

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 MICHAEL A. CRAIG SR.,

12 Plaintiff,

13 v.

14 RN FARIA, et al.,

15 Defendants.
16
17

1:15-cv-00183-DAD-EPG-PC

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS CASE BE
DISMISSED, WITH PREJUDICE, FOR
FAILURE TO STATE A CLAIM UNDER
SECTION 1983
(ECF No. 11.)

OBJECTIONS, IF ANY, DUE WITHIN
THIRTY DAYS

18 **I. BACKGROUND**

19 Michael A. Craig Sr. ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma*
20 *pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the
21 Complaint commencing this action on January 14, 2015. (ECF No. 1.) The Court screened the
22 Complaint under 28 U.S.C. § 1915A and entered an order on February 11, 2016, dismissing the
23 Complaint for failure to state a claim, with leave to amend. (ECF No. 10). On March 10,
24 2016, Plaintiff filed the First Amended Complaint, which is now before the Court for
25 screening. (ECF No. 11.)

26 **II. SCREENING REQUIREMENT**

27 The Court is required to screen complaints brought by prisoners seeking relief against a
28 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).

1 The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
2 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or
3 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
4 § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been
5 paid, the court shall dismiss the case at any time if the court determines that . . . the action or
6 appeal fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

7 A complaint is required to contain “a short and plain statement of the claim showing
8 that the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
9 are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by
10 mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
11 (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff’s
12 allegations are taken as true, Courts “are not required to indulge unwarranted inferences.” Doe I
13 v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and
14 citation omitted). Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a
15 claim to relief that is plausible on its face.’” Iqbal 556 U.S. at 678. While factual allegations
16 are accepted as true, legal conclusions are not. Id. The mere possibility of misconduct falls
17 short of meeting this plausibility standard. Id. at 678-79; Moss v. U.S. Secret Service, 572 F.3d
18 962, 969 (9th Cir. 2009).

19 **III. SUMMARY OF FIRST AMENDED COMPLAINT**

20 Plaintiff’s First Amended Complaint lists five defendants: RN-Faria, T. Ordonez, M.
21 Carrarquillo, D. Hermosillo, and RN-Martinez. (First Amended Complaint (FAC), ECF No. 11
22 at 2-3.) Plaintiff alleges that he received inadequate medical care and was denied access to the
23 courts. He suffers from a medical issue regarding a rash that affects his skin, “comes and goes,
24 and . . . travels throughout [his] body.” (FAC at 3.) Plaintiff made two visits to RN-Faria
25 regarding his skin condition before making at least three requests to see a dermatologist or
26 specialist. (FAC at 4.) Plaintiff also says he was diagnosed with Valley Fever in 2012 by
27 another doctor at another prison. (FAC at 3.) However, in May 2013, RN-Martinez told

28 ///

1 Plaintiff he does not have Valley Fever, and an outside Dermatologist and a prison Doctor
2 agreed that Plaintiff's skin condition was Psoriasis and not Valley Fever. (FAC at 9.)

3 In addition to these factual allegations, Plaintiff states a number of legal claims. He
4 claims that prison officials were deliberately indifferent to his medical needs. He claims he
5 was deprived of Due Process of the law. He claims that prison employees conspired to deprive
6 him of his rights under the Eighth and Fourteenth Amendments. He claims he was denied
7 Equal Protection. He claims his access to the Courts was impeded. He cites many legal
8 standards that cover many types of constitutional claims.

9 Plaintiff states that he is enduring pain and suffering due to a lack of medical care.
10 Specifically, Plaintiff alleges that his condition has worsened and this affects his ability to face
11 everyday activities. (FAC at 9.) Plaintiff requests monetary damages, punitive damages, and
12 injunctive relief. (FAC at 10.)

13 **IV. EVALUATION OF PLAINTIFF'S CLAIMS**

14 The Civil Rights Act under which this action was filed provides:

15 Every person who, under color of any statute, ordinance,
16 regulation, custom, or usage, of any State or Territory or the
17 District of Columbia, subjects, or causes to be subjected, any
18 citizen of the United States or other person within the jurisdiction
19 thereof to the deprivation of any rights, privileges, or immunities
20 secured by the Constitution and laws, shall be liable to the party
injured in an action at law, suit in equity, or other proper
proceeding for redress

21 42 U.S.C. § 1983. "Section 1983 . . . creates a cause of action for violations of the federal
22 Constitution and laws." Sweaney v. Ada County, Idaho, 119 F.3d 1385, 1391 (9th Cir. 1997)
23 (internal quotations omitted). "To the extent that the violation of a state law amounts to the
24 deprivation of a state-created interest that reaches beyond that guaranteed by the federal
25 Constitution, Section 1983 offers no redress." Id.

