

# APPENDIX

## A

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 15 2023

FOR THE NINTH CIRCUIT

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

JOSE LUIS GARCIA,

Plaintiff-Appellant,

v.

KYEONG PARK,

Defendant-Appellee.

No. 22-16840

D.C. No. 3:21-cv-09048-JD

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
James Donato, District Judge, Presiding

Submitted December 12, 2023\*\*

Before: WALLACE, LEE, and BUMATAY, Circuit Judges

California state prisoner Jose Luis Garcia 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.

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

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

2004). We affirm.

The district court properly granted summary judgment because Garcia failed to raise a genuine dispute of material fact as to whether defendant was deliberately indifferent in treating Garcia's foot issues. *See id.* at 1057-60 (prison officials act with deliberate indifference only if they know of and disregard a risk to the prisoner's health; medical malpractice, negligence, or difference of opinion concerning the course of treatment does not amount to deliberate indifference).

**AFFIRMED.**

# APPENDIX

## B

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOSE LUIS GARCIA,  
Plaintiff,

v.

KYEONG PARK,  
Defendant.

Case No. 21-cv-09048-JD

**ORDER RE SUMMARY JUDGMENT**

Re: Dkt. No. 17

Jose Garcia, a state prisoner acting pro se, filed a civil rights action under 42 U.S.C. § 1983. Plaintiff alleges that Dr. Park, a doctor at plaintiff's prison and the sole defendant in this case, improperly treated plaintiff's toe and foot injuries. Defendant filed a motion for summary judgment, plaintiff filed an opposition and defendant filed a reply. Summary judgment is granted for Dr. Park.

**BACKGROUND**

The salient facts are undisputed. On December 8, 2020, plaintiff was injured when a heavy cart loaded with 300 dinner trays fell onto his right foot. Complaint ("Compl.") at 3. Plaintiff's right foot was bleeding, and a nail was almost detached from his large toe. *Id.* at 4. That same day plaintiff was admitted to Natividad Hospital and treated for a laceration on his right large toe. Motion for Summary Judgment ("MSJ"), Park Decl. ¶ 5; Cho Decl., Deposition at 17-18. An x-ray taken at the hospital indicated that plaintiff did not suffer any fractures. Park Decl., Ex. A.

On December 9, 2020, Dr. Park treated plaintiff for the toe injury and a laceration on his ear. Park Decl. ¶ 6. Plaintiff already had a bottom bunk and had been provided crutches and a prescription for acetaminophen-codeine (Tylenol 3) and ibuprofen. *Id.*; Deposition at 23, 28-30. Dr. Park did not discontinue the crutches or the medications. *Id.* Deposition at 29-30.

1 Dr. Park treated plaintiff again on December 24, 2020. Park Decl. ¶ 7; Deposition at 32-  
2 33. Plaintiff complained of bleeding and pain in his right foot and toe and stated that the Tylenol  
3 3 was not helping with his pain. *Id.*; Deposition at 33. Plaintiff also stated that he was neither  
4 improving nor worsening. Park Decl. ¶ 7, Ex. C. Dr. Park conducted an examination and  
5 discovered dried blood on plaintiff's right toe and that his toenail had fallen off. *Id.* There was  
6 scant adherent pus and swelling, but the nerves and blood vessels were still intact. *Id.* Plaintiff  
7 also had redness and pain with the application of light touch. *Id.* Dr. Park ordered 160 mg tabs of  
8 sulfamethoxazole-trimethoprim, an antibiotic, to be taken for ten days. *Id.*

9 Dr. Park treated plaintiff on January 6, 2021. Park Decl. ¶ 8; Deposition at 35-36.  
10 Plaintiff stated that he needed to be seen urgently and was experiencing a lot of pain. Park Decl. ¶  
11 8, Ex. D; Deposition at 36. Dr. Park noted it was unusual that plaintiff's pain had moved from his  
12 toe to his foot and ankle. Park Decl. ¶ 8, Ex. D. Plaintiff's toe infection was no longer present,  
13 and this appointment concerned a completely different set of symptoms. *Id.* Plaintiff had a good  
14 range of motion in his foot and ankle, there was tenderness to palpation along the medial foot and  
15 ankle and no obvious deformity. The nerves and blood vessels were still intact. Plaintiff had pain  
16 with internal rotation, plantar flexion and some tenderness along the Achilles tendon. He was able  
17 to bear weight, walk and go up and down stairs without problems. The degree of pain plaintiff  
18 described was inconsistent with Dr. Park's findings. *Id.* Dr. Park ordered an ankle brace that  
19 plaintiff received two days later. *Id.*; Deposition at 23, 36-37.

