

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAY 26 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DEMETRIUS A. WILSON, AKA Demetrius
Antwon Wilson,

Plaintiff-Appellant,

v.

JEFFREY ALVAREZ, Director of C.H.S.
Medical at Maricopa County, individual and
official capacity; et al.,

Defendants-Appellees.

No. 21-15583

D.C. No. 4:19-cv-00257-RCC
District of Arizona,
Tucson

ORDER

Before: FERNANDEZ, TASHIMA, and FRIEDLAND, Circuit Judges.

Wilson's petition for panel rehearing (Docket Entry No. 83) is denied.

Wilson's motion for case status (Docket Entry No. 82) is granted. The Clerk is instructed to send Wilson a copy of the docket sheet and Wilson's petition for panel rehearing.

No further filings will be entertained in this closed case.

Appendix - A

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 25 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DEMETRIUS A. WILSON, AKA Demetrius
Antwon Wilson,

Plaintiff-Appellant,

v.

JEFFREY ALVAREZ, Director of C.H.S.
Medical at Maricopa County, individual and
official capacity; MARICOPA COUNTY,
Maricopa County Hospital/Jail; KAROLE
DAVIS, Surgeon at Maricopa County
Hospital, individual and official capacity;
ERIC THOMAS, Surgeon at Maricopa
County Hospital, individual and official
capacity; ANUPAMA BALAJI, Medical
Provider at Maricopa County Jail, individual
and official capacity; JOSEPH M. ARPAIO,
Sheriff over Maricopa County Jail, individual
and official capacity; LAYLA SHANAH,
Surgeon at Maricopa County Hospital,
individual and official capacity; MEREDITH
HEBERER, Surgeon at Maricopa County
Hospital, individual and official capacity;
MARGARET SALAS, Provider at A.D.O.C.
Tucson/Manzanita, individual and official
capacity; NATALIE BELL, Provider at
A.D.O.C. Tucson/Rincon, individual and
official capacity; ALICE WARREN,
Provider at A.D.O.C. Tucson/Whetstone,

No. 21-15583

D.C. No. 4:19-cv-00257-RCC

MEMORANDUM*

"APPENDIX - A"

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

individual and official capacity; MARICOPA COUNTY HOSPITAL, Institution, Maricopa County Hospital Integrated Health System; STATE OF ARIZONA, Institution of Arizona; SUPERIOR COURT OF ARIZONA IN MARICOPA COUNTY, Court/Judge, Institution; MARICOPA CORRECTIONAL HEALTH SERVICE ADMINISTRATION, Maricopa Correctional Health Service Administration, Institution, Maricopa County Jail; ARIZONA DEPARTMENT OF CORRECTION CORIZON HEALTH, Institution; CORIZON MEDICAL, Institution, Corizon Medical A.D.O.C.; MARICOPA COUNTY JAIL, Institution; CHARLES RYAN, Director of A.D.O.C., individual and official capacity; TRACY NOLAN, Corizon Administration Institution, Arizona department Corrections, individual and official capacity; KAREY WITTY, Corizon Administration Institution, Arizona department Corrections, individual and official capacity; B. ANDERSON FLATT, Corizon Administration Institution, Arizona department Corrections, individual and official capacity; AYODEJI LADELE, Regional Medical Director for Corizon, individual and official capacity; SALAZAR, Doctor, Tucson Corizon, individual and official capacity; DAVID SHINN, Director, in his official capacity only,

Defendants-Appellees.

Appeal from the United States District Court
for the District of Arizona
Raner C. Collins, District Judge, Presiding

Submitted February 15, 2022**
San Francisco, California

Before: FERNANDEZ, TASHIMA, and FRIEDLAND, Circuit Judges.

Arizona state prisoner Demetrius A. Wilson appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging deliberate indifference to his serious medical needs. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004). We affirm.

The district court properly granted summary judgment because Wilson failed to raise a genuine dispute of material fact as to whether defendants were deliberately indifferent to his serious medical needs. *See id.* at 1060-61 (holding deliberate indifference is a high legal standard requiring a defendant be aware of and disregard an excessive risk to an inmate's health).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

All pending requests are denied.

AFFIRMED.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2)*.

SH

1
2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Demetrius Antwon Wilson,
10 Plaintiff,

11 v.

