

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Donald R. Huston v. A. Mardesich, et al.

Huston v. Mardesich · No. CV-23-02203-PHX-JAT (DMF) · Decided November 24, 2025

OPINION

1 MGD 2 WO 3 4 5 6 IN THE UNITED STATES DISTRICT COURT 7 FOR THE DISTRICT
OF ARIZONA 8 9 Donald R. Huston, No. CV-23-02203-PHX-JAT (DMF) 10 Plaintiff, 11 v.
ORDER 12 A. Mardesich, et al., 13 Defendants. 14 15 Plaintiff Donald R. Huston, who is
currently confined in the Central Arizona 16 Correctional and Rehabilitation Facility (CACRF),
brought this pro se civil rights action 17 pursuant to 42 U.S.C. § 1983 regarding the alleged lack
of treatment for a detached retina.

18 Defendant Mardesich moves for summary judgment. (Doc. 46.) Plaintiff was informed of 19
his rights and obligations to respond pursuant to *Rand v. Rowland*, 154 F.3d 952, 962 (9th Cir.
1998) (en banc) (Doc. 49), and he opposes the Motion. (Doc. 66.) 21 I. Background 22 On
screening the Complaint under 28 U.S.C. § 1915A(a), the Court determined that 23 Plaintiff stated
an Eighth Amendment medical care claim in Count One against Defendant 24 Health Service
Administrator (HSA) A. Mardesich in her individual capacity based on the 25 allegation that
Defendant instituted policies that delayed Plaintiff from receiving healthcare 26 and led to
blindness in one eye.

(Doc. 5.) The Court directed Defendant to answer the 27 claim and dismissed the remaining claim
and defendant. (Id.) 28 1 II. Legal Standards 2 A. Summary Judgment Standard 3 A court must
grant summary judgment “if the movant shows that there is no genuine 4 dispute as to any
material fact and the movant is entitled to judgment as a matter of law.” 5 Fed. R. Civ.

P. 56(a); see also *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The 6 movant bears the
initial responsibility of presenting the basis for its motion and identifying 7 those portions of the
record, together with affidavits, if any, that it believes demonstrate 8 the absence of a genuine
issue of material fact. *Celotex*, 477 U.S. at 323. 9 If the movant fails to carry its initial burden of
production, the nonmovant need not 10 produce anything.

Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Co., Inc., 210 F.3d 1099, 11 1102-03 (9th Cir. 2000).
But if the movant meets its initial responsibility, the burden shifts 12 to the nonmovant to
demonstrate the existence of a factual dispute and that the fact in 13 contention is material, i.e., a
fact that might affect the outcome of the suit under the 14 governing law, and that the dispute is
genuine, i.e., the evidence is such that a reasonable 15 jury could return a verdict for the
nonmovant.

Anderson v. Liberty Lobby, Inc., 477 U.S. 16 242, 248, 250 (1986); see Triton Energy Corp. v. Square D. Co., 68 F.3d 1216, 1221 (9th Cir. 1995). The nonmovant need not establish a material issue of fact conclusively in its favor, First Nat’l Bank of Ariz. v. Cities Serv. Co., 391 U.S. 253, 288-89 (1968); however, it must “come forward with specific facts showing that there is a genuine issue for trial.” Matsushita Elec.

Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (internal citation omitted); see Fed. R. Civ. P. 56(c)(1). At summary judgment, the judge’s function is not to weigh the evidence and determine the truth but to determine whether there is a genuine issue for trial. Anderson, 477 U.S. at 249.

In its analysis, the court must believe the nonmovant’s evidence and draw all inferences in the nonmovant’s favor. Id. at 255. The court need consider only the cited materials, but it may consider any other materials in the record. Fed. R. Civ. P. 56(c)(3). B. Eighth Amendment To support a medical care claim under the Eighth Amendment, a prisoner must demonstrate “deliberate indifference to serious medical needs.” Jett v. Penner, 439 F.3d 2 1091, 1096 (9th Cir.