20 Plaintiff was next seen by Dr. Park on February 12, 2021. Park Decl. ¶ 9, Ex. E. Plaintiff  
21 stated that when using the ankle brace, he felt pressure and pain in his right inner ankle and right  
22 toe. Plaintiff requested an MRI and a referral to a specialist. *Id.* During the physical examination,  
23 Dr. Park found that plaintiff had a good range of motion in his ankle and foot, no redness, no focal  
24 tenderness, no swelling and intact motor and sensor. Plaintiff reported that he was doing better,  
25 and Dr. Park found that there had been at least a 75% to 100% improvement since the examination  
26 one month prior. Based on these findings, Dr. Park did not believe that an MRI or referral to  
27 specialist was medically necessary. Plaintiff was instructed to continue using the ankle brace and  
28 avoid strenuous exercise, running and sports but to engage in regular exercise and eat a proper diet

1 for weight management. *Id.*

2 On March 17, 2021, Dr. Park treated plaintiff for toe pain and an infected toenail. Park  
3 Decl. ¶ 10, Ex. F. The medial edge of plaintiff's toe was red and inflamed and had adherent pus.  
4 Dr. Park removed the ingrown toenail and applied a dressing and bandages. Dr. Park noted that it  
5 was difficult to determine whether the ingrown toenail was related to the December 8, 2020, injury  
6 because the condition occurred after the original injury healed. *Id.*

7 On April 22, 2021, Dr. Park treated plaintiff for complaints of pain radiating from his toe  
8 to his ankle. Park Decl. ¶ 11, Ex. G. Plaintiff was able to walk but had discomfort. A physical  
9 examination was normal except for the tenderness to palpation of the toe. The joint appeared to  
10 have mild bony hypertrophy. Dr. Park ordered an x-ray, prescribed sulindac, an anti-inflammatory  
11 medication, to address the pain and referred plaintiff to physical therapy. Dr. Park did not believe  
12 physical therapy was necessary, but plaintiff had repeatedly requested it. *Id.* This was the last  
13 time Dr. Park treated plaintiff. Park Decl. ¶ 12.

14 Plaintiff underwent an x-ray on April 28, 2021, which revealed a distal fracture, which was  
15 a minor fracture in his right toe. Park Decl. ¶ 13, Ex. H. The fracture did not require medical  
16 intervention and was not expected to cause much pain. *Id.*

17 On July 29, 2021, a different doctor prescribed a cast shoe for plaintiff. Park Decl. ¶ 14.  
18 Dr. Park did not believe a cast shoe was necessary during his course of treatment for plaintiff. *Id.*  
19 Plaintiff states that the other doctor stated that the cast shoe was necessary right after the injury to  
20 prevent further damage. Opposition at 3. Plaintiff states his condition improved by using the cast  
21 shoe. *Id.*

## 22 Expert Opinion

23 Dr. Park proffered an expert opinion from Dr. Feinberg, the Chief Medical Consultant for  
24 the California Correctional Health Care Services Office of Legal Affairs. MSJ, Feinberg Decl. ¶¶  
25 3, 7. Dr. Feinberg is board certified in Internal Medicine and previously worked at two California  
26 prisons and was a physician team leader at Kaiser Permanente for twelve years. *Id.* ¶ 4 Dr.  
27 Feinberg reviewed the medical treatment provided to plaintiff and concluded that the treatment Dr.  
28 Park provided was appropriate and medically acceptable. *Id.* ¶ 8, 34. Dr. Feinberg agreed that

1 referral to a specialist was not indicated for this toe laceration, infection and other symptoms. *Id.*  
2 ¶ 34. Dr. Feinberg also agreed that physical therapy was not medically necessary, and a cast shoe  
3 was not required unless there was a fracture. *Id.* ¶¶ 35, 36. Because the initial x-ray the day of the  
4 incident did not indicate a fracture, a cast shoe was not needed. *Id.* ¶ 36. Furthermore, a toe  
5 fracture is rarely placed in a cast. Immobilization of the area is appropriate which was  
6 accomplished through the taping of plaintiff's toe and when plaintiff later complained of pain it  
7 was reasonable to then try the cast shoe. *Id.* Finally, Dr. Feinberg noted that Dr. Park prescribed  
8 numerous pain medications that are not available over the counter. *Id.* ¶ 37.

