

APPENDIX

A

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DEC 15 2023

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

JOSE LUIS GARCIA,

No. 22-16840

Plaintiff-Appellant,

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

v.

KYEONG PARK,

MEMORANDUM*

Defendant-Appellee.

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.

* 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

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JOSE LUIS GARCIA,
Plaintiff,
v.
KYEONG PARK,
Defendant.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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 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.

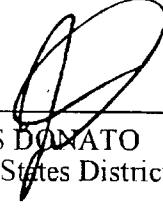
19 **CONCLUSION**

- 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

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JAMES DONATO
United States District Judge


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JOSE LUIS GARCIA,
Plaintiff,
v.
KYEONG PARK,
Defendant.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

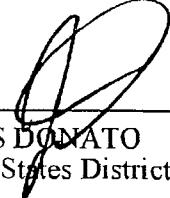
Case No. 21-cv-09048-JD

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 inamtes 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. Olaez at NMC-ER, who accepted pt for further evaluation/bx. Pt transferred, code 1.

Encounter Info: Patient Name: JOSE GARCIA, DOB: 11/09/1986, CDR: 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

APPENDIX

D

01/12/2022 11:34 AM →8316787272
01/12/2022 11:34 PAX

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002/002

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

F44326

Ordering Physician: ANDRES ROJAS PA-C
CC:
The CT dose for this exam is: CTDIVOL DLP

Document: 1209-0033

RIGHT FOOT

INDICATION: Right great toe compression injury.

COMPARISON: None.

TECHNIQUE: AP, lateral, and oblique views.

Received

JAN 12 2022

Medical Record
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 12/9/2020 9:09 AM

| | | |
|-----------------------------|-----------------------------|--|
| Natividad | Patient Name: JOSE L GARCIA | Date of Birth: 11/09/1986 |
| Diagnostic Imaging Services | Age/Gender: 34 | Acct: V720883644 |
| 1441 Constitution Blvd. | H.D.MRN: | Location: EMERGENCY DEPARTMENT MRN: M000786888 |
| Salinas CA 93912 | Accession #: 1688214.001 | Ref. Loc:Correctional Training Facility |
| (831) 755-4369 | | |

Page 1

SER 007

APPENDIX

E



Name: JOSE GARCIA
DOB: 11/9/1986
Exam Name: XR FOOT RIGHT-3 VWS |
73630
Age: 34Y 9M
Primary Care Provider: K. Park, MD - CTFI
Ordering Provider: K. Park, MD

Patient ID: 11575512
Secondary ID: F44226
Exam Date: 4/28/2021 10:53 AM

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

APPENDIX

F

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

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

9

10 **JOSE LUIS GARCIA,**

11 **Plaintiff,**

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

13

14 **v.**

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16 **KYEONG PARK,**

17 **Defendant.**

18 DECLARATION OF JOSE LUIS GARCIA
(CDCR No. F-44226)

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.

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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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Jose Luis Garcia (F-44226)
In Pro-Per

APPENDIX

G

7536 DME/Supply Receipt
12/09/20 01:05 PST Performed by Gultia, Helen RN
Entered on 12/09/20 01:23 PST

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 Prostheses 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: 1

7536 Expiration 1: 12/18/20

7536 Patient Signature: X Helen Gultia

7536 Issuing Staff Signature: X juan garcia Jr

7536 Witness Name: X

12-9-20

N

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 of 2

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