12 Jeffrey Alvarez, et al.,
13 Defendants.
14

No. CV 19-00257-TUC-RCC

ORDER

15 Plaintiff Demetrius Antwon Wilson, who is currently confined in the Arizona State
16 Prison Complex (ASPC)-Tucson, Santa Rita Unit, in Tucson, Arizona, brought this civil
17 rights action pursuant to 42 U.S.C. § 1983. (Doc. 1.) Before the Court are Defendants
18 Corizon and Warren's Second Motion for Summary Judgment (Doc. 128), Plaintiff's
19 Motion for Preliminary Injunction (Doc. 134), and Plaintiff's "Objection to Any Delays"
20 (Doc. 141).¹²

21 **I. Background**

22 Upon screening Plaintiff's Complaint (Doc. 1) under 28 U.S.C. § 1915A(a), the
23 Court determined that Plaintiff stated an Eighth Amendment medical policy claim against
24

25 ¹ The Court provided notice to Plaintiff pursuant to *Rand v. Rowland*, 154 F.3d 952,
26 962 (9th Cir. 1998) (en banc), regarding the requirements of a response to the summary
judgment motions. (Doc. 130.)

27 ² Because the Court is granting summary judgment to Defendants on the merits of
28 Plaintiff's medical care claim, Plaintiff's Motion for Preliminary Injunction will be denied
as moot. Likewise, Plaintiff's "Objection to Any Delays" in which he requests a jury trial
will also be denied as moot.

Corizon—the Arizona Department of Corrections’ (ADC) former contracted private healthcare provider—in Count One, an Eighth Amendment medical care official capacity claim against former ADC Director Charles Ryan in Count One, and an Eighth Amendment medical care claim against ASPC-Tucson medical provider Alice Warren in Count Four. (Doc. 10 at 18–19.)³ The Court directed these Defendants to answer and dismissed the remaining claims and Defendants. (*Id.* at 21.) On January 23, 2020, the Court substituted current ADC Director David Shinn for Defendant Ryan pursuant to Federal Rule of Civil Procedure 25(d) and dismissed Defendant Ryan from the action. (Doc. 55.)

On November 24, 2020, the Court granted summary judgment to Defendant Shinn and dismissed him from the action. (Doc. 127.) In that same Order, the Court denied Defendants Corizon and Warren’s Motion for Summary Judgment without prejudice after determining that they had applied the wrong legal standard to Plaintiff’s Eighth Amendment medical care claim. (*Id.*)

Defendants Corizon and Warren have now filed a Second Motion for Summary Judgment. (Doc. 128.)

II. Summary Judgment Standard

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

If the movant fails to carry its initial burden of production, the nonmovant need not produce anything. *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Co., Inc.*, 210 F.3d 1099, 1102–03 (9th Cir. 2000). But if the movant meets its initial responsibility, the burden then shifts to the nonmovant to demonstrate the existence of a factual dispute and that the fact

³ The citation refers to the document and page number generated by the Court’s Case Management/Electronic Case Filing system.

1 in contention is material, i.e., a fact that might affect the outcome of the suit under the
 2 governing law, and that the dispute is genuine, i.e., the evidence is such that a reasonable
 3 jury could return a verdict for the nonmovant. *Anderson*, 477 U.S. at 250; see *Triton*
 4 *Energy Corp. v. Square D. Co.*, 68 F.3d 1216, 1221 (9th Cir. 1995). The nonmovant need
 5 not establish a material issue of fact conclusively in its favor, *First Nat'l Bank of Ariz. v.*
 6 *Cities Serv. Co.*, 391 U.S. 253, 288–89 (1968); however, it must “come forward with
 7 specific facts showing that there is a genuine issue for trial.” *Matsushita Elec. Indus. Co.,*
 8 *Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (internal citation omitted); see Fed.
 9 R. Civ. P. 56(c)(1).

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. In its analysis, the court does not make credibility determinations; it must
 13 believe the nonmovant’s evidence and draw all inferences in the nonmovant’s favor. *Id.* at
 14 255; *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). The court need
 15 consider only the cited materials, but it may consider any other materials in the record.
 16 Fed. R. Civ. P. 56(c)(3).

17 **III. Relevant Facts⁴**

18 In or about December 2015, Plaintiff had surgery to have his temporary colostomy
 19 closed while he was confined in the Maricopa County Jail. (Doc. 1 at 7.) After the surgery,
 20 Plaintiff continued to suffer from bloody stools, anemia, internal bleeding, stomach pain,
 21 dizziness, shortness of breath, and blurry vision, and he had to undergo multiple blood
 22 transfusions. (*Id.*) Plaintiff was transferred to the ADC on or about January 18, 2017.

