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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ALBERT JOHN HAMILTON JR.,
Plaintiff,
v.
J. URBAN, et al.,
Defendants.

Case No. CV 17-5297 ODW (SS)

**MEMORANDUM AND ORDER
DISMISSING COMPLAINT WITH
LEAVE TO AMEND**

**I.
INTRODUCTION**

On July 18, 2017, Plaintiff Albert John Hamilton Jr. ("Plaintiff"), a California state prisoner proceeding pro se, filed a complaint pursuant to 42 U.S.C. § 1983. Congress mandates that district courts perform an initial screening of complaints in civil actions where a prisoner seeks redress from a governmental entity or employee. 28 U.S.C. § 1915A(a). This court may dismiss such a complaint, or any portion of it, before service of process if the court concludes that the complaint (1) is frivolous or malicious,

1 (2) fails to state a claim upon which relief can be granted, or
2 (3) seeks monetary relief from a defendant who is immune from such
3 relief. 28 U.S.C. § 1915A(b). For the reasons stated below, the
4 Complaint is DISMISSED, with leave to amend.¹

5
6 **II.**

7 **ALLEGATIONS OF THE COMPLAINT**

8
9 Plaintiff sues two employees of the California Men's Colony
10 State Prison ("CMC") in their individual capacities only: (1) nurse
11 J. Urban and (2) supervising nurse M. Trujillo (collectively
12 "Defendants"). (Compl. at 3).

13
14 Plaintiff alleges that he is an "ADA inmate" who tested
15 positive for tuberculosis in 1987. (Id. at 1, 6). According to
16 the Complaint, Urban "refused to review [Plaintiff's] medical
17 records before injecting [him] with a (TB) shot on May 8, 2015."
18 (Id. at 5). Plaintiff "did not have any serious medical need for
19 R/N Urban to inject him with a (TB) shot," which "may have caused
20 [him] significant injury." (Id.).

21
22 On June 25, 2015, Trujillo filed a false report regarding the
23 incident. (Id.). The report was false because Trujillo stated
24 that Plaintiff "took a (TB) test at M[en's] C[entral] J[ail] on
25 [August 11,] 2014, but [Plaintiff] was at Wasco state prison that
26

27 ¹ Magistrate Judges may dismiss a complaint with leave to amend
28 without approval of the District Judge. See McKeever v. Block,
932 F.2d 795, 798 (9th Cir. 1991).

1 same[.]day.” (Id.). By filing the report, Trujillo “intentionally
2 interfered with [Plaintiff’s] medical treatment” (Id.).
3 Urban and Trujillo “caused [Plaintiff] to suffer much pain of not
4 knowing what may[.]be wrong with him.” (Id. at 6).

5
6 Plaintiff summarily asserts that Defendants were negligent
7 and committed medical malpractice. (Id.). In addition, Urban
8 “violated the (ADA) [and Plaintiff’s] U.S. constitution[al]
9 rights.” (Id. at 3). Plaintiff seeks \$10,000 in monetary damages
10 from each Defendant. (Id. at 6).

11
12 **III.**

13 **DISCUSSION**

14
15 Pursuant to 28 U.S.C. § 1915A(b), the Court dismisses the
16 Complaint due to defects in pleading. A pro se litigant in a civil
17 rights case, however, must be given leave to amend his or her
18 complaint unless “it is absolutely clear that the deficiencies of
19 the complaint cannot be cured by amendment.” See Akhtar v. Mesa,
20 698 F.3d 1202, 1212 (9th Cir. 2012) (citation and internal
21 quotation marks omitted). Accordingly, the Complaint is dismissed
22 with leave to amend.

23
24 **A. The Complaint Fails To State Claims For Negligence And Medical**
25 **Malpractice**

26
27 Plaintiff alleges that both Urban and Trujillo are liable for
28 “negligence and medical malpractice.” (Compl. at 6). However,

1 the Complaint does not satisfy the procedural requirements for
2 alleging state law tort claims (such as negligence or medical
3 malpractice) against government actors.