### 9 LEGAL STANDARDS

10 Summary judgment is proper where the pleadings, discovery, and affidavits show there is  
11 "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of  
12 law." *See* Fed. R. Civ. P. 56(a). Material facts are those that may affect the outcome of the case.  
13 *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute as to a material fact is  
14 genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving  
15 party. *See id.*

16 A court shall grant summary judgment "against a party who fails to make a showing  
17 sufficient to establish the existence of an element essential to that party's case, and on which that  
18 party will bear the burden of proof at trial[,] . . . since a complete failure of proof concerning an  
19 essential element of the nonmoving party's case necessarily renders all other facts immaterial."  
20 *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The moving party bears the initial  
21 burden of identifying those portions of the record that demonstrate the absence of a genuine issue  
22 of material fact. *Id.* The burden then shifts to the nonmoving party to "go beyond the pleadings  
23 and by [his] own affidavits, or by the 'depositions, answers to interrogatories, and admissions on  
24 file,' designate 'specific facts showing that there is a genuine issue for trial.'" *See id.* at 324  
25 (citing Fed. R. Civ. P. 56(e) (amended 2010)).

26 For purposes of summary judgment, the court must view the evidence in the light most  
27 favorable to the nonmoving party; if the evidence produced by the moving party conflicts with  
28 evidence produced by the nonmoving party, the court must assume the truth of the evidence



1 submitted by the nonmoving party. *See Leslie v. Grupo ICA*, 198 F.3d 1152, 1158 (9th Cir. 1999).  
2 The court's function on a summary judgment motion is not to make credibility determinations or  
3 weigh conflicting evidence with respect to a disputed material fact. *See T.W. Elec. Serv., Inc. v.*  
4 *Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987).

5 The defense of qualified immunity protects "government officials . . . from liability for  
6 civil damages insofar as their conduct does not violate clearly established statutory or  
7 constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457  
8 U.S. 800, 818 (1982). The rule of "qualified immunity protects 'all but the plainly incompetent or  
9 those who knowingly violate the law.'" *Saucier v. Katz*, 533 U.S. 194, 202 (2001) (quoting  
10 *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). Defendants can have a reasonable, but mistaken,  
11 belief about the facts or about what the law requires in any given situation. *Id.* at 205. A court  
12 considering a claim of qualified immunity must determine whether the plaintiff has alleged the  
13 deprivation of an actual constitutional right and whether such right was clearly established such  
14 that it would be clear to a reasonable officer that his conduct was unlawful in the situation he  
15 confronted. *See Pearson v. Callahan*, 555 U.S. 223, 236 (2009) (overruling the sequence of the  
16 two-part test that required determining a deprivation first and then deciding whether such right  
17 was clearly established, as required by *Saucier*). The Court may exercise its discretion in deciding  
18 which prong to address first, in light of the particular circumstances of each case. *Pearson*, 555  
19 U.S. at 236.

20 A right is clearly established if it was "sufficiently clear [at the time of the conduct at  
21 issue] that every reasonable official would have understood that what he is doing violates that  
22 right." *Taylor v. Barkes*, 575 U.S. 822, 825 (2015). The Supreme Court has repeatedly cautioned  
23 that courts should not define clearly established law at a high level of generality. *See White v.*  
24 *Pauly*, 137 S. Ct. 548, 552 (2017) (per curiam); *see, e.g., Kisela v. Hughes*, 138 S. Ct. 1148, 1154  
25 (2018) (per curiam) (officer entitled to qualified immunity for shooting a woman who was armed  
26 with a large knife, was ignoring officers' orders to drop the weapon, and was within striking  
27 distance of her housemate; prior cases on excessive force did not clearly establish that it was  
28 unlawful to use force under these circumstances, where officer may not have been in apparent

1 danger but believed woman was a threat to her housemate); *White*, 137 S. Ct. at 552 (officer  
2 entitled to qualified immunity because there was no clearly established law prohibiting a  
3 reasonable officer who arrives late to an ongoing police action from assuming that officers already  
4 present had followed proper procedure, such as providing identification, before using deadly  
5 force).

