



1 Congress mandates that district courts perform an initial  
2 screening of complaints in civil actions where a prisoner seeks  
3 redress from a governmental entity or employee. 28 U.S.C.  
4 § 1915A(a). This Court may dismiss such a complaint, or any portion  
5 thereof, before service of process if the complaint (1) is  
6 frivolous or malicious, (2) fails to state a claim upon which  
7 relief can be granted, or (3) seeks monetary relief from a defendant  
8 who is immune from such relief. 28 U.S.C. § 1915A(b)(1-2); see  
9 also Lopez v. Smith, 203 F.3d 1122, 1126-27 & n.7 (9th Cir. 2000)  
10 (en banc). For the reasons stated below, the Complaint is DISMISSED  
11 with leave to amend.<sup>1</sup>

## 12 13 II.

### 14 ALLEGATIONS OF THE COMPLAINT

15  
16 Plaintiff sues J. Lewis ("Defendant"), Deputy Director of  
17 Policy and Risk Management Services for California Correctional  
18 Health Care Services ("CCHCS") in both his individual and official  
19 capacities. (Compl. at 3).<sup>2</sup>

20  
21 The substantive allegations of the Complaint allege that, as  
22 an inmate "in the custody of the California Department of  
23 Corrections and Rehabilitation," Plaintiff filed an ADA Reasonable  
24 Modification or Accommodation Request for a "walking cane, back

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25 <sup>1</sup> Magistrate judges may dismiss a complaint with leave to amend  
26 without approval of the district judge. See McKeever v. Block,  
27 932 F.2d 795, 798 (9th Cir. 1991).

28 <sup>2</sup> The Court will cite to the Complaint and its attachments as though  
they were consecutively paginated.

1 brace, mattress supporter, mobility impaired vest, and a lower tier  
2 chrono [sic] to no avail." (Id. at 6). The Complaint further  
3 states that Defendant denied Plaintiff's third level appeal.  
4 (Id.).

5  
6 Attachments to the Complaint provide further detail regarding  
7 Plaintiff's claims. Plaintiff was at all relevant times an inmate  
8 at the California State Prison-Los Angeles County ("CSP-LAC").  
9 (Id. at 11). Plaintiff's initial Reasonable Accommodation Request,  
10 dated September 13, 2016, stated that he had "a physical disability  
11 due to lower back pain" and was "having difficulty walking  
12 distances, climbing stairs/sitting and laying down." (Id.). On  
13 September 28, 2016, Plaintiff filed an appeal, stating that the  
14 prison denied his accommodation request "without having [him]  
15 examined by a doctor, discriminating against [him]." (Id. at 10).

16  
17 On February 15, 2017, Defendant, on behalf of CCHCS, denied  
18 Plaintiff's third level appeal because there was "no documentation  
19 that [Plaintiff's] primary care provider determined [that there  
20 was] a medical necessity for a lower tier [sic], mattress  
21 supporter, mobility vest, back brace and walking cane." (Id. at  
22 8). Defendant also wrote that on October 24, 2016, Plaintiff  
23 attended a follow-up primary care physician evaluation and received  
24 an x-ray showing mild degenerative changes of the lumbar spine,  
25 noting that there was a plan of care in place that Plaintiff's  
26 doctor had discussed with him. (Id.).

1 Plaintiff seeks \$10,000 in compensatory damages for "pain and  
2 suffering" and injunctive relief ordering CCHCS to accommodate his  
3 request for the following "medical necessities: (1) [a] walking  
4 cane, (2) [a] back brace. (3) [a] mattress, (4) [a] mobility  
5 impaired vest, [and] (5) [a] lower tier chrono." (Id. at 7).

6  
7 **III.**

8 **DISCUSSION**

9  
10 Under 28 U.S.C. § 1915A(b), the Court must dismiss the  
11 Complaint due to pleading defects. However, the Court must grant  
12 a pro se litigant leave to amend his defective complaint unless  
13 "it is absolutely clear that the deficiencies of the complaint  
14 could not be cured by amendment." Akhtar v. Mesa, 698 F.3d 1202,  
15 1212 (9th Cir. 2012) (citation and internal quotation marks  
16 omitted). For reasons discussed below, it is not "absolutely  
17 clear" that the defects of Plaintiff's Complaint could not be cured  
18 by amendment. Accordingly, the Complaint is DISMISSED with leave  
19 to amend.