4
5 Under the California Government Claims Act ("CGCA"),² a
6 plaintiff may not bring an action for damages against a public
7 employee or entity unless he first presents a written claim to the
8 local governmental entity within six months of the accrual of the
9 incident. See Mabe v. San Bernadino County, Dept. of Public Social
10 Services, 237 F.3d 1101, 1111 (9th Cir. 2001) (CGCA requires the
11 "timely presentation of a written claim and the rejection of the
12 claim in whole or in part" as a condition precedent to filing
13 suit); see also Cal. Gov't Code § 945.4 ("[N]o suit for money or
14 damages may be brought against a public entity . . . until a written
15 claim therefor has been presented to the public entity and has been
16 acted upon by the board, or has been deemed to have been rejected
17 by the board . . ."). Furthermore, a plaintiff must affirmatively
18 allege compliance with the CGCA's claims presentation requirement,
19 or explain why compliance should be excused. Mangold v. Cal. Pub.
20 Utils. Comm'n, 67 F.3d 1470, 1477 (9th Cir. 1995) ("Where
21 compliance with the [California] Tort Claims Act is required, the
22 plaintiff must allege compliance or circumstances excusing
23 compliance, or the complaint is subject to general demurrer.")

24
25 ² The short title "Government Claims Act" has been used
26 interchangeably in California cases with the title "Tort Claims
27 Act" to refer to the statutory scheme for presenting claims for
28 money damages against governmental entities. However, because the
California Supreme Court has expressed a preference for the title
"Government Claims Act," the Court will adopt that usage. See City
of Stockton v. Superior Court, 42 Cal. 4th 730, 741-42 (2007).

1 (internal quotation marks omitted). "The failure to exhaust an
2 administrative remedy [under the CGCA] is a jurisdictional, not a
3 procedural, defect." Miller v. United Airlines, Inc., 174 Cal.
4 App. 3d 878, 890 (1985); see also Cornejo v. Lightbourne, 220 Cal.
5 App. 4th 932, 938 (2013) ("Ordinarily, filing a claim with a public
6 entity pursuant to the Claims Act is a jurisdictional element of
7 any cause of action for damages against the public entity . . .").

8
9 To the extent that Plaintiff is attempting to assert causes
10 of action for negligence or medical malpractice, the claims fail
11 because the Complaint does not allege that Plaintiff satisfied the
12 CGCA claims presentation requirement before filing suit.³
13 Accordingly, the Complaint is dismissed, with leave to amend.
14 Plaintiff is cautioned that he should not assert a state law tort
15 claim unless he can either show that he presented his claim to the
16 appropriate agency prior to filing suit or explain why exhaustion
17 should be excused under the particular circumstances of this case.

18 \\

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23 _____
24 ³ The claim presentation requirement under the CGCA is separate
25 from, and is not satisfied by, internal prison grievance processes.
26 See Hendon v. Ramsey, 528 F. Supp. 2d 1058, 1069-70 (S.D. Cal.
27 2007) ("Although Plaintiff has demonstrated successfully that he
28 utilized the prison grievance process to exhaust his federal claims
by filing an inmate appeal, and has attached documentation in the
form of his CDC 602 form and administrative responses, these
documents do not satisfy the CTCA [California Tort Claims Act] with
respect to his state law negligence claims.").

1 **B. The Complaint Fails To State A Claim For Deliberate**
2 **Indifference To Serious Medical Needs**

3
4 The Complaint alleges that by administering a "(TB) skin test"
5 without reviewing Plaintiff's medical records, Urban violated
6 Plaintiff's "U.S. constitution[al] rights." (Compl. at 3). It is
7 possible that Plaintiff is attempting to state a claim for
8 deliberate indifference to serious medical needs. However,
9 Plaintiff's deliberate indifference claim is defective.