## 6 DISCUSSION

### 7 Eighth Amendment

8 Deliberate indifference to serious medical needs violates the Eighth Amendment's  
9 proscription against cruel and unusual punishment. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976);  
10 *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other grounds*, *WMX*  
11 *Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc). A determination of  
12 "deliberate indifference" involves an examination of two elements: the seriousness of the  
13 prisoner's medical need and the nature of the defendant's response to that need. *Id.* at 1059.

14 A serious medical need exists if the failure to treat a prisoner's condition could result in  
15 significant injury or the "unnecessary and wanton infliction of pain." *Id.* The existence of an  
16 injury that a reasonable doctor or patient would find important and worthy of comment or  
17 treatment, the presence of a medical condition that significantly affects an individual's daily  
18 activities, or the existence of chronic and substantial pain are examples of indications that a  
19 prisoner has a serious need for medical treatment. *Id.* at 1059-60.

20 A prison official is deliberately indifferent if he or she knows that a prisoner faces a  
21 substantial risk of serious harm and disregards that risk by failing to take reasonable steps to abate  
22 it. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). The prison official must not only "be aware of  
23 facts from which the inference could be drawn that a substantial risk of serious harm exists," but  
24 "must also draw the inference." *Id.* If a prison official should have been aware of the risk, but did  
25 not actually know, the official has not violated the Eighth Amendment, no matter how severe the  
26 risk. *Gibson v. County of Washoe*, 290 F.3d 1175, 1188 (9th Cir. 2002). "A difference of opinion  
27 between a prisoner-patient and prison medical authorities regarding treatment does not give rise to  
28 a § 1983 claim." *Franklin v. Oregon*, 662 F.2d 1337, 1344 (9th Cir. 1981). In addition, "mere

1 delay of surgery, without more, is insufficient to state a claim of deliberate medical indifference. .  
2 . . [Prisoner] would have no claim for deliberate medical indifference unless the denial was  
3 harmful.” *Shapley v. Nevada Bd. of State Prison Comm’rs*, 766 F.2d 404, 407 (9th Cir. 1985).

4 A review of the record establishes, without any genuine dispute of fact, that Dr. Park did  
5 not violate plaintiff’s rights under the Eighth Amendment and is therefore entitled to qualified  
6 immunity. Plaintiff’s central argument is that he disagrees with the medical treatment that he  
7 received. He argues that he should have been provided a cast shoe and physical therapy  
8 immediately after the injury and that he should have been provided stronger pain medication and  
9 referred to a podiatrist. However, the Ninth Circuit has held that, “[a] difference of opinion  
10 between a prisoner-patient and prison medical authorities regarding treatment does not give rise to  
11 a § 1983 claim.” *Franklin*, 662 F.2d at 1344.

12 The facts demonstrate that Dr. Park treated plaintiff many times for his toe and foot issues.  
13 Dr. Park provided an ankle brace, removed an ingrown toenail and prescribed pain medication and  
14 antibiotics. Dr. Park repeatedly noted that the nerves and blood vessels were intact, and plaintiff  
15 was able to bear weight, walk and go up and down stairs. It is also undisputed that at the February  
16 12, 2021, appointment, plaintiff’s condition had greatly improved.

17 Plaintiff’s contentions that he should have been provided a cast shoe and physical therapy  
18 immediately after the injury fail to demonstrate a constitutional violation. Dr. Park determined  
19 that a cast shoe and physical therapy were not necessary. Even assuming that a different doctor at  
20 the prison did tell plaintiff that a cast shoe would have been necessary immediately after the injury  
21 to prevent further damage, this is still merely a difference of opinion. Furthermore, the medical  
22 expert noted that the treatment provided by Dr. Park was proper and that there had been no need  
23 for a cast shoe after the injury because there was no fracture.

24 Plaintiff’s nerves and blood vessels were continually intact, he had good range of motion  
25 and he was consistently able to bear weight and walk on the toe and foot. Even if Dr. Park’s  
26 treatment had been incorrect and a cast shoe should have been immediately provided, plaintiff  
27 cannot demonstrate that Dr. Park was deliberately indifferent based on all the treatment he  
28 provided. If Dr. Park should have been aware of the risk of not providing the cast shoe, but did

1 not actually know, he did not violate the Eighth Amendment, no matter how severe the risk of  
2 serious harm to plaintiff. *See Gibson*, 290 F.3d at 1188. To the extent plaintiff argues that Dr.  
3 Park committed medical malpractice or was negligent, that is insufficient to make out a violation  
4 of the Eighth Amendment. *See Toguchi v. Chung*, 391 F.3d 1051, 1060 (9th Cir. 2004).