23
 24 ⁴ Plaintiff did not provide a separate statement of facts corresponding to Defendants’
 25 Statements of Facts as required by Local Rule 56.1(b) and as explained to Plaintiff in the
 26 Court’s September 9, 2020 Orders (Doc. 130). Accordingly, the Court will consider
 27 Defendants’ facts as undisputed unless it is clear from the record evidence, including the
 28 allegations in the verified Complaint—which the Court construes as an affidavit in
 opposition to the Motion for Summary Judgment—that there is a dispute. See *Jones v.*
Blanas, 393 F.3d 918, 923 (9th Cir. 2004) (allegations in a pro se plaintiff’s verified
 pleadings must be considered as evidence in opposition to summary judgment); *Schroeder*
v. McDonald, 55 F.3d 454, 460 (9th Cir. 1995) (verified complaint may be used as an
 affidavit opposing summary judgment if it is based on personal knowledge and sets forth
 specific facts admissible in evidence). —

1 (Doc. 129 (Defs.' Statement of Facts) ¶ 4.)

2 Once in ADC custody, Plaintiff began complaining of bloody stools and dizziness,
3 and Defendant Corizon sent Plaintiff to the Maryvale Hospital, where they placed cameras
4 in Plaintiff's throat and rectum to determine the source of the bleeding. (Doc. 1 at 9.) On
5 August 31, October 16, and November 20, 2017, Corizon transported Plaintiff to Banner
6 Hospital for blood transfusions. (*Id.*)

7 On May 28, 2018, Plaintiff saw healthcare provider Salas to inquire about the results
8 from the testing for his internal bleeding he had done at the hospital. (Doc. 1-1 at 3.) Salas
9 insisted on giving Plaintiff an "iron table treatment," which Plaintiff asserts is "the wrong
10 prescribed treatment" and previously caused Plaintiff's stomach to hurt and did not stop
11 the internal bleeding. (*Id.*)

12 Plaintiff gets his hemoglobin level tested weekly. (*Id.*) Plaintiff's hemoglobin level
13 was at 7.2, but his most recent blood test showed that it had dropped to 7.1. (*Id.*) Plaintiff
14 claims both that Salas needs to stop weekly testing of his hemoglobin level because the
15 frequent testing is dangerous for him, and that his hemoglobin level must be tested because
16 if it drops to 6.9 or lower, he will need another blood transfusion "to keep from d[y]ing."
17 (*Id.* at 3-4.) Plaintiff has been taking iron medication since 2016, but he has seen no
18 medical benefits. (*Id.* at 4.)

19 On October 29, 2018, Plaintiff was prescribed Misoprostol (Cytotec), which is used
20 to treat stomach ulcers. (*Id.* at 6.) Plaintiff was on the medication for 30 days was told that
21 his hemoglobin level reached 8.0, but his hemoglobin level subsequently dropped. (*Id.*)
22 Plaintiff requested an ultrasound, but his request was denied by "medical." (*Id.*)

23 On January 17, 2019, Plaintiff was taken to Banner Hospital because he was
24 vomiting and had stomach pain, nausea, dizziness, gas, and lightheadedness. (*Id.* at 7.) The
25 doctor at the hospital told Plaintiff that the previous twenty blood transfusions caused fluids
26 to build up and push against his rectum. (*Id.*) The doctor also told Plaintiff that his bowels
27 were "thickening and surrounding inflammatory changes of small bowel segment in the
28 right mid abdomen." (*Id.*) Plaintiff was discharged from the hospital with discharge

1 instructions. (*Id.*)

2 The day after Plaintiff was discharged from the hospital, Defendant Warren failed
3 to follow the discharge instructions regarding the colorectal surgery, the fluids that needed
4 to be drained, and his inflamed abdomen. (*Id.*)

5 On January 20, January 24, March 5, and April 6, 2019, Plaintiff filed Health Needs
6 Requests (HNR) because he was sick and had not recovered since leaving the hospital. (*Id.*)

7 On February 16, 2019, Corizon again transported Plaintiff to Banner Hospital for
8 another blood transfusion. (Doc. 1 at 9.)

