka had tried  
6 to choke herself or that she had threatened to commit suicide[, and] . . . did not write a  
7 report nor inform their supervising sergeant about the incident that day.” *Id.* After being  
8 released from jail, Clustka was taken to an emergency room where she was admitted for  
9 observation and, shortly after being released from the hospital, she was arrested and taken  
10 back to the Washoe County Jail. *Id.* at 1093. At the emergency room and during the jail  
11 intake process, medical officials—none of whom knew about Clustka’s previous suicide  
12 attempt—screened Clustka and determined that suicide watch was unnecessary. *Id.* The  
13 morning after she was booked in jail, Clustka committed suicide. *Id.*

14       Based on these facts, the Ninth Circuit found that the plaintiffs “presented sufficient  
15 evidence of actual and proximate causation to defeat summary judgment and give rise to a  
16 jury question whether the officers’ omissions caused Clustka’s eventual suicide.” *Id.* at  
17 1098. The Ninth Circuit rejected the defendants’ argument that the medical screenings that  
18 occurred after they failed to report the attempted suicide were an intervening cause, noting  
19 that,

20               [w]hen medical examiners have insufficient information about  
21 the patient they are diagnosing, they are likely to give an  
22 inaccurate diagnosis. By failing to report Clustka’s choking and  
23 threat of suicide, the officers rendered these reviews of little  
24 value. More important, by doing so, they foreseeably  
undermined her access to effective medical evaluations and  
adequate mental health care.

25 *Id.* at 1101.

26       The same is true here. Dr. Dean’s failure to inform any officials about Plaintiff’s  
27 suicidal thoughts might have rendered the medical reviews by Drs. Chou and Malhotra “of  
28 little value.” *See id.* Rather than an intervening cause, these examinations—predictably—

1 may have led to inaccurate diagnoses and left Plaintiff on an unacceptable course of  
2 treatment. Thus, if Plaintiff proves Dr. Dean was subjectively aware of his suicidal  
3 ideations, “[a] jury could reasonably conclude that notwithstanding the subsequent  
4 uninformed medical reviews, the failure to take action following” Plaintiff informing  
5 Dr. Dean he was experiencing suicidal ideations “was a moving force and proximate cause  
6 of [Plaintiff]’s [attempted] suicide.” *Id.* “When presented to the jury, [Dr. Dean’s]  
7 argument[s] may well succeed. [They are] not, however, sufficient to warrant judicial  
8 determination of causation as a matter of law.” *Id.* at 1102.

9 In sum, the Court finds Plaintiff’s allegations sufficient to show genuine issues of  
10 material facts as to whether Dr. Dean was deliberately indifferent to Plaintiff’s heightened  
11 risk of suicide in violation of the Eighth Amendment.

## 12 **II. Deliberate Indifference and Equal Protection Claims Against NP Pasha and** 13 **Dr. Dean**

14 The Court next turns to Plaintiff’s remaining claims against NP Pasha and Dr. Dean.  
15 After reviewing the Prior Order and Plaintiff’s Motion, the Court finds no clear error in its  
16 conclusion that Plaintiff failed to raise a genuine issue of material fact as to any claim  
17 against NP Pasha or the deliberate indifference and equal protection claims regarding  
18 orthopedic shoes against Dr. Dean.<sup>4</sup> *See* Prior Order at 19–28. Plaintiff fails to raise facts  
19 that show NP Pasha’s decisions regarding Plaintiff’s medications, or both Defendants  
20 decisions regarding orthopedic shoes, amounted to anything more than a “difference of  
21 medical opinion,” which is “insufficient, as a matter of law, to establish deliberate  
22 indifference.” *See Jackson*, 90 F.3d at 332. Accordingly, the Court **GRANTS** Defendants’  
23 Motion for Summary Judgment regarding (1) all claims against NP Pasha, and (2) the  
24 deliberate indifference and equal protection claims regarding orthopedic shoes against  
25 Dr. Dean.

---

26  
27  
28 <sup>4</sup> The Court incorporates by reference its analysis from the Prior Order concerning these claims. *See* Prior  
Order at 19–28.

