

1 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting
2 *Twombly*, 550 U.S. at 570). While factual allegations are accepted as true, legal conclusions are
3 not. *Id.*

4 **II. Summary of Complaint**

5 Plaintiff is incarcerated at Sierra Conservation Center (“SCC”) in Jamestown, California,
6 where the events giving rise to this action occurred. Plaintiff names California Correctional
7 Healthcare Services and Does 1-15 as defendants in this action.

8 Plaintiff alleges the following. Plaintiff is disabled as defined by federal and state law. In
9 March 2005, Plaintiff sought treatment from defendants for his serious and debilitating ailments
10 concerning degenerative disks and severe back pain immobility and damaged knee.
11 Approximately one month later, Plaintiff’s ailments began to get worse, as noted by defendants.
12 Defendants offered no qualifying or adequate remedy for Plaintiff’s severe pain. Prison officials
13 barred Plaintiff from participating in the only federal vocational activities/service offered at the
14 substance abuse facility because of Plaintiff’s disabilities. Defendants told Plaintiff that he would
15 be scheduled to see an orthopedist and neurologist, but Plaintiff never saw them. Plaintiff’s pain
16 worsened and he began to experience dizziness, nausea, and debilitating numbness. Plaintiff
17 suffers from a degenerative disc disorder with swelling of the nerves near his spine, spinal stenosis
18 with a pin in his back, and arthritis. Plaintiff’s pain is constant and it disrupts his sleeping pattern.
19 The defendants have failed to address Plaintiff’s medical issues.

20 On June 28, 2005, Plaintiff sought treatment from defendants for his severe back pain,
21 headaches, and numbness in his leg. Plaintiff sought medical treatment again on November 10,
22 2005 for his constant pain, vomiting, and extreme headaches. On February 1, 2006, Plaintiff
23 notified Defendants the he suffered dizziness, blackouts, and that the pain in his back was
24 unbearable. Defendants gave Plaintiff pain medication that did nothing to help with his pain.

25 As of January 23, 2009, Plaintiff had been in constant pain for about four years and
26 defendants failed to provide proper treatment. On June 2, 2009, Plaintiff again notified defendants
27 of his ongoing back pain, headaches, blackouts, and left-leg numbness. On August 15, 2009,
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1 Plaintiff requested that defendants perform a follow-up examination for his knee. Plaintiff was
2 unable to bend his knee, which worsened his back pain. On June 25, 2011, Plaintiff contacted
3 defendants regarding his back pain. Plaintiff was unable to stand up, he had severe back pain, and
4 he could not sleep.

5 Plaintiff asserts violations of the Eighth Amendment, Americans with Disabilities Act
6 (“ADA”), and state law negligence. Plaintiff requests injunctive relief and compensatory and
7 punitive damages.

8 **III. Analysis**

9 A. Eighth Amendment—Medical Deliberate Indifference

10 Plaintiff raises claims under Section 1983 for violation of the Eighth Amendment’s
11 prohibition against cruel and unusual punishments. To constitute cruel and unusual punishment in
12 violation of the Eighth Amendment, prison conditions must involve “the wanton and unnecessary
13 infliction of pain.” *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981). A prisoner’s claim does not
14 rise to the level of an Eighth Amendment violation unless (1) “the prison official deprived the
15 prisoner of the ‘minimal civilized measure of life’s necessities,’” and (2) “the prison official ‘acted
16 with deliberate indifference in doing so.’” *Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004)
17 (quoting *Hallett v. Morgan*, 296 F.3d 732, 744 (9th Cir. 2002) (citation omitted)). In order to find
18 a prison official liable under the Eighth Amendment for denying humane conditions of
19 confinement within a prison, the official must know “that inmates face a substantial risk of serious
20 harm and disregard[] that risk by failing to take reasonable measures to abate it.” *Farmer v.*
21 *Brennan*, 511 U.S. 825, 847 (1994).

24 To maintain an Eighth Amendment claim based on prison medical treatment, an inmate
25 must show (1) a serious medical need by demonstrating that failure to treat a prisoner’s condition
26 could result in further significant injury or the unnecessary and wanton infliction of pain, and (2) a
27 deliberately indifferent response by defendant. *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir.
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1 2006). The deliberate indifference standard is met by showing (a) a purposeful act or failure to
2 respond to a prisoner’s pain or possible medical need and (b) harm caused by the indifference. *Id.*
3 The failure to respond to a prisoner’s complaints of pain can be sufficient to support an Eighth
4 Amendment claim. *Snow v. McDaniel*, 681 F.3d 978, 990 (9th Cir. 2012); *Clement v. Gomez*, 298
5 F.3d 898, 904 (9th Cir. 2002). However, deliberate indifference must be shown and it is a high
6 legal standard. *Toguchi*, 391 F.3d at 1060 (quotation marks omitted). “Under this standard, the
7 prison official must not only ‘be aware of the facts from which the inference could be drawn that a
8 substantial risk of serious harm exists,’ but that person ‘must also draw the inference.’” *Id.* at
9 1057 (quoting *Farmer*, 511 U.S. at 837). “‘If a prison official should have been aware of the risk,
10 but was not, then the official has not violated the Eighth Amendment, no matter how severe the
11 risk.’” *Id.* (quoting *Gibson v. Cnty. of Washoe, Nev.*, 290 F.3d 1175, 1188 (9th Cir. 2002)).