20  
21 **A. Lewis Is An Improper Defendant Because Plaintiff Does Not Have**  
22 **A Right To A Particular Grievance Procedure Or Outcome**

23  
24 The gravamen of Plaintiff's claims is that Defendants wrongly  
25 denied his request for reasonable accommodations. (Compl. at 5).  
26 Lewis's only involvement in the denial was that as the Deputy  
27 Director of Health Care Appeals for the CCHCS, he signed the letter  
28 denying Plaintiff's third level grievance appeal. Though a

1 prisoner must "exhaust his administrative remedies before filing a  
2 lawsuit concerning prison conditions," Sapp v. Kimbrell, 623 F.3d  
3 813, 821 (9th Cir. 2010) (citing 42 U.S.C. § 1997e(a)), the denial  
4 of a grievance, without more, is insufficient to establish  
5 liability. See Shehee v. Luttrell, 1999 F.3d 295, 300 (6th Cir.  
6 1999). Additionally, there is no constitutional right to a  
7 particular grievance process. Mann v. Adams, 855 F.2d 639 (9th  
8 Cir. 1988).

9  
10 Here, Plaintiff merely alleges that Defendant denied his  
11 appeal. (Compl. at 5). However, a plaintiff "cannot state a  
12 constitutional claim based on his dissatisfaction with the  
13 grievance process. Where the defendant's only involvement in the  
14 allegedly unconstitutional conduct is 'the denial of administrative  
15 grievances or the failure to act, the defendant cannot be liable  
16 under § 1983.'" Grenning v. Klemme, 34 F. Supp. 3d 1144, 1157  
17 (E.D. Wash. 2014) (quoting Shehee, 199 F.3d at 300). Accordingly,  
18 the Complaint is dismissed, with leave to amend.

19  
20 **B. Plaintiff Fails To Allege A Deliberate Indifference Claim**

21  
22 Plaintiff attempts to state a constitutional claim based on  
23 the failure to accommodate his medical needs. To state an Eighth  
24 Amendment claim based on a prisoner's medical treatment, a prisoner  
25 must demonstrate that the defendant was "deliberately indifferent"  
26 to his "serious medical needs." Jett v. Penner, 439 F.3d 1091,  
27 1096 (9th Cir. 2006). To establish a "serious medical need," the  
28 prisoner must demonstrate that "failure to treat a prisoner's

1 condition could result in further significant injury or the  
2 'unnecessary and wanton infliction of pain.'" Jett, 439 F.3d at  
3 1096 (citation omitted).

4  
5 To establish the defendant's "deliberate indifference" to a  
6 serious medical need, a plaintiff must demonstrate: "(a) a  
7 purposeful act or failure to respond to a prisoner's pain or  
8 possible medical need, and (b) harm caused by the indifference."  
9 (Id.). Deliberate indifference "may appear when prison officials  
10 deny, delay or intentionally interfere with medical treatment, or  
11 it may be shown by the way in which prison physicians provide  
12 medical care." (Id.) (citations omitted). The defendant must have  
13 been subjectively aware of a serious risk of harm and must have  
14 consciously disregarded that risk.

15  
16 The Complaint fails to state a deliberate indifference claim.  
17 First, the Complaint's conclusory language does not clearly  
18 establish that Plaintiff has or had a serious medical need. (Compl.  
19 at 5). Exhibits attached to the Complaint indicate that his chief  
20 complaint is lower back pain that was treated with Tylenol. (Id.  
21 at 17). It is not clear that Plaintiff's back pain was a "serious  
22 medical need." Even if it were, Plaintiff has not demonstrated  
23 deliberate indifference to that serious medical need.

24  
25 The Complaint also fails to allege that Defendant was  
26 subjectively aware of Plaintiff's serious medical needs but chose  
27 to ignore them. In the letter denying Plaintiff's appeal,  
28 Defendant notes that Plaintiff attended a follow-up appointment

1 with his doctor, received an x-ray showing mild degenerative  
2 disease in the lumbar spine, and had a "plan of care" in place that  
3 his physician reviewed with him. (Id.). These exhibits do not  
4 demonstrate a deliberate indifference to medical needs claim.  
5 Furthermore, the named defendant does not appear to be a proper  
6 defendant for such a claim, as he did not provide medical treatment  
7 to Plaintiff nor was he involved in Plaintiff's medical care.  
8 Accordingly, to the extent that Plaintiff is attempting to assert  
9 a deliberate indifference claim, the claim is dismissed, but with  
10 leave to amend.

11  
12 **C. Plaintiff Fails To State A Claim Under The ADA**

13  
14 Plaintiff also unsuccessfully attempts to state a claim for  
15 relief under the Americans with Disabilities Act ("ADA"), 42 U.S.C.  
16 §§ 12101 et seq. Title II of the ADA, which "prohibits a 'public  
17 entity' from discriminating against a 'qualified individual with a  
18 disability on account of that individual's disability,' [] covers  
19 inmates in state prisons." Pennsylvania Dept. of Corr. v. Yeskey,  
20 524 U.S. 206, 208 (1998) (quoting 42 U.S.C. § 12132). To achieve  
21 compliance with the Act, "Title II authorizes suits by private  
22 citizens," including prisoners, "for money damages against public  
23 entities that violate § 12132." United States v. Georgia, 546 U.S.  
24 151, 154 (2006) (sovereign immunity does not protect states from  
25 ADA claims by state prisoners).