2006) (citing Estelle v. Gamble, 429 U.S. 97, 104 (1976)). There are two prongs to the deliberate-indifference analysis: an objective standard and a subjective standard. First, a prisoner must show a “serious medical need.” Id. (citations omitted). A “‘serious’ medical need exists if the failure to treat a prisoner’s condition could result in further significant injury or the ‘unnecessary and wanton infliction of pain.’” McGuckin v. Smith, 974 F.2d 1050, 1059–60 (9th Cir.

1992), overruled on other grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc) (internal citation omitted). Indications that a prisoner has a serious medical need include “[t]he existence of an injury that a reasonable doctor or patient would find important and worthy of comment or treatment; the presence of a medical condition that significantly affects an individual’s daily activities; or the existence of chronic and substantial pain.” Id. at 1059–60.

Second, a prisoner must show that the defendant’s response to that need was deliberately indifferent. Jett, 439 F.3d at 1096. “Prison officials are deliberately indifferent to a prisoner’s serious medical needs when they ‘deny, delay or intentionally interfere with medical treatment.’” Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990) (quoting Hutchinson v. United States, 838 F.2d 390, 394 (9th Cir.

1988)). Deliberate indifference may also be shown where prison officials fail to respond to a prisoner’s pain or possible medical need. Jett, 439 F.3d at 1096. “In deciding whether there has been deliberate indifference to an inmate’s serious medical needs, [courts] need not defer to the

21 judgment of prison doctors or administrators.” *Colwell v. Bannister*, 763 F.3d 1060, 1066 22 (9th Cir.

2014) (quoting *Hunt v. Dental Dep’t*, 865 F.2d 198, 200 (9th Cir. 1989)). 23 Even if deliberate indifference is shown, to support an Eighth Amendment claim, 24 the prisoner must demonstrate harm caused by the indifference. *Jett*, 439 F.3d at 1096; see 25 *Hunt*, 865 F.2d at 200 (delay in providing medical treatment does not constitute Eighth 26 Amendment violation unless delay was harmful).

27 28 1 III. Facts1 2 CACRF is a private prison in Florence, Arizona, operated under contract with the 3 Arizona Department of Corrections Rehabilitation and Reentry (ADCRR) by GEO Secure 4 Services (GEO). (Doc. 47 (Def.’s Statement of Facts (DSOF)) ¶¶ 1, 3.) At the time 5 relevant to the Complaint, Defendant was employed as a medical services provider and 6 HSA for GEO.

(Id. ¶ 3.) 7 On February 23, 2022, Plaintiff saw an outside provider, Dr. Derek Y. Kunimoto, 8 MD, at Retinal Consultants of Arizona Ltd., and Dr. Kunimoto diagnosed Plaintiff with 9 retinal detachment of the right eye. (Doc. 66-2 at 5.) Dr. Kunimoto recommended surgery, 10 and Plaintiff consented to surgery. (Id.)

On March 7, 2022, Plaintiff had surgery by Dr. 11 Kunimoto for “SERIOUS RETINAL DETACHMENT RIGHT EYE; TRD OD.” (Doc. 12 66-2 at 43 (emphasis in original).) 13 On March 8, 2022, Plaintiff had a one-day post-op follow up at Retinal Consultants 14 and reported that his right eye felt sore, but he had no pain or complaints.2 (Doc. 66-1 at 15 50, 53.) Dr. Jamal noted: “Doing well.

Start Rx, alt precautions, and positioning. Return 16 1 week (DYK),” which apparently meant Plaintiff was to return in a week to see Dr. 17 Kunimoto. (Id.) 18 19 20 1 Defendant provides almost no evidence of Plaintiff’s medical care in her summary 21 judgment briefing, and her Statement of Facts (Doc. 47) merely makes the conclusory assertion that she provided “appropriate, reasonable medical services” to Plaintiff to 22 address his medical needs and that nothing in her encounters with him revealed a serious 23 medical need.