26 To state a claim under section 1983, a plaintiff must allege that (1) the defendant acted
27 under color of state law and (2) the defendant deprived him of rights secured by the
28 Constitution or federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir.

1 2006). “A person ‘subjects’ another to the deprivation of a constitutional right, within the
2 meaning of section 1983, if he does an affirmative act, participates in another’s affirmative
3 acts, or omits to perform an act which he is legally required to do that causes the deprivation of
4 which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). “The
5 requisite causal connection can be established not only by some kind of direct, personal
6 participation in the deprivation, but also by setting in motion a series of acts by others which
7 the actor knows or reasonably should know would cause others to inflict the constitutional
8 injury.” Id. at 743-44.

9 **A. First Claim: Violation of Eighth Amendment- Deliberate Indifference to**
10 **Serious Medical Needs**

11 Plaintiff’s first claim does not provide sufficient facts to state a claim under section
12 1983. Plaintiff alleges that he saw RN-Faria multiple times about the rash on his skin; made
13 multiple requests to see a specialist before arrangements to do so were made; and was told by
14 RN-Faria, a prison doctor, and an outside dermatologist that his condition was psoriasis despite
15 being diagnosed with Valley Fever by a different prison doctor over two years earlier.

16 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an
17 inmate must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d
18 1091, 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104 (1976)). The two-part
19 test for deliberate indifference requires the plaintiff to show (1) “‘a serious medical need’ by
20 demonstrating that ‘failure to treat a prisoner’s condition could result in further significant
21 injury or the unnecessary and wanton infliction of pain,’” and (2) “the defendant’s response to
22 the need was deliberately indifferent.” Jett, 439 F.3d at 1096 (quoting McGuckin v. Smith, 974
23 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds by WMX Techs., Inc. v. Miller,
24 104 F.3d 1133, 1136 (9th Cir. 1997) (*en banc*) (internal quotations omitted)). Deliberate
25 indifference is shown by “a purposeful act or failure to respond to a prisoner’s pain or possible
26 medical need, and harm caused by the indifference.” Id. (citing McGuckin, 974 F.2d at 1060).
27 Deliberate indifference may be manifested “when prison officials deny, delay or intentionally
28 interfere with medical treatment, or it may be shown by the way in which prison physicians

1 provide medical care.” Id. Where a prisoner is alleging a delay in receiving medical treatment,
2 the delay must have led to further harm in order for the prisoner to make a claim of deliberate
3 indifference to serious medical needs. McGuckin, 974 F.2d at 1060 (citing Shapely v. Nevada
4 Bd. of State Prison Comm’rs, 766 F.2d 404, 407 (9th Cir. 1985)).

5 “Deliberate indifference is a high legal standard.” Toguchi v. Chung, 391 F.3d 1051,
6 1060 (9th Cir. 2004). “A showing of medical malpractice or negligence is insufficient to
7 establish a constitutional deprivation under the Eighth Amendment.” Id. “[E]ven gross
8 negligence is insufficient to establish a constitutional violation.” Id. (citing Wood v.
9 Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990)).

10 “A difference of opinion between a prisoner-patient and prison medical authorities
11 regarding treatment does not give rise to a § 1983 claim.” Franklin v. Oregon, 662 F.2d 1337,
12 1344 (9th Cir. 1981) (internal citation omitted). To prevail, Plaintiff “must show that the course
13 of treatment the doctors chose was medically unacceptable under the circumstances . . . and . . .
14 that they chose this course in conscious disregard of an excessive risk to plaintiff’s health.”
15 Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1996) (internal citations omitted).

16 Plaintiff alleges that he suffers from a persistent rash causing skin to slough off when
17 he showers, sleeps, and wears clothing. Although Plaintiff claims an injury – that his condition
18 has worsened as a result of his lack of medical care and that this impedes his ability to face
19 every day activities – he does not allege facts demonstrating that RN-Faria or any other
20 defendant was deliberately indifferent to his condition. RJN-Faria and other medical providers
21 met with Plaintiff regularly to diagnose and treat his skin condition. A misdiagnosis, without
22 more, may state a claim for negligence or medical malpractice, but does not rise to the level of
23 a § 1983 claim. Plaintiff has not shown that any of the defendants knew of his skin condition
24 and failed to provide him with medical care in a timely manner. Therefore, Plaintiff fails to
25 state a medical claim under the Eighth Amendment against any of the defendants.