5 Similarly, plaintiff fails to demonstrate a constitutional violation with respect to Dr. Park's  
6 treatment of his pain. Plaintiff's condition was continually monitored, and he was prescribed  
7 acetaminophen-codeine, sulindac and ibuprofen for pain. It was also noted that plaintiff's degree  
8 of pain described was inconsistent with Dr. Park's findings and based on plaintiff's ability to bear  
9 weight, walk and move up and down stairs. Plaintiff's allegations that he was only provided over  
10 the counter medication is contradicted by the undisputed facts that demonstrate the medication  
11 was only available by prescription.

12 Consequently, Dr. Park is entitled to qualified immunity for this Eighth Amendment claim.  
13 All of the treatment that Dr. Park provided and plaintiff's mere disagreement with the treatment  
14 fail to demonstrate deliberate indifference in violation of the Eighth Amendment.

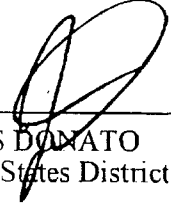
15 Even if there was a constitutional violation, it was not clearly established that Dr. Park's  
16 actions were unconstitutional, in light of the case law above regarding differences of opinion.  
17 Based on the undisputed facts, no reasonable doctor would have believed that the extensive  
18 medical treatment Dr. Park provided was unlawful.

19 **CONCLUSION**

- 20 1. Defendant's motion for summary judgment (Dkt. No. 17) is **GRANTED**.  
21 2. The Clerk is requested to terminate all pending motions, enter judgment, and close the  
22 file.

23 **IT IS SO ORDERED.**

24 Dated: October 31, 2022

25  
26  
27   
28 JAMES DONATO  
United States District Judge

United States District Court  
Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOSE LUIS GARCIA,  
Plaintiff,

v.

KYEONG PARK,  
Defendant.


Case No. 21-cv-09048-JD

**JUDGMENT**

Pursuant to the order of dismissal signed today, this case is dismissed with prejudice.

**IT IS SO ORDERED.**

Dated: October 31, 2022

  
\_\_\_\_\_  
JAMES DONATO  
United States District Judge

# APPENDIX

## C

**\* Final Report \***  
**Document Contains Addenda**

34y/o generally healthy male, unremarkable med history, takes no chronic meds, pushing a heavy cart loaded with approx 300 dinner trays to be delivered to inmates when somehow he lost control of the cart, and it fell onto his R foot. Per TTA RN, diffuse bleeding, with medical R distal great toe & nail almost completely detached. RN very concerned about crush toe injury with likely fracture that may require surgery. Last Tdap 2/9/20. RN was able to control bleeding with compression bandage. Spoke with Dr. Olazaez at NMC-ER, who accepted pt for further evaluation/bx. Pt transferred. code 1.

**Encounter Info:** Patient Name: JOSE GARCIA, DOB: 11/09/1986, CDCR: F44226, FIN: 10000001411575512F44226, Facility: CTF, Encounter Type: Institutional Encounter

**Addendum by Chen, Yun-Ching P&S on December 09, 2020 04:38:23 PST (Verified)**

Pt returned from NMC-ER: No fracture found on xray, but had a large laceration that took off part of the R great toenail bed, which was sutured. Suture removal in 10d, pain control. Ordered Ibuprofen 600mg TID PRN and Tylenol#3 2 tabs TID PRN for pain control, temporary crutches, LVN 3d for wound care, and lay-in x1wk. PCP to issue 7410.

Result type: Phone Message/Call  
Result date: December 08, 2020 21:04 PST  
Result status: Modified  
Result title: POC  
Performed by: Chen, Yun-Ching P&S on December 08, 2020 21:11 PST  
Verified by: Chen, Yun-Ching P&S on December 08, 2020 21:11 PST

Printed by: Feinberg, Bennett P&S  
Printed on: 4/4/2022 15:05 PDT

Page 1 of 1

**AGO 001**

# APPENDIX D



01/12/2022 WBD 11:34 FAX Jan/12/2022 11:43:08 AM ->8316787272

2/2  
0002/002

RADIOLOGY  
Signed XR FOOT RIGHT 3 VIEWS 12/08/20

F44226

Ordering Physician: ANDRES ROJAS PA-C

Document: 1209-0033

CC:

The CT dose for this exam is: CTDIVOL DLP

## RIGHT FOOT

INDICATION: Right great toe compression injury.