10
11 To state a claim for unconstitutional health care services, a
12 prisoner must demonstrate that the defendants were "deliberately
13 indifferent" to his "serious medical needs." Jett v. Penner, 439
14 F.3d 1091, 1096 (9th Cir. 2006). To establish a "serious medical
15 need," the prisoner must show that "failure to treat [the]
16 prisoner's condition could result in further significant injury or
17 the 'unnecessary and wanton infliction of pain.'" Jett, 439 F.3d
18 at 1096 (citation omitted); see also Morgan v. Morgensen, 465 F.3d
19 1041, 1045 (9th Cir. 2006) (the existence of a serious medical
20 need is determined by an objective standard).

21
22 To establish "deliberate indifference" to such a need, a
23 prisoner must demonstrate: "(a) a purposeful act or failure to
24 respond to a prisoner's pain or possible medical need, and (b) harm
25 caused by the indifference." Jett, 439 F.3d at 1096. Deliberate
26 indifference "may appear when prison officials deny, delay or
27 intentionally interfere with medical treatment, or it may be shown
28 by the way in which prison physicians provide medical care." Id.

1 (citation omitted). Yet, an "inadvertent [or negligent] failure
2 to provide adequate medical care" alone does not state a claim.
3 Id. (citation omitted). The defendant must have been subjectively
4 aware of a serious risk of harm and must have consciously
5 disregarded that risk. See Farmer v. Brennan, 511 U.S. 825, 839
6 (1994). An "isolated exception" to a defendant's "overall
7 treatment" of a prisoner does not state a deliberate indifference
8 claim. Jett, 439 F.3d at 1096.

9
10 Here, Plaintiff alleges that because he has tested positive
11 for TB since 1987, Urban should not have administered a follow up
12 TB test. Even assuming, without deciding, that TB tests should
13 not be given to patients who have previously tested positive for
14 the disease, and that Urban deliberately refused to review
15 Plaintiff's medical records before administering the test despite
16 Plaintiff's objections, the Complaint does not state a claim for
17 deliberate indifference because Plaintiff has not shown that he
18 suffered any harm from the test. Plaintiff alleges that the follow
19 up test was "not necessary," and "may have caused [him] significant
20 injury" and "could have caused [him] more pain or dread." (Compl.
21 at 5) (emphasis added). However, Plaintiff does not allege that
22 he actually suffered any physical harm as a result of the test.

23
24 Plaintiff's allegation that both Urban and Trujillo "caused
25 [him] to suffer much pain of not knowing what may[]be wrong with
26 him" appears to allege that the only "harm" that resulted from the
27 test was a temporary increase in Plaintiff's anxiety. (Id. at 6).
28 However, this allegation fails to show the "harm" necessary for a

1 deliberate indifference claim because "an inmate may not pursue an
2 emotional distress injury unless accompanied by a physical injury."
3 Wood v. Idaho Dep't of Corr., 391 F. Supp. 2d 852, 867 (D. Idaho
4 2005).

5
6 The Prison Litigation Reform Act provides in relevant part:

7
8 No Federal civil action may be brought by a prisoner
9 confined in a jail, prison or other correctional
10 facility for mental or emotional injury suffered while
11 in custody without a prior showing of physical injury."

12
13 42 U.S.C. § 1997e(e). The Ninth Circuit has determined that section
14 1997e(e)'s "physical injury" requirement demands a showing of a
15 "physical injury that need not be significant but must be more than
16 de minimis" before a prisoner may recover damages for emotional
17 injuries. Oliver v. Keller, 289 F.3d 623, 627 (9th Cir. 2002).
18 For example, in Oliver, the Ninth Circuit found that a pretrial
19 detainee's section 1983 claim for "mental and emotional injury"
20 resulting from "dehumanizing" and "overcrowded" conditions failed
21 to satisfy section 1997e(e)'s physical injury requirement where
22 the only physical injuries alleged were a canker sore and back and
23 leg pain from sleeping on benches and the floor. Id. at 629; see
24 also Wilson v. Dover, 369 Fed. Appx. 844, at *1 (9th Cir. 2010)
25 (affirming dismissal of prisoner's deliberate indifference claim
26 based on "lack of privacy in his medical care" because plaintiff
27 "fail[ed] to allege any physical symptoms or the type of harm
28 required for a deliberate indifference claim under the Prison