9 On March 14, 2019, Defendant Warren “put Plaintiff in for surgery.” (Doc. 1-1 at
10 7.) On April 3, Plaintiff “was sent back to . . . Warren about [his] surgery.” (*Id.*) Warren
11 told Plaintiff that ADC denied the surgery because Warren failed to provide “enough
12 information for a surgery” and that she needed to look at his medical records. (*Id.* at 7-8.)
13 Plaintiff asserts that Warren failed to provide “the vital information of inflammat[ion] in
14 [his] right mid abdomen” and that his hemoglobin level had dropped from 8.2 to 7.3, which
15 indicates that he is still bleeding internally. (*Id.* at 8.)

16 On June 24, 2019, Plaintiff was admitted to Banner Hospital with complaints of
17 abdominal pain, cramps, headache, anemia, low hemoglobin, and maroon colored stools.
18 (Doc. 112-1 at 2.) During his hospital stay, Plaintiff underwent multiple blood
19 transfusions, a colonoscopy that was “without evidence cause for bleeding,” an
20 enteroscopy, and two endoscopies. (*Id.* at 2, 3.) Plaintiff’s colonoscopy and enteroscopy
21 were “without evident cause for bleeding[.]” (*Id.* at 3.) Two 1–2 mm ulcers were found,
22 but there was no sign of recent bleeding. (*Id.*) It was also noted that “[c]olorectal surgery
23 was consulted and, while a provoked bleed angiogram was considered, was felt to represent
24 an unnecessary risk at this time.” (*Id.*) Plaintiff was also found to be positive for *H. pylori*
25 and was prescribed antibiotics. (*Id.*) The doctor noted that Plaintiff was resistant to
26 treatment “and made frequent and, often, unreasonable demands of hospital staff making
27 providing effective care for him rather difficult.” (*Id.*) By the time Plaintiff was
28 discharged on July 1, 2019, his “hemoglobin had stabilized and was slowly uptrending.”

1 (*Id.*) Continued iron supplementation and close monitoring of hemoglobin were
2 recommended. (*Id.*)

3 On December 24, 2019, Plaintiff was taken back to Banner Hospital for low
4 hemoglobin, abdominal pain, diarrhea, shortness of breath, dizziness, and maroon colored
5 stool. (*Id.* at 9.) Upon examination, the emergency room doctor noted that Plaintiff was
6 not experiencing abdominal pain, nausea, vomiting, diarrhea, or constipation at the time of
7 the examination. (*Id.*) The records from this visit also indicated that Plaintiff had
8 previously undergone the following procedures while in ADC custody: a blood transfusion
9 on November 20, 2017; endoscopic procedures on December 27, 2017; excision of the
10 large intestine on December 27, 2017; colonoscopy on December 27, 2017; inspection of
11 upper intestinal tract on May 3, 2018; and drainage of duodenum on June 25, 2018. (*Id.* at
12 9–10.) On December 24, 2019, Plaintiff had a blood transfusion, and he was discharged
13 from the hospital the following day on December 25, 2019. (*Id.* at 11, 14.)

14 On February 11, 2020, Plaintiff was again seen again at BUMC for low hemoglobin
15 and maroon colored stools. (*Id.* at 19.) Plaintiff denied having abdominal pain, vomiting,
16 or diarrhea. (*Id.*) Upon examination, the doctor noted that Plaintiff's abdomen was soft,
17 non-tender, non-distended, with no bowel sounds and no masses. (*Id.* at 20.) Plaintiff
18 refused a digital rectal exam. (*Id.*) Plaintiff had a blood transfusion that day. (*Id.* at 27.)
19 On February 14, 2020, Plaintiff asked to be released from the hospital, against the doctor's
20 advice; Plaintiff noted that he was leaving the hospital because the corrections officer who
21 was guarding him said he was "acting like a bitch" and had turned off the television while
22 Plaintiff was watching it. (Doc. 112-2 at 4–5.)

23 Plaintiff's hemoglobin was checked in March, April, and June 2020. (*Id.* at 13–16.)
24 According to Plaintiff's records, Plaintiff was supposed to be sent out for a blood
25 transfusion whenever his hemoglobin fell below 7. (*Id.* at 19.)

26 On April 28, 2020, Plaintiff was seen by Defendant Warren; Warren noted that
27 Plaintiff's hemoglobin was 9.8 and that he denied experiencing nausea, vomiting, or
28 diarrhea. (*Id.* at 14.)