COMPARISON: None.

TECHNIQUE: AP, lateral, and oblique views.

Received

JAN 12 2022

Medical Records  
CTF

## FINDINGS:

Bone density: Normal osseous mineralization.

Acute findings: No acute fracture or subluxation is identified.

Nonacute findings: None.

Joints: The joint spaces are preserved.

Soft tissues: Soft tissue injury/swelling in the region of the distal first metatarsal and right great toe. No radiopaque foreign body.

Additional: None.

IMPRESSION: Right foot soft tissue swelling/injury without acute osseous pathology or radiopaque foreign body.

LOC: 50

Report electronically signed by Radiologist: Joseph P Marshall, MD 12/8/2020 9:09 AM

Natividad  
Diagnostic Imaging Services  
1441 Constitution Blvd.  
Salinas CA 93912  
(831) 755-4369

Patient Name: JOSE L GARCIA  
Age/Gender: 34  
H.D.MRN:  
Location: EMERGENCY DEPARTMENT  
Accession #: 1688214.001

Date of Birth: 11/09/1986  
Acct: V720883644  
MRN: M000786888  
Ref. Loc: Correctional Training Facility

# APPENDIX

E



CALIFORNIA CORRECTIONAL  
HEALTH CARE SERVICES

Correctional Training Facility

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Name:	JOSE GARCIA	Patient ID:	11575512
DOB:	11/9/1986	Secondary ID:	F44226
Exam Name:	XR FOOT RIGHT-3 VWS	Exam Date:	4/28/2021 10:53 AM
	73630		
Age:	34Y 9M		
Primary Care Provider:	K. Park, MD - CTF		
Ordering Provider:	K. Park, MD		

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CLINICAL INDICATION: s/p injury, pain over 1st MTP  
COMPARISON: August 7, 2017.  
TECHNIQUE: 3 views of the foot.

FINDINGS:

An ununited distal tuft fracture is present at the first distal phalanx. This is new from prior exam.

No additional fractures are appreciated.  
The joint spaces are preserved.  
Bone mineralization is normal.  
No significant soft tissue swelling is seen.

IMPRESSION:

Ununited tuft fracture of the great toe.

Electronically Signed by: RWaters, MD

Date Signed: 4/28/2021 11:23 AM

Report Electronically Signed by: RICHARD WATERS, MD  
Report Electronically Signed on: 4/28/2021 11:23 AM

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# APPENDIX

## F

1 Jose Luis Garcia, F-44226  
2 Correctional Training Facility  
3 P.O. Box 705  
4 Soledad, CA 93960  
5 In Pro-Per

6  
7 **UNITED STATES DISTRICT COURT**  
8 **NORTHERN DISTRICT OF CALIFORNIA**  
9

10  
11 **JOSE LUIS GARCIA,**  
12 **Plaintiff,**

Case No.: 3:21-cv-09048 JD (PR)

13 **v.**

14 **DECLARATION OF JOSE LUIS GARCIA**  
15 **(CDCR No. F-44226)**

16 **KYEONG PARK,**  
17 **Defendant.**  
18

19 I, Jose Luis Garcia, declare;

20 1. I am the plaintiff in this action currently incarcerated at the  
21 Correctional Training Facility in Soledad. My prison identification number  
22 is(F-44226).

23 2. On December 8, 2020, while working as a volunteer in the facility where I  
24 am confined, I was injured when a heavy cart loaded with approximately 300  
25 dinner trays weighting about 400 to 500 pounds fell onto my right foot causing  
26 me a considerable injury.


27 3. For over six months following the surgery, I experienced a very strong  
28 pain in my right foot and ankle. I communicate to Dr. Park about this concern,

1 and personally requested him a referral to an specialist to obtain better  
2 treatment, but Dr. Park denied my request, expressed a disbelief, and just  
3 prescribed over-the-counter pain medication which was not helping to my  
4 condition.