Therefore, most of the relevant facts regarding Plaintiff’s medical care are taken from the medical records Plaintiff submitted with his Response and from Plaintiff’s 24 Complaint. See *Jones v. Blanas*, 393 F.3d 918, 923 (9th Cir. 2004) (allegations in a pro se 25 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 26 may be used as an affidavit opposing summary judgment if it is based on personal 27 knowledge and sets forth specific facts admissible in evidence). 28 2 Karim N. Jamal, MD, apparently did the follow-up exam because he signed this medical record. (See Doc. 66-1 at 53.) 1 On March 16, 2022, Plaintiff saw Dr. Kunimoto for follow up.

(Id. at 46.) Dr. 2 Kunimoto noted: “OD VA slowly clearing up. NO pain. Using drops as directed. OS no 3 complaints.” (Id.) Dr. Kunimoto further noted: “Retina is attached. There is mild traction 4 inferiorly. No s/s of infection IOP is good at (16).” (Id. at 49.) 5 On April 27, 2022, Plaintiff saw Dr. Kunimoto for follow up, and Plaintiff reported 6 no change in his vision since the last visit and no floaters, flashes or pain in either eye.

(Id. 7 at 43.) Dr. Kunimoto’s Assessment was “Recurrent RD [retinal detachment] OD [right 8 eye]” and “S/P 25 g PPV / SBP /MP / PRP /C3f8 gas OD – 03/07/2002.” (Id. at 45.) Under 9 Plan of Care, Dr. Kunimoto wrote: 10 Unfortunately, there is inferior PVR3 with a recurren[t] RD OD. Recommend surgery. RBA discussed.

The patient elects 11 surgery. 12 Drops Vigamox QID until done 13 Pred QID 14 Plan: 25 g PPV / MP /PRP / retinectomy / SO exchange OD 15 (Id.) On April 27, 2022, Plaintiff signed a surgical consent form for a retinectomy of the 16 right eye for “recurrent RD.” (Doc. 66-2 at 44-45.) 17 On May 9, 2022, Plaintiff submitted an HNR to make sure the follow-up surgery 18 was scheduled.

(Doc. 66-1 at 7.) The nurse’s response says, “Given to MRC.” (Id.) On 19 May 10, 2022, Nurse Courtney told Plaintiff to use Inmate Letters, not HNRs, “for these 20 types of questions as they bog down her nursing line.” (Doc. 1 at 5-6.) 21 Plaintiff explains that under ADCRR Department Order 1101, prisoners request 22 healthcare through an HNR and are supposed to be seen by a nurse within 24 hours of 23 receipt of an HNR for routine needs or immediately for emergent needs.

(Id. at 4.) Plaintiff 24 25 3 “Proliferative vitreoretinopathy (PVR) is the most common cause for failure of 26 rhegmatogenous retinal detachment repair and is characterized by the growth and 27 contraction of cellular membranes within the vitreous cavity and on both sides of the retinal surface as well as intraretinal fibrosis.” National Institutes of Health, Proliferative 28 Vitreoretinopathy: A Review, <https://pmc.ncbi.nlm.nih.gov/articles/PMC6310037/> [permalink: <https://perma.cc/3JFF-48RL>].

1 states that when a prisoner submits an Inmate Letter, it can take up to 20 workdays for a 2 response. (Id.) The difference in response times between an HNR and Inmate Letters, 3 according to Plaintiff, results in cost savings because it “reduces the number of nurses 4 required to conduct nursing lines, which result in delays or denial in proper healthcare.” 5 (Id.)

6 On May 10, 2022, Plaintiff submitted an Inmate Letter to the HSA requesting the 7 second surgery. (Id. at 6.)4 On May 13, 2022, Defendant responded that “she personally 8 called the ‘surgery scheduler’ and ‘successfully confirmed’ plaintiff was scheduled for the 9 recommended eye surgery soon.” (Id.) Plaintiff spent a night in a medical unit observation 10 bed prior to surgery, but the following day he was released back to his unit and was told 11 his surgery was canceled because GEO did not have the staff to transport him to surgery.5 12 (Id.)

13 On May 16, 2022, Breanna Estrada from Retinal Consultants called the prison to 14 reschedule surgery because Plaintiff was a no show for surgery that day. (See Doc. 66-1 15 at 42.) 16 On May 25, 2022, Plaintiff submitted an HNR stating that he was scheduled for 17 surgery on his right eye for a detached retina and asking if the 3 different drops he was 18 supposed to use for 3 days prior to the surgery had been ordered.