1 Litigation Reform Act") (citing 42 U.S.C. § 1997e(e) & Oliver, 289
2 F.3d at 627-28); Wood, 391 F. Supp. 2d at 867 (prisoner's section
3 1983 deliberate indifference claim for "worry and distress"
4 suffered during delay of scheduled hepatitis vaccinations barred
5 by section 1997e(e) where prisoner did not contract hepatitis
6 during the delay); Glosson v. Morales, 469 F. Supp. 2d 827, 830
7 (S.D. Cal. 2007) (prisoner's section 1983 excessive force claim
8 for "physical and mental anguish" failed to overcome section
9 1997e(e)'s physical injury requirement where the physical injuries
10 suffered were minor abrasions, scratches and bumps).

11
12 The Complaint fails to state facts establishing that the harm
13 Plaintiff suffered was a serious harm. Accordingly, the Complaint
14 is dismissed, with leave to amend.

15
16 **C. The Complaint Fails To State A Claim Under The ADA**

17
18 Plaintiff summarily claims that Urban "violated the ADA."
19 (Compl. at 3). Title II of the ADA, which "prohibits a 'public
20 entity' from discriminating against a 'qualified individual with a
21 disability on account of that individual's disability,' [] covers
22 inmates in state prisons." Pennsylvania Dept. of Corr. v. Yeskey,
23 524 U.S. 206, 208 (1998) (quoting 42 U.S.C. § 12132). However,
24 the Complaint fails to state an ADA claim.

25
26 To state a claim under § 12132 of Title II, a plaintiff must
27 allege that:
28

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

10
11 Simmons v. Navajo County, Ariz., 609 F.3d 1011, 1021 (9th Cir.
12 2010) (quoting McGary v. City of Portland, 386 F.3d 1259, 1265 (9th
13 Cir. 2004)). In order to allege a qualifying disability under the
14 ADA, a plaintiff must demonstrate that he has been diagnosed with
15 a condition that substantially limits his life activities. Bragdon
16 v. Abbott, 524 U.S. 624, 631 (1998); see also Weaving v. City of
17 Hillsboro, 763 F.3d 1106, 1111 (9th Cir. 2014) ("A 2008 Amendment
18 to the ADA provides, 'The definition of disability in this chapter
19 shall be construed in favor of broad coverage . . . ' 'The term
20 'substantially limits' shall be interpreted consistently with the
21 [amendment].'" (citing 42 U.S.C. § 12102(4)(A-B)).

22
23 "The ADA prohibits discrimination because of disability, not
24 inadequate treatment for disability." Simmons, 609 F.3d at 1022
25 (emphasis added). Insufficient medical care does not state a claim
26 under the ADA. Id.; see also Bryant v. Madigan, 84 F.3d 246, 249
27 (7th Cir. 1996) ("[T]he Act would not be violated by a prison's
28 simply failing to attend to the medical needs of its disabled

1 prisoners . . . The ADA does not create a remedy for medical
2 malpractice.”).

3
4 Here, the Complaint does not allege facts showing that simply
5 testing positive for TB has substantially limited Plaintiff’s life
6 activities, or that Plaintiff was denied access to a governmental
7 benefit because of that disability. To state an ADA claim, the
8 Complaint must establish that Plaintiff has a qualifying
9 disability; that the prison did not accommodate his disability,
10 which prevented him from enjoying the benefits of services,
11 programs, or activities provided to non-disabled prisoners; and
12 that he was discriminated against because of his disability.
13 Accordingly, the Complaint is dismissed, with leave to amend.