26 ///

27 ///

28 ///

1 **B. Second Claim: Violation of First Amendment – Impeding Access to the**
2 **Courts; Violation of Fourteenth Amendment – Due Process; Conspiracy;**
3 **Equal Protection Violation**

4 Plaintiff’s second claim does not provide sufficient facts to state a claim under section
5 1983. He does not explain exactly what each defendant did or failed to do or how each
6 defendant was the cause of his injury. He alleges in general that there are widespread problems
7 with the prison medical department and that employees of the prison abuse their authority in
8 regard to inmates that are medicated or have insufficient knowledge of their rights to off-site
9 health care treatment. He then alleges that unspecified defendants were conspiring to deprive
10 him of his civil rights under the Eighth and Fourteenth Amendments. The only factual
11 allegations Plaintiff states in support of these allegations are that the appeals council gave no
12 explanation for screening out his appeal and that the diagnosis from the doctor in the prison in
13 which he was previously housed was different than the diagnosis from those at the prison in
14 which he is currently housed.

15 **1. First Amendment Violation - Impede Access to the Courts**

16 Prisoners have a right under the First and Fourteenth Amendments to litigate claims
17 challenging their sentences or the conditions of their confinement without direct interference
18 from prison officials. Lewis v. Casey, 518 U.S. 343, 350 (1996); Silva v. Di Vittorio, 658 F.3d
19 1090, 1103 (9th Cir. 2011); Bounds v. Smith, 430 U.S. 817, 824–25 (1977). However, the
20 right of access is merely the right to bring to court a grievance the inmate wishes to present,
21 and is limited to direct criminal appeals, habeas petitions, and civil rights actions. Lewis, 518
22 U.S. at 354. To claim a violation of this right, a plaintiff must show that he has suffered an
23 actual injury as a result of the alleged interference. Christopher v. Harbury, 536 U.S. 403, 415
24 (2002); Lewis, 518 U.S. at 351. In other words, he must be able to show that the deprivation
25 has directly impacted the relevant litigation in a manner adverse to him. Id. at 348 (defining
26 “actual injury” as “actual prejudice with respect to contemplated or existing litigation, such as
27 the inability to meet a filing deadline or to present a claim”). While Plaintiff has a
28 constitutional right to access the courts, the interferences complained of by Plaintiff must have

1 caused him to sustain an actual injury. Id. at 351; Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir.
2 2010); Phillips v. Hust, 588 F.3d 652, 655 (9th Cir. 2009).

3 Plaintiff claims that his First Amendment rights were violated during the prison appeals
4 process. However, Plaintiff has not shown that any of the defendants' actions, or failure to act,
5 during the prison appeals process, caused him actual prejudice with respect to pending
6 litigation or a claim that he was unable to bring. The First Amended Complaint is devoid of
7 any facts suggesting that Plaintiff suffered an injury impacting Plaintiff's litigation, such as the
8 inability to meet a filing deadline or to present a claim. Therefore, Plaintiff fails to state a
9 claim for denial of access to the courts.

10 **2. Fourteenth Amendment Violation-Due Process**

11 Plaintiff alleges that three appeals coordinators violated his rights to due process when
12 they did not explain why his prison grievance supporting this litigation was screened out.

13 Defendants' actions in responding to Plaintiff's appeals, alone, cannot give rise to any
14 claims for relief under section 1983 for violation of due process. "[A prison] grievance
15 procedure is a procedural right only, it does not confer any substantive right upon the inmates."
16 Buckley v. Barlow, 997 F.2d 494, 495 (8th Cir. 1993) (citing Azeez v. DeRobertis, 568 F.
17 Supp. 8, 10 (N.D. Ill. 1982)); see also Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (no
18 liberty interest in processing of appeals because no entitlement to a specific grievance
19 procedure); Massey v. Helman, 259 F.3d 641, 647 (7th Cir. 2001) (existence of grievance
20 procedure confers no liberty interest on prisoner); Mann v. Adams, 855 F.2d 639, 640 (9th Cir.
21 1988). "Hence, it does not give rise to a protected liberty interest requiring the procedural
22 protections envisioned by the Fourteenth Amendment." Azeez, 568 F. Supp. at 10; Spencer v.
23 Moore, 638 F. Supp. 315, 316 (E.D. Mo. 1986). Thus, since Plaintiff has neither a liberty
24 interest, nor a substantive right in inmate appeals, Plaintiff fails to state a cognizable claim for
25 the processing and/or reviewing of his 602 inmate appeals.

26 Plaintiff alleges that his rights to due process were violated by defendants improperly
27 processing his prison appeals. However, Plaintiff has neither a liberty interest, nor a

28 ///

1 substantive right in inmate appeals. Therefore, he fails to state a cognizable due process claim
2 for the processing and/or reviewing of his inmate appeals.