1 On June 25, 2020, Nurse Practitioner (NP) Bell discussed testing Plaintiff for H.
2 pylori, but Plaintiff refused and stated that he “doesn’t want to mess with his stool.” (*Id.*
3 at 19.) That same day, NP Bell submitted a consult request for Plaintiff to be seen by a
4 general surgeon at Banner Hospital for a small bowel enteroscopy, and the request was
5 approved on July 7, 2020. (*Id.* at 21.)

6 On July 14, 2020, Plaintiff was seen by Defendant Warren to discuss his lab results.
7 (*Id.* at 23.) Plaintiff’s hemoglobin was 7.8. (*Id.*) Defendant Warren assessed Plaintiff with
8 chronic anemia and a vitamin B12 deficiency. (*Id.* at 23, 24.) Defendant Warren
9 prescribed Cyanocobalamin to treat the B12 deficiency and ordered a blood panel and B12
10 testing. (*Id.* at 24.)

11 On July 29, 2020, Plaintiff tested positive for COVID-19. (*Id.* at 27.)

12 On August 4, 2020, it was noted that Banner Hospital had informed the prison that
13 Plaintiff’s scheduled surgical consult would have to be cancelled due to a COVID backlog
14 and that the hospital would call the prison when they were ready to reschedule. (*Id.* at 29.)

15 On August 8, 2020, Plaintiff’s hemoglobin was tested again at St. Luke’s Hospital,
16 and the results showed that his hemoglobin was 7.5. (*Id.* at 31.) The reference range for
17 hemoglobin was noted as 12.7–17.0. (*Id.*)

18 On August 18, 2020, Defendant Warren ordered additional labs to have Plaintiff’s
19 blood levels monitored again. (*Id.* at 35.) The plan was to continue monitoring Plaintiff’s
20 hemoglobin until he was cleared from quarantine. (*Id.* at 38.)

21 On August 21, 2020, it was noted that Banner Hospital was still not ready to
22 schedule Plaintiff’s surgical consult. (*Id.* at 41.)

23 Since the original surgery in 2015, Plaintiff has had over 19 blood transfusions.
24 (Doc. 1 at 9.) Plaintiff asserts that his “blood count is still low” and he needs additional
25 blood transfusions and surgery to stop the internal bleeding. (*Id.*) Plaintiff’s symptoms
26 include bloody stools, dizziness, stomach pain, shortness of breath, blurry vision, and
27 anemia. (*Id.*) Plaintiff asserts that he will die if he does not have the necessary blood
28 transfusions and surgery to stop the internal bleeding. (*Id.*) Plaintiff asserts that Defendant

1 Corizon has failed to “perform their medical duties” by failing to transport Plaintiff to a
2 hospital to treat his internal bleeding. (*Id.*) Plaintiff further asserts that he needs to be
3 housed in a hospital until “successful medical completion of procedures are done.” (*Id.*)

4 **IV. Eighth Amendment Medical Care Claim**

5 **A. Legal Standard**

6 To support a medical care claim under the Eighth Amendment, a prisoner must
7 demonstrate “deliberate indifference to serious medical needs.” *Jett v. Penner*, 439 F.3d
8 1091, 1096 (9th Cir. 2006) (citing *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)). There are
9 two prongs to the deliberate-indifference analysis: an objective prong and a subjective
10 prong. First, a prisoner must show a “serious medical need.” *Id.* (citations omitted). A
11 “‘serious’ medical need exists if the failure to treat a prisoner’s condition could result in
12 further significant injury or the ‘unnecessary and wanton infliction of pain.’” *McGuckin*
13 *v. Smith*, 974 F.2d 1050, 1059–60 (9th Cir. 1992), *overruled on other grounds by WMX*
14 *Techs., Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc) (internal citation
15 omitted). Examples of indications that a prisoner has a serious medical need include “[t]he
16 existence of an injury that a reasonable doctor or patient would find important and worthy
17 of comment or treatment; the presence of a medical condition that significantly affects an
18 individual’s daily activities; or the existence of chronic and substantial pain.” *Id.* at 1059–
19 60.