(Id. at 8.) A nurse 19 responded that “we will let you know prior x 3 days before. Appointment was 5-16-2022. 20 Has to be rescheduled.” (Id.) 21 On June 1, 2022, Breanna Estrada from Retinal Consultants called the prison to see 22 if Plaintiff’s surgery could be moved up to June 2 but the prison informed Estrada that a 23 driver was not available to transport Plaintiff and so the surgery would remain scheduled 24 for June 27.

(Id. at 41.) 25 26 4 The Inmate Letters and Responses that Plaintiff writes about in his Complaint are 27 not in the record. 28 5 Plaintiff does not say when this occurred but, given the context, it appears this happened around May 16, 2022. 1 On June 7, 2022, Plaintiff sent an Inmate Letter to Medical concerning the surgery 2 and eyedrops he needed to use prior to surgery.

(Doc. 1 at 6.) The HSA responded on June 3 13, 2022, that the surgery had been rescheduled and the eye drops had been reordered. 4 (Id.)6 Plaintiff did not receive the eyedrops he was supposed to use prior to the surgery. 5 (Id.) 6 On June 27, 2022, Dr. Kunimoto performed another surgery for Plaintiff’s “TOTAL 7 RETINAL DETACHMENT RIGHT EYE.” (Doc. 66-2 at 36-37 (emphasis in original).)

8 The procedure was a “Right Vitrectomy, Laser, Membrane Strip, Retinectomy, Silicone 9 Oil Injection.” (Id. at 37.) Plaintiff explains that an “NOS bubble” was placed in his right 10 eye “to hold parts of the eye together” and that the surgeon said the NOS bubble must be 11 released in 6 weeks, i.e., around August 8, 2022. (Doc. 1 at 6, 9.) 12 On June 28, 2022, Plaintiff saw Dr. Sachin Mehta at Retinal Consultants for follow- 13 up.

(Doc. 66-1 at 36, 40.) Plaintiff complained of blurry vision in his right eye. (Id.) 14 Following examination, Dr. Mehta noted: 15 —retina attached under oil 16 —no s/s infection 17 —eye is soft by AC formed, no wound leak 18 —Start PF/Oflox QID 19 —RD/endoph WS discussed 20 —positioning discussed 21 —f/u 1 week PO OD w/ DYK 22 (Id. at 39.) 23 Upon Plaintiff’s return to prison that day, a nurse noted that Plaintiff had an eye 24 patch and was to use eye drops for 3 months.

(Doc. 66-2 at 22.) The nurse also wrote “F/u 25 1 wk PO OD c DYK,” which presumably meant Plaintiff was to follow up in one week 26 with Dr. Kunimoto. 27 28 6 “HSA” apparently refers to Defendant. 1 On August 9, 2022, Plaintiff submitted an HNR asking if the post-op appointment 2 that was to take place 6 weeks after the surgery had been scheduled. (Doc. 66-1 at 9.)

LPN 3 T. Shaffer responded that same day to “submit inmate letter.” (Id.) 4 On August 16, 2022, Plaintiff submitted Inmate Letters to Medical and the HSA 5 “requesting care.”⁷ (Doc. 1 at 7.) 6 On August 17, 2022, Plaintiff felt that the NOS bubble had ruptured. (Id.) 7 On August 18, 2022, RN Blanco noted in Plaintiff’s prison medical record that 8 Plaintiff was complaining of right eye pulsating and shaking for the past 3 days and that 9 “the bubble that was put on my last [right] eye Sx [surgery] has popped.” (Doc.

66-4 at 4- 10 5.) RN Blanco wrote that Plaintiff had surgery on June 27, 2022, “schedule [patient with] 11 ophthalmology surgeons,” and referred Plaintiff to a healthcare provider. (Id. at 4-5.) 12 On August 23, 2022, Deputy Warden Dennis looked at Plaintiff’s eye and instructed 13 Plaintiff to submit an HNR. (Doc. 1 at 7.) Plaintiff considered this a direct order from the 14 Deputy Warden and so submitted the following HNR on August 24, 2022: “Attn: HSA A. 15 Mardesich.