### 1 III. Qualified Immunity

2 Having found Plaintiff raised a genuine issue of material fact as to whether Dr. Dean  
3 violated the Eighth Amendment, the Court must now determine whether qualified  
4 immunity applies. Qualified immunity shields certain government officials from liability  
5 unless their conduct violates “clearly established statutory or constitutional rights of which  
6 a reasonable person would have known.” *Hope v. Pelzer*, 536 U.S. 730, 739 (2002)  
7 (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). The point of shielding officials  
8 from liability except when they violate “clearly established” rights is to “ensure that before  
9 they are subjected to suit, officers are on notice their conduct is unlawful.” *Id.* (quoting  
10 *Saucier v. Katz*, 533 U.S. 194, 206 (2001)). Nonetheless, officials who violate statutory or  
11 constitutional rights knowingly or through plain incompetence are not shielded from  
12 liability. *Taylor v. Barkes*, 135 S. Ct. 2042, 2044 (2015) (quoting *Ashcroft v. al-Kidd*, 563  
13 U.S. 731, 743 (2011)). Thus, if “every ‘reasonable official would have understood that  
14 what he is doing violates that right,’” then the right is clearly established, and qualified  
15 immunity does not provide a defense. *See al-Kidd*, 563 U.S. at 741. For a constitutional  
16 or statutory right to be clearly established, there does not need to be a factually  
17 indistinguishable case spelling out liability, but existing precedent “must have placed the  
18 statutory or constitutional question beyond debate.” *Id.*

19 Defendants argue that “there are no authorities that would put every reasonable  
20 official in the place of Dr. Dean or NP Pasha on notice that their actions amounted to  
21 deliberate indifference.” MSJ at 22. The Court disagrees. The Ninth Circuit has held that  
22 “[i]t is clearly established that the Eighth Amendment protects against deliberate  
23 indifference to a detainee’s serious risk of suicide.” *Conn*, 591 F.3d at 1102 (citing  
24 *Cabrales v. Cty. of Los Angeles*, 864 F.2d 1454 (9th Cir. 1988), *cert. granted and judgment*  
25 *vacated*, 490 U.S. 1087 (1989); *Cavalieri v. Shepard*, 321 F.3d 616, 621 (7th Cir.  
26 2003); *Colburn v. Upper Darby Tp.*, 946 F.2d 1017, 1023 (3d Cir. 1991)). “When a  
27 [prisoner] attempts or threatens suicide . . . , it is obvious that the [official] must report the  
28 incident to those who will next be responsible for h[is] custody and safety.” *Id.*

1 As discussed above, *see supra* Section I., a reasonable juror could conclude that  
2 Plaintiff posed an objectively serious risk of suicide, that Dr. Dean was subjectively aware  
3 of that risk yet failed to respond, and that Plaintiff suffered harm as a result. On the current  
4 disputed record, “a grant of summary judgment . . . with regard to qualified immunity  
5 would be inappropriate.” *Id.*; *see also Ortega v. O’Connor*, 146 F.3d 1149, 1154 (9th Cir.  
6 1998) (“Courts should decide issues of qualified immunity as early in the proceedings as  
7 possible, *but when the answer depends on genuinely disputed issues of material fact, the*  
8 *court must submit the fact-related issues to the jury.*”) (emphasis added) (citing *Liston v.*  
9 *Cty. of Riverside*, 120 F.3d 965, 975 (9th Cir. 1997); *Act Up!/Portland v. Bagley*, 988 F.2d  
10 868, 873 (9th Cir. 1993)).

11 Upon reconsideration, the Court concludes that Plaintiff has alleged facts sufficient  
12 to raise a genuine issue of material fact as to whether Dr. Dean was deliberately indifferent  
13 to his serious medical need in violation of the Eighth Amendment, and that this violation  
14 was clearly established making qualified immunity inappropriate. Accordingly, the Court  
15 **DENIES** Defendants’ Motion as to Plaintiff’s claim against Dr. Dean for deliberate  
16 indifference to Plaintiff’s serious medical need regarding his heightened risk of suicide.

### 17 **CONCLUSION**

18 Based on the foregoing, the Court:

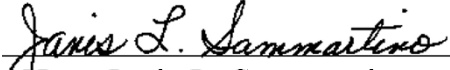
- 19 1. **GRANTS** Plaintiff’s Motion for Reconsideration (ECF No. 110);
- 20 2. **GRANTS** Defendants’ Motion for Summary Judgment (ECF No. 77) with  
21 regard to all claims against NP Pasha and the deliberate indifference and equal protection  
22 claims regarding orthopedic shoes against Dr. Dean; and
- 23 3. **DENIES** Defendants’ Motion for Summary Judgment (ECF No. 77) as to  
24 Plaintiff’s cause of action against Dr. Dean for deliberate indifference to Plaintiff’s serious  
25 medical need regarding his heightened risk of suicide.

26 In light of the Court’s denial of summary judgment, the Court will entertain a motion  
27 for appointment of counsel pursuant to 28 U.S.C. § 1915(e)(1) and Southern District of  
28 California General Order 596. *See* S.D. Cal. Gen. Order 596 (noting the Southern District

1 of California’s Pro Bono Plan specifically provides for appointment of pro bono counsel  
2 “as a matter of course for purposes of trial in each prisoner civil rights case where summary  
3 judgment has been denied”).

4 **IT IS SO ORDERED.**

5 Dated: March 10, 2020

6   
7 Hon. Janis L. Sammartino  
8 United States District Judge  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28