1 To state a claim under § 12132 of Title II, a plaintiff must  
2 allege that:

3  
4 “(1) he is an individual with a disability; (2) he is  
5 otherwise qualified to participate in or receive the  
6 benefit of some public entity’s services, programs, or  
7 activities; (3) he was either excluded from  
8 participation in or denied the benefits of the public  
9 entity’s services, programs, or activities, or was  
10 otherwise discriminated against by the public entity;  
11 and (4) such exclusion, denial of benefits, or  
12 discrimination was by reason of [his] disability.”

13  
14 Simmons v. Navajo County, Ariz., 609 F.3d 1011, 1021 (9th Cir.  
15 2010) (inmate’s failure to show that his “exclusion from outdoor  
16 recreation [by jail officers] was by reason of his depression” was  
17 fatal to his Title II claim) (quoting McGary v. City of Portland,  
18 386 F.3d 1259, 1265 (9th Cir. 2004)).

19  
20 “The ADA prohibits discrimination because of disability, not  
21 inadequate treatment for disability.” Simmons, 609 F.3d at 1022  
22 (emphasis added) (county jail’s failure to “lessen [inmate’s]  
23 depression” by offering programs or activities “is not actionable  
24 under the ADA”). The mere provision of inadequate medical care  
25 does not state a claim under the ADA. Id. (citing Bryant v.  
26 Madigan, 84 F.3d 426, 429 (7th Cir. 1996) (“[T]he Act would not be  
27 violated by a prison’s simply failing to attend to the medical  
28 needs of its disabled prisoners . . . . The ADA does not create a



1 remedy for medical malpractice.")); see also Elbert v. N.Y. State  
2 Dept. of Corr. Servs., 751 F. Supp. 2d 590, 595 (S.D. N.Y. 2010)  
3 ("Courts routinely dismiss ADA suits by disabled inmates that  
4 allege inadequate medical treatment, but do not allege that the  
5 inmate was treated differently because of his or her disability.")  
6 (citing cases); Carrion v. Wilkinson, 309 F. Supp. 2d 1007, 1016  
7 (N.D. Ohio 2004) (inmate failed to state ADA claim where he alleged  
8 only that the prison had refused to provide him with a diabetic  
9 diet, but did not allege that prison officials denied the him "the  
10 benefits of any services, programs, or activities provided for  
11 other non-disabled inmates, or that they subjected him to  
12 discrimination because of his diabetes").

13  
14 Plaintiff's conclusory allegations do not establish an ADA  
15 claim. Plaintiff must allege facts showing that the prison's  
16 purported refusal to accommodate his disability prevented him from  
17 enjoying the benefits of services, programs or activities provided  
18 to non-disabled prisoners, and that he was discriminated against  
19 because of his disability. Accordingly, Plaintiff's ADA claim is  
20 dismissed, with leave to amend.

21  
22 **IV.**

23 **CONCLUSION**

24  
25 For the reasons stated above, the Complaint is dismissed with  
26 leave to amend. If Plaintiff still wishes to pursue this action,  
27 he is granted **thirty (30) days** from the date of this Memorandum  
28 and Order within which to file a First Amended Complaint. In any

1 amended complaint, the Plaintiff shall cure the defects described  
2 above. **Plaintiff shall not include new defendants or new**  
3 **allegations that are not reasonably related to the claims asserted**  
4 **in the original complaint.** The First Amended Complaint, if any,  
5 shall be complete in itself and shall bear both the designation  
6 "First Amended Complaint" and the case number assigned to this  
7 action. It shall not refer in any manner to any previously filed  
8 complaint in this matter.

9  
10 In any amended complaint, Plaintiff should confine his  
11 allegations to those operative facts supporting each of his claims.  
12 Plaintiff is advised that pursuant to Federal Rule of Civil  
13 Procedure 8(a), all that is required is a "short and plain statement  
14 of the claim showing that the pleader is entitled to relief."  
15 **Plaintiff is strongly encouraged to utilize the standard civil**  
16 **rights complaint form when filing any amended complaint, a copy of**  
17 **which is attached.** In any amended complaint, Plaintiff should  
18 identify the nature of each separate legal claim and make clear  
19 what specific factual allegations support each of his separate  
20 claims. Plaintiff is strongly encouraged to keep his statements  
21 concise and to omit irrelevant details. It is not necessary for  
22 Plaintiff to cite case law or include legal argument. **Plaintiff**  
23 **is also advised to omit any claims for which he lacks a sufficient**  
24 **factual basis.**

25  
26 **Plaintiff is explicitly cautioned that failure to timely file**  
27 **a First Amended Complaint or failure to correct the deficiencies**  
28 **described above, will result in a recommendation that this action**