14
15 **D. The Complaint Fails To State A Claim Against Trujillo**

16
17 Plaintiff appears to allege that Trujillo is liable because
18 she filed a “false report” stating that Plaintiff “took a (TB) test
19 at MCJ on 8/11/2014,” even though Plaintiff “was at Wasco State
20 Prison that same day.” (Compl. at 5). Even assuming that Trujillo
21 was mistaken as to where -- or even whether -- Plaintiff received
22 a prior TB test, Plaintiff has not identified what constitutional
23 right, if any, was violated or alleged facts showing that he was
24 harmed in any way by the error. Plaintiff has not alleged that
25 the information was, will, or even could be used against him. The
26 simple fact that an institutional file contains inaccurate
27 information does not, by itself, state a constitutional claim.
28 See, e.g., Reyes v. Supervisor of DEA, 834 F.2d 1093, 1097 (1st

1 Cir. 1987) (allegation that police department maintained false
2 information without a showing that the information was or would be
3 used to deprive the inmate of a constitutionally protected interest
4 failed to state a due process claim); Pruett v. Levi, 622 F.2d 256,
5 258 (6th Cir. 1980) (mere existence of inaccuracy in FBI criminal
6 file does not state constitutional claim). Accordingly, the
7 Complaint is dismissed, with leave to amend.

8
9 **E. The Complaint Violates Rule 8**

10
11 Federal Rule of Civil Procedure 8(a)(2) requires that a
12 complaint contain “‘a short and plain statement of the claim
13 showing that the pleader is entitled to relief,’ in order to ‘give
14 the defendant fair notice of what the . . . claim is and the
15 grounds upon which it rests.’” Bell Atlantic v. Twombly, 550 U.S.
16 544, 555 (2007) (citations omitted). Rule 8 may be violated when
17 a pleading “says too little” and “when a pleading says too much.”
18 Knapp v. Hogan, 738 F.3d 1106, 1109 (9th Cir. 2013) (emphasis in
19 original); see also Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys.,
20 Inc., 637 F.3d 1047, 1058-59 (9th Cir. 2011) (a complaint violates
21 Rule 8 if a defendant would have difficulty understanding and
22 responding to the complaint).

23
24 The Complaint violates Rule 8 because Plaintiff does not
25 clearly identify the nature of each of his legal claims and the
26 specific facts giving rise to each individual claim. For example,
27 the Complaint does not clearly state what constitutional right
28 Defendants may have violated, or whether Plaintiff is in fact

1 bringing his section 1983 and ADA claims only against Urban.
2 Additionally, the Complaint contains confusing and superfluous
3 allegations, such as the many references to "attached documents,"
4 even though no documents were attached to the Complaint, and likely
5 did not need to be. (See Compl. at 6-9). Accordingly, the
6 Complaint is dismissed, with leave to amend.

7
8 **IV.**

9 **CONCLUSION**

10
11 For the reasons stated above, the Complaint is dismissed, with
12 leave to amend. If Plaintiff still wishes to pursue this action,
13 he is granted **thirty (30) days** from the date of this memorandum
14 and Order within which to file a First Amended Complaint. In any
15 amended complaint, Plaintiff shall cure the defects described
16 above.

17
18 **Furthermore, Plaintiff shall omit any claims or allegations**
19 **that are not reasonably related to the claims asserted in the**
20 **Complaint, but shall instead attempt to cure the deficiencies**
21 **addressed in this Order.** The First Amended Complaint, if any,
22 shall be complete in itself and shall bear both the designation
23 "First Amended Complaint" and the case number assigned to this
24 action. It shall not refer in any manner to the original Complaint.
25 In any amended complaint, Plaintiff should confine his allegations
26 to the operative facts supporting each of his claims. Plaintiff
27 is advised that pursuant to Federal Rule of Civil Procedure 8(a),
28 all that is required is a "short and plain statement of the claim