I had surgery on my right eye for a detached retina. I was supposed to go back 16 to the surgeon on 8/8/2022 for a 6 week post-op check up and to pop the N.O.S. bubble in 17 my eye. I have not gone and it’s almost 2 week[s] past due. I need to know when I will 18 go.” (Id.; Doc. 66-1 at 10.)

On August 25, 2022, Defendant responded: “You are 19 scheduled. Please use an inmate letter for this type of request in the future.” (Doc. 66-1 at 20 10.) 21 On August 25, 2022, Plaintiff saw Dr. Mehta at Retinal Consultants, and Plaintiff 22 reported his “vision has barely been LP since surgery. He can see a small silver [sic] of 23 light in the upper lefthand quadrant of the right eye.

He does not feel this has changed 24 since surgery. Patient denies pain or headaches OD.” (Id. at 34.) The Assessment by Dr. 25 Mehta was “S/P 25 g PPV / MP / PRP / retinectomy / SO exchange OD – 59 Days. Total 26 retinal detachment, right eye.” (Id. at 37.)

Under Plan, Dr. Mehta wrote: 27 28 7 Plaintiff does not say what care he requested or if he received responses to his Inmate Letters. 1 —pt lost [sic] to follow-up for 2 months 2 —exam confirms macular PVR 3 —no s/s infection 4 —IOP low but acceptable 5 —RD/endoph WS discussed 6 RTC 1 month PO w/ DYK 7 (Id.) 8 Dr. Mehta told Plaintiff that he “needed to see the doctor who did the surgery.” 9 (Doc.

1 at 7.) 10 On August 27, 2022, Plaintiff sent an Inmate Letter to Defendant, and on September 11 9, 2022, Defendant sent a response stating Plaintiff “would be seen soon.”⁸ (Id.) On 12 September 26, 2022, Plaintiff submitted an Inmate Letter to Defendant “requesting an 13 appointment.”⁹ (Id.) 14 On October 5, 2022, Plaintiff saw Dr. Kunimoto at Retinal Consultants.

(Doc. 66- 15 1 at 29.) Plaintiff reported that his vision had not returned since his last visit, he did not 16 have pain in either eye, and he denied seeing any new flashes, floaters or distortion. (Id.) 17 Under Assessment, Dr. Kunimoto noted “[t]otal retinal detachment, right eye.” (Id. at 33.) 18 In the plan of care, Dr. Kunimoto wrote: “[t]here is a closed funnel RD OD, under silicon 19 oil.

Dismal visual prognosis. Comfort measures. Follow.” (Id.) Dr. Kunimoto said 20 Plaintiff was to return in 1 year for follow up. (Id.) The doctor informed Plaintiff that 21 “nothing else could be done.” (Doc. 1 at 7.) 22 On December 12, 2022, Plaintiff asked to receive a second opinion and was 23 informed that GEO only contracts with one retinal specialist and Plaintiff has no right to 24 dictate his healthcare.

(Doc. 1 at 7-8.) 25 26 27 8 Plaintiff does not say what he wrote in this Inmate Letter. 28 9 Plaintiff does not provide any details about this Inmate Letter or say if he received a response. 1 On April 23, 2023, Plaintiff saw Dr. Kunimoto who assessed Plaintiff, in part, with 2 total retinal detachment, right eye. (Doc. 66-1 at 24.) Plaintiff reported that his vision had 3 been getting worse since his last visit, he has constant pain and little to no vision in his 4 right eye, and he denied any new flashes, floaters, or distortion since his last visit.

(Id. at 5 24-25.) In the plan of care, Dr. Kunimoto noted “[t]here is a closed funnel RD OD, under 6 silicon oil. Dismal visual prognosis. Comfort measures. Follow.” (Id. at 24.) 7 On May 28, 2024, Plaintiff submitted an HNR requesting a health aide because he 8 is blind in his right eye. (Id. at 11.)