20 Second, a prisoner must show that the defendant’s response to that need was
21 deliberately indifferent. *Jett*, 439 F.3d at 1096. “Prison officials are deliberately
22 indifferent to a prisoner’s serious medical needs when they ‘deny, delay or intentionally
23 interfere with medical treatment.’” *Wood v. Housewright*, 900 F.2d 1332, 1334 (9th Cir.
24 1990) (quoting *Hutchinson v. United States*, 838 F.2d 390, 394 (9th Cir. 1988)). Deliberate
25 indifference may also be shown where prison officials fail to respond to a prisoner’s pain
26 or possible medical need. *Jett*, 439 F.3d at 1096. “In deciding whether there has been
27 deliberate indifference to an inmate’s serious medical needs, [courts] need not defer to the
28

1 judgment of prison doctors or administrators.” *Colwell v. Bannister*, 763 F.3d 1060, 1066
 2 (9th Cir. 2014) (quoting *Hunt v. Dental Dep’t*, 865 F.2d 198, 200 (9th Cir. 1989).

3 Even if deliberate indifference is shown, to support an Eighth Amendment claim,
 4 the prisoner must demonstrate harm caused by the indifference. *Jett*, 439 F.3d at 1096; *see*
 5 *Hunt*, 865 F.2d at 200 (delay in providing medical treatment does not constitute Eighth
 6 Amendment violation unless delay was harmful).

7 **B. Discussion**

8 It is undisputed that Plaintiff’s internal bleeding and anemia-related issues
 9 constituted serious medical needs, and there is ample evidence in the record showing that
 10 Plaintiff’s medical issues were “worthy of comment or treatment[,]” undergoing several
 11 blood transfusions, multiple surgeries, ongoing hemoglobin testing, and several hospital
 12 visits. *See McGuckin*, 974 F.2d at 1059-60. Thus, the Court’s analysis turns on whether
 13 Defendants’ actions amounted to deliberate indifference.

14 **1. Defendant Warren**

15 According to the record, Plaintiff had five encounters with Defendant Warren
 16 between January 2019 and August 2020. Defendant Warren’s conduct did not amount to
 17 deliberate indifference during any of these encounters.

18 First, in January 2019, Plaintiff saw Defendant Warren the day after he was
 19 discharged from the hospital, and Plaintiff vaguely asserts that Defendant Warren failed to
 20 follow the discharge instructions regarding the colorectal surgery, the fluids that needed to
 21 be drained, and his inflamed abdomen. (Doc. 1-1 at 7.) Plaintiff does not specify what the
 22 discharge instructions were or how Defendant Warren failed to follow them. Plaintiff’s
 23 conclusory statement is insufficient to establish that Defendant Warren deliberately
 24 disregarded his serious medical needs during this encounter.

25 Second, on March 14, 2019, Defendant Warren submitted a consult request for
 26 surgery, but the request was sent back to Defendant Warren for additional information.
 27 (*Id.*) Assuming Defendant Warren failed to include “enough information for a surgery” in
 28 her initial consult request, at most, such an oversight amounts to negligence and does not

1 support a finding of deliberate indifference. (*Id.* at 7–8.)

2 Third, on April 28, 2020, Plaintiff was seen by Defendant Warren, and Defendant
3 Warren noted that Plaintiff's hemoglobin was 9.8 and that he denied experiencing nausea,
4 vomiting, or diarrhea. (Doc. 112-2 at 14.) Plaintiff does not refute the evidence regarding
5 this encounter, and the undisputed evidence of Defendant Warren's conduct during this
6 encounter does not support a finding that she deliberately disregarded Plaintiff's serious
7 medical needs.

8 Next, on July 14, 2020, Plaintiff was seen by Defendant Warren to discuss his lab
9 results. (*Id.* at 23.) Plaintiff's hemoglobin was 7.8, and Defendant Warren assessed
10 Plaintiff with chronic anemia and a vitamin B12 deficiency. (*Id.* at 23–24.) Defendant
11 Warren prescribed Cyanocobalamin to treat the B12 deficiency and ordered a blood panel
12 and B12 testing. (*Id.* at 24.) Again, Plaintiff does not refute the evidence regarding this
13 encounter, and the undisputed evidence of Defendant Warren's conduct during this
14 encounter does not support a finding that she deliberately disregarded Plaintiff's serious
15 medical needs.