5 4. After April 2021, Dr. Park concluded providing me medical attention. After  
6 April 22, 2021, Dr. Jonathan Ashby took over as my primary care physician. On  
7 July 15, 2021, I received from Dr. Ashby a cast shoe. While delivering the cast  
8 shoe to me, Dr. Ashby expressed that this cast shoe was necessary right after  
9 the injury to prevent a further damage.

10 5. During the course of the treatment provided by Dr. Ashby, my condition  
11 improved significantly due to the fair treatment provided by Dr. Ashby.

12  
13 I declare under penalty of perjury under the laws of the State of California  
14 and the United States, that the foregoing is true and correct and that this  
15 declaration was executed on August 16, 2022, at Soledad, California.

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20 Jose Luis Garcia (F-44226)  
21 In Pro-Per  
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# APPENDIX

## G

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Patient Encounter Information

ENCTR Information: Encounter Info: Patient Name: JOSE GARCIA, DOB: 11/09/1986, FIN: 10000001411575512F44226, Facility: CTF, Encounter Type: Institutional Encounter

Approved DME/Medical Supplies

DME Air Cell Cushion-High Profile (Roho): N/A  
DME Air Cushion (for Wheelchair Seat): N/A  
DME Air Cushion-Full (Day/Geri Chair): N/A  
DME Ankle Foot Orthoses/Knee Ankle Foot: N/A  
DME Back Braces: N/A  
DME Bone Growth Stimulators Electrical: N/A  
DME Breast Pump: N/A  
DME Bubble Humidifier: N/A  
DME Burn Garment: N/A  
DME Cane: N/A  
DME Commode Chair: N/A  
DME Compression Stocking: N/A  
DME Continuous Passive Motion Lower: N/A  
DME Continuous Passive Motion Upper: N/A  
DME Crutches: Crutches Temporary  
DME Expiration Crutches: 12/18/20  
DME Diabetic Supplies Monitors: N/A  
DME Eyeglass Frames: Eyeglass Frames Permanent  
DME Eyeglasses for Aphakia: N/A  
DME Foot Orthoses: N/A  
DME Hearing Aid: N/A  
DME Hearing Impaired Disability Vest: N/A  
DME Heel/Foot Protector: N/A  
DME Helmet: N/A  
DME Incontinence Supplies: N/A  
DME Insulin Pump: N/A  
DME Knee Braces: N/A  
DME Mobility Impaired Disability Vest: N/A  
DME BiPap: N/A  
DME CPAP: N/A  
DME Ocular Conformers: N/A  
DME Ostomy Supplies: N/A  
DME Oxygen Concentrators: N/A  
DME Pressure Reducing Support Services: N/A  
DME Prosthetic Limbs Lower Extremity: N/A  
DME Prosthetic Limbs Upper Extremity: N/A  
DME Reading Glasses: N/A  
DME Scleral Shell Contact Lenses: N/A  
DME Sitz Bath: N/A  
DME Spinal Orthoses: N/A  
DME Standing Frames: N/A  
DME Therapeutic Contact Lenses: N/A  
DME Therapeutic Shoes/Orthotics: N/A  
DME Toilet Seat Lift (Erector): N/A  
DME Tracheostomy Care Supplies: N/A  
DME Truss Hernia Support: N/A  
DME Urologic Supplies: N/A  
DME Vision Impaired Disability Vest: N/A  
DME Voice Prosthesis Augmentative: N/A  
DME Walkers: N/A  
DME Wheelchair: N/A  
DME Wound Care Dressings: N/A  
DME Negative Pressure Wound Therapy: N/A  
DME Wrist Support Brace: N/A  
DME Other Options: N/A

Durable Medical Equipment and Supply Receipt  
7536 Descriptions 1: Crutches  
7536 Quantity 1: 2  
7536 Expiration 1: 12/18/20  
7536 Patient Signature: X *[Signature]* 12-9-20  
7536 Issuing Staff Signature: X *[Signature]* 12-9-20  
7536 Witness Name: X

CTF (Location: CTF A LA A3 ; 324 ; 324001U)  
Patient Name: GARCIA, JOSE LUIS DOB / AGE / SEX: 11/09/86 34 Years Male  
Admitting Physician:

Admission Date / MRN / Financial Num: 01/29/14 F44226 10000001411575512F44226 Page 2 of 2

Print Date: 12/09/20  
Print Time: 01:23 PST  
Printed by: Gultia, Helen RN