The response from RN Oszust states that Plaintiff had 9 a pending appointment for a chart review to look into his request. (Id.) A note in Plaintiff’s 10 prison medical record dated September 26, 2024, states “Health Aid SNO [special needs 11 order], issued.” (Doc. 66-4 at 26.) 12 IV. Discussion 13 A. Serious Medical Need 14 Although Defendant asserts in her Declaration that “[a]t no time in any encounters 15 with Plaintiff did he present with a serious medical need,” there can be no real dispute that 16 Plaintiff’s detached retina condition constituted a serious medical need.

Plaintiff’s 17 detached retina was “worthy of comment or treatment” as revealed by his medical records 18 showing that Plaintiff had two surgeries in 2022 for his detached retina, multiple follow- 19 up visits with the specialist(s), and has now been assigned an aide for his right eye 20 blindness.

The record therefore supports that Plaintiff’s retinal detachment and 21 accompanying blindness constitute serious medical needs. See McGuckin, 974 F.2d at 22 1059–60. See also Browning v. Snead, 886 F. Supp. 547 (S.D. W.Va. 1995) (a detached 23 retina is a serious medical condition); Hanson v. Blaine County, No. 1:16-cv-00421-BLW, 24 2018 WL 3370526, at * 5 (D.

Id. Jul 9, 2018) (“[a] detached retina may constitute a serious 25 medical need.”); Herrera-Cubias v. Fox, No. 08-CV-0517-TUC-AWT, 2012 WL 26 12539503, at *4 (D. Ariz. Sept. 10, 2012) (“courts have held that a detached retina is a 27 serious medical need because it causes discomfort, necessitates surgery, and can lead to 28 blindness”) (citations omitted). 1 B. Deliberate

Indifference 2 The second prong in the analysis examines whether Defendant was deliberately 3 indifferent to Plaintiff's serious medical need.

The inquiry into an individual defendant's 4 liability for deliberate indifference "must be individualized and focus on the duties and 5 responsibilities of each individual defendant whose acts or omissions are alleged to have 6 caused a constitutional deprivation." *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988); 7 see *Rizzo v. Goode*, 423 U.S. 362, 370–71, 375–77 (1976).

8 The initial inquiry in the deliberate indifference analysis is whether Defendant knew 9 of Plaintiff's serious medical need. Evidence in the record supports that Defendant was 10 aware Plaintiff suffered from a detached retina because she avers that she was aware of 11 Plaintiff's history and the referrals for him to see an offsite specialist. (Doc. 47-2 at 3, Def.

12 Decl. ¶ 5.) 13 Next, the Court considers Defendant's response to Plaintiff's serious medical need. 14 The evidence reflects that on April 27, 2022, after Plaintiff's first surgery, Dr. Kunimoto 15 recommended a second surgery for recurrent retinal detachment in the right eye, and 16 Plaintiff agreed to the second surgery. Plaintiff began asking on May 9, 2022, for the 17 second surgery to be scheduled.

He was told to use Inmate Letters for these types of 18 requests, not HNRs. On May 10, Plaintiff sent an Inmate Letter to the HSA, and Defendant 19 responded on May 13, 2022, that Plaintiff was scheduled for the recommended eye surgery 20 soon.

The record indicates that the second surgery was originally scheduled to take place 21 around May 16, but did not happen then because of prison transport issues. Plaintiff 22 inquired via HNRs and Inmate Letters about the second surgery and getting the eye drops 23 he needed to use before the surgery.

On June 13, Defendant responded to Plaintiff's June 24 7 Inmate Letter that the surgery was rescheduled. 25 The second surgery took place June 27, 2022, and Dr. Kunimoto told Plaintiff to 26 return in 6 weeks to release the NOS bubble, but Plaintiff did not return to Retinal 27 Consultants by August 8.

On August 16, 2022, Plaintiff submitted Inmate Letters to 28 Medical and the HSA requesting unspecified "care," and on August 17, Plaintiff felt the 1 NOS bubble rupture. Plaintiff saw a nurse on August 18 about the burst bubble, and the 2 record says he was referred to a provider.