16 Finally, on August 18, 2020, Defendant Warren ordered additional labs to have
17 Plaintiff's blood levels monitored again and to continue monitoring his hemoglobin levels
18 until he was cleared from COVID-19 quarantine. (*Id.* at 35, 38.) As with the previous
19 encounters, Plaintiff does not refute the evidence regarding the August 18, 2020 encounter,
20 and the undisputed evidence of Defendant Warren's conduct during this encounter does
21 not support a finding that she deliberately disregarded Plaintiff's serious medical needs.

22 Based on the foregoing, there is no evidence in the record to show that during any
23 of her encounters with Plaintiff, Defendant Warren deliberately disregarded his internal
24 bleeding or anemia-related issues. Moreover, there is no evidence that the course of
25 treatment she provided was medically unacceptable. Accordingly, Defendant Warren will
26 be dismissed from the action.

27 **2. Defendant Corizon**

1 To prevail on a claim against a private entity performing a traditional public
2 function, such as providing medical care to prisoners, Plaintiff must meet the test
3 articulated in *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 690-94
4 (1978). Under this test, Plaintiff must show that an official policy or custom caused the
5 constitutional violation. *Monell*, 436 U.S. at 694. To make this showing, Plaintiff must
6 demonstrate that: (1) he was deprived of a constitutional right; (2) Corizon had a policy or
7 custom; (3) the policy or custom amounted to deliberate indifference to Plaintiff's
8 constitutional right; and (4) the policy or custom was the moving force behind the
9 constitutional violation. *Mabe v. San Bernardino Cnty., Dep't of Pub. Soc. Servs.*, 237
10 F.3d 1101, 1110-11 (9th Cir. 2001). Further, if the policy or custom in question is an
11 unwritten one, the plaintiff must show that it is so "persistent and widespread" that it
12 constitutes a "permanent and well settled" practice. *Monell*, 436 U.S. at 691 (quoting
13 *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 167-68 (1970)). "Liability for improper custom
14 may not be predicated on isolated or sporadic incidents; it must be founded upon practices
15 of sufficient duration, frequency and consistency that the conduct has become a traditional
16 method of carrying out policy." *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996).

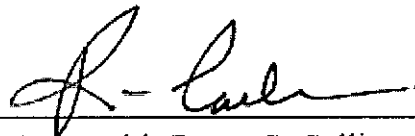
17 Here, the available evidence does not support a constitutional violation. It is
18 undisputed that Plaintiff's internal bleeding and anemia-related issues constituted serious
19 medical needs. However, the records shows that Plaintiff has received several blood
20 transfusions to improve his low hemoglobin levels and that Plaintiff underwent several
21 procedures, pursuant to the recommendations of the Banner Hospital providers, to assess
22 the source of his internal bleeding, including colonoscopies, enteroscopies, and
23 endoscopies. Plaintiff has not refuted Defendants' evidence or offered any facts showing
24 that the course of treatment he received was medically unacceptable or in disregard of his
25 serious medical needs. Plaintiff's disagreement with the medical providers' treatment
26 decisions is not enough to establish deliberate indifference, and Plaintiff is not competent
27 to offer medical opinions or to interpret medical test results, *see* Fed. R. Civ. P. 56(e).
28 Accordingly, the first element of the *Monell* analysis has not been met.

1 Further, Plaintiff has not shown that Corizon promulgated or enforced a deliberately
2 indifferent policy of custom. Plaintiff's conclusory statement in his Complaint that
3 Corizon failed to "perform their medical duties" by failing to transport Plaintiff to a
4 hospital to treat his internal bleeding is belied by the evidence that shows Plaintiff received
5 several blood transfusions, monitoring, and diagnostic testing for his conditions. Absent
6 specific evidence of a policy or custom, Plaintiff's vague statement is insufficient to show
7 that Corizon had a policy or custom that deprived Plaintiff of his Eighth Amendment right
8 to medical care. Thus, the record does not support a *Monell* claim against Corizon, and
9 Corizon will be dismissed from the action.

10 **IT IS ORDERED:**

- 11 (1) Defendants' Second Motion for Summary Judgment (Doc. 128) is **granted**.
12 (2) Plaintiff's Motion for Preliminary Injunction (Doc. 134) is **denied as moot**.
13 (3) Plaintiff's "Objection to Any Delays" (Doc. 141) is **denied as moot**.
14 (4) The Clerk of Court must terminate the action and enter judgment
15 accordingly.

16 Dated this 17th day of March, 2021.

17
18
19
20 

21 Honorable Raner C. Collins
22 Senior United States District Judge
23
24
25
26
27
28