3 **3. Conspiracy**

4 Plaintiff alleges that defendants conspired against him. To state a claim for conspiracy
5 under section 1983, Plaintiff must show the existence of an agreement or meeting of the minds
6 to violate constitutional rights, Avalos v. Baca, 596 F.3d 583, 592 (9th Cir. 2010); Franklin v.
7 Fox, 312 F.3d 423, 441 (9th Cir. 2001), and an actual deprivation of constitutional rights, Hart
8 v. Parks, 450 F.3d 1059, 1071 (9th Cir. 2006) (quoting Woodrum v. Woodward County,
9 Oklahoma, 866 F.2d 1121, 1126 (9th Cir. 1989)). ““To be liable, each participant in the
10 conspiracy need not know the exact details of the plan, but each participant must at least share
11 the common objective of the conspiracy.” Franklin, 312 F.3d at 441 (quoting United Steel
12 Workers of America v. Phelps Dodge Corp., 865 F.2d 1539, 1541 (9th Cir. 1989)).

13 The federal system is one of notice pleading, and the court may not apply a heightened
14 pleading standard to plaintiff’s allegations of conspiracy. Empress LLC v. City and County of
15 San Francisco, 419 F.3d 1052, 1056 (9th Cir. 2005); Galbraith v. County of Santa Clara, 307
16 F.3d 1119, 1126 (2002). However, although accepted as true, the “[f]actual allegations must be
17 [sufficient] to raise a right to relief above the speculative level” Twombly, 550 U.S. 544,
18 555 (2007) (citations omitted). A plaintiff must set forth “the grounds of his entitlement to
19 relief[,]” which “requires more than labels and conclusions, and a formulaic recitation of the
20 elements of a cause of action” Id. (internal quotations and citations omitted). As such, a
21 bare allegation that defendants conspired to violate Plaintiff’s constitutional rights will not
22 suffice to give rise to a conspiracy claim under section 1983.

23 Plaintiff’s allegation that defendants conspired against him is conclusory, without any
24 supporting facts. Plaintiff’s Complaint is devoid of any facts suggesting any existence of an
25 agreement or meeting of the minds. Therefore, Plaintiff fails to state a claim of conspiracy.

26 **4. Equal Protection**

27 The Equal Protection Clause requires that persons who are similarly situated be treated
28 alike. City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 439 (1985); Shakur v.

1 Schriro, 514 F.3d 878, 891 (9th Cir. 2008). An equal protection claim may be established by
2 showing that Defendants intentionally discriminated against Plaintiff based on his membership
3 in a protected class, Comm. Concerning Cmty. Improvement v. City of Modesto, 583 F.3d 690,
4 702-03 (9th Cir. 2009); Serrano v. Francis, 345 F.3d 1071,1082 (9th Cir. 2003), Lee v. City of
5 Los Angeles, 250 F.3d 668, 686 (9th Cir. 2001), or that similarly situated individuals were
6 intentionally treated differently without a rational relationship to a legitimate state purpose,
7 Engquist v. Oregon Department of Agr., 553 U.S. 591, 601-02 (2008); Village of Willowbrook
8 v. Olech, 528 U.S. 562, 564 (2000); Lazy Y Ranch Ltd. v. Behrens, 546 F.3d 580, 592 (9th Cir.
9 2008); North Pacifica LLC v. City of Pacifica, 526 F.3d 478, 486 (9th Cir. 2008).

10 Plaintiff has not alleged any facts demonstrating that he was intentionally discriminated
11 against on the basis of his membership in a protected class, or that he was intentionally treated
12 differently than other similarly situated inmates without a rational relationship to a legitimate
13 state purpose. Therefore, Plaintiff fails to state a claim for relief for violation of his right to
14 equal protection.

15 **V. CONCLUSION AND RECOMMENDATIONS**

16 The Court finds that Plaintiff's First Amended Complaint fails to state any cognizable
17 claims upon which relief may be granted under § 1983. The Court previously granted Plaintiff
18 leave to amend the complaint, with ample guidance by the Court. Plaintiff has now filed two
19 complaints without stating any claims upon which relief may be granted under § 1983. The
20 Court finds that the deficiencies outlined above are not capable of being cured by amendment,
21 and therefore further leave to amend should not be granted. 28 U.S.C. § 1915(e)(2)(B)(ii);
22 Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000).

23 Therefore, **IT IS HEREBY RECOMMENDED** that pursuant to 28 U.S.C. § 1915A
24 and 28 U.S.C. § 1915(e), this action be dismissed with prejudice for failure to state a claim
25 upon which relief may be granted under § 1983, and that this dismissal be subject to the "three-
26 strikes" provision set forth in 28 U.S.C. § 1915(g). Silva, 658 F.3d at 1098.

27 These Findings and Recommendations will be submitted to the United States District
28 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within

1 **thirty (30) days** after being served with these Findings and Recommendations, Plaintiff may
2 file written objections with the Court. The document should be captioned “Objections to
3 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file
4 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.
5 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394
6 (9th Cir. 1991)).

7
8 IT IS SO ORDERED.

9 Dated: September 1, 2016

10 /s/ Eric P. Gray
11 UNITED STATES MAGISTRATE JUDGE
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28