On August 24, Plaintiff submitted an HNR to 3 Defendant about not having the six-week follow up for his surgery, and Defendant 4 responded on August 25 that Plaintiff was scheduled. That same day, August 25, Plaintiff 5 saw Dr. Mehta at Retinal Consultants, and Dr. Mehta diagnosed Plaintiff with "[t]otal 6 retinal detachment, right eye." (Doc. 66-1 at 37.) When Plaintiff saw Dr.

Kunimoto on 7 October 5, 2022, Dr. Kunimoto told Plaintiff “nothing else could be done,” and his plan of 8 care was “comfort measures” with “dismal visual prognosis.” (Doc.

1 at 7, Doc. 66-1 at 9 33.) 10 As stated, in addressing an individual’s liability, the Court must consider the duties 11 and responsibilities of the defendant. In her declaration, Defendant fails to describe her 12 duties and responsibilities. (See Doc. 47-2 at 2-4.) Defendant avers that she did not take 13 “any affirmative action to deprive Plaintiff of any of his rights”; however, under Ninth 14 Circuit law, a failure to act is sufficient to support § 1983 liability.

(Id. ¶ 7.) See Taylor v. 15 List, 880 F.2d 1040, 1045 (9th Cir. 1989); Shaka v. Ryan, CV 10-02253-PHX-SMM (BSB), 16 2015 WL 926192, at *8 (D. Ariz. March 4, 2015) (explaining why, under Ninth Circuit 17 law, FHA defendant who responded to the plaintiff’s grievance could be liable).

Thus, 18 there is a question of fact whether Defendant was aware of Plaintiff’s need for surgery and 19 surgery follow up and whether she was responsible for medical transport and/or scheduling 20 such that she could have, but failed to act, to ensure Plaintiff timely received specialist- 21 recommended care.

However, there is no dispute that Defendant was not Plaintiff’s 22 treating provider, and Plaintiff’s vague Inmate Letters requesting “care” after his second 23 surgery and even his August 24, 2022, HNR about not receiving a six-week follow-up 24 failed to convey urgency such that Defendant could be found to be deliberately indifferent. 25 Moreover, Plaintiff saw Dr. Mehta at Retinal Consultants on August 25, 2022, for his 26 surgery follow-up.

Thus, on this record, Defendant’s involvement, which consisted of 27 responses to Inmate Letters in May and June 2022 and an HNR on August 25, 2022, about 28 scheduling appointments with the specialist were not egregious enough to rise to deliberate indifference. See McGuckin, 974 F.2d at 1060-61 (repeated failure to properly treat a 2| prisoner or a single failure that is egregious strongly suggests deliberate indifference); 3| Wood, 900 F.2d at 1334 (“[i]n determining deliberate indifference, we... look for substantial indifference in the individual case, indicating more than mere negligence or 5 | isolated occurrences of neglect’).

6 The last element is whether Plaintiff was harmed by the delays in treatment. The first delay was the delay in surgery from May 16 to June 27, and the second delay was the 8 | delay in follow up from August 8 to August 25.

The above facts do not include claims that 9) Plaintiff complained of pain or symptoms between May 16 and June 27, and during the 10 | second delay, Plaintiff only inquired about the date of the follow up and he then reported 11 | on August 17 that the “bubble” had ruptured, but he was seen by the specialist on August 25—the day after he sent an HNR to Defendant asking for the follow up.

Without more, 13 | there is insufficient evidence that Plaintiff's current blindness in his right eye was due to any delay in receiving care and that any delay was attributable to Defendant. 15 Accordingly, the Court will grant summary judgment to Defendant. 16 IT IS ORDERED: 17 (1) The reference to the Magistrate Judge is withdrawn as to Defendant's 18 | Motion for Summary Judgment (Doc.

46), and the Motion is granted. 19 (2) This action is terminated with prejudice. The Clerk of Court must enter 20 | judgment accordingly. 21 Dated this 21st day of November, 2025. 22 24 / 5 _
James A. Teil Org Senior United States District Judge 26 27 28