13 “A difference of opinion between a physician and the prisoner - or between medical
14 professionals - concerning what medical care is appropriate does not amount to deliberate
15 indifference.” *Snow v. McDaniel*, 681 F.3d 978, 987 (9th Cir. 2012) (citing *Sanchez v. Vild*, 891
16 F.2d 240, 242 (9th Cir. 1989)), overruled in part on other grounds, *Peralta v. Dillard*, 744F.3d
17 1046 (9th Cir. 2014); *Wilhelm v. Rotman*, 680 F.3d 1113, 1122-23 (9th Cir. 2012) (citing *Jackson*
18 *v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1986)). Rather, Plaintiff “must show that the course of
19 treatment the doctors chose was medically unacceptable under the circumstances and that the
20 defendants chose this course in conscious disregard of an excessive risk to [his] health.” *Snow*,
21 681 F.3d at 988 (citing *Jackson*, 90 F.3d at 332) (internal quotation marks omitted).

24 Here, Plaintiff fails to state a claim for medical deliberate indifference against any
25 defendants. Although Plaintiff alleges that he informed doe defendants of his need for medical
26 treatment, he fails to include sufficient factual detail as to whether defendants were actually aware
27 of his need for treatment. *Toguchi*, 391 F.3d at 1057. Plaintiff alleges that defendants failed to
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1 treat him properly for four years. However, difference of opinion between a physician and the
2 prisoner or between medical professionals concerning what medical care is appropriate does not
3 amount to deliberate indifference. *Snow*, 681 F.3d at 987. Accordingly, Plaintiff fails to state any
4 claims for medical deliberate indifference to support an Eighth Amendment claim.

5 B. State Law Claims—Negligence

6 California’s Tort Claims Act requires that a tort claim against a public entity or its
7 employees be presented to the California Victim Compensation and Government Claims Board,
8 formerly known as the State Board of Control, no more than six months after the cause of action
9 accrues. Cal. Gov’t Code §§ 905.2, 910, 911.2, 945.4, 950-950.2. Presentation of a written claim,
10 and action on or rejection of the claim, are conditions precedent to suit. *State v. Superior Court of*
11 *Kings Cnty. (Bodde)*, 32 Cal. 4th 1234, 1245 (2004); *Mangold v. Cal. Pub. Utils. Comm’n*, 67
12 F.3d 1470, 1477 (9th Cir. 1995). To state a tort claim against a public employee, a plaintiff must
13 allege compliance with the Tort Claims Act. *State v. Superior Court*, 32 Cal.4th at 1245;
14 *Mangold*, 67 F.3d at 1477; *Karim-Panahi v. Los Angeles Police Dep’t*, 839 F.2d 621, 627 (9th Cir.
15 1988).

16 Plaintiff has not alleged compliance with the Tort Claims Act and therefore fails to state a
17 claim for negligence against any defendants.

18 C. ADA

19 Title II of the ADA “prohibit[s] discrimination on the basis of disability.” *Lovell v.*
20 *Chandler*, 303 F.3d 1039, 1052 (9th Cir. 2002). Title II provides that “no qualified individual
21 with a disability shall, by reason of such disability, be excluded from participation in or be denied
22 the benefits of the services, programs, or activities of a public entity, or be subject to
23 discrimination by such entity.” 42 U.S.C. § 12132. Title II of the ADA applies to inmates within
24 state prisons. *Pa. Dept. of Corrs. v. Yeskey*, 118 S.Ct. 1952, 1955 (1998); *see also Armstrong v.*
25 *Wilson*, 124 F.3d 1019, 1023 (9th Cir. 1997); *Duffy v. Riveland*, 98 F.3d 447, 453-56 (9th Cir.
26 1996). “
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1 “To establish a violation of Title II of the ADA, a plaintiff must show that (1) [he] is a
2 qualified individual with a disability; (2) [he] was excluded from participation in or otherwise
3 discriminated against with regard to a public entity’s services, programs, or activities; and (3) such
4 exclusion or discrimination was by reason of [his] disability.” *Lovell*, 303 F.3d at 1052. Facially
5 neutral policies may violate the ADA when such policies unduly burden disabled persons, even
6 when such policies are consistently enforced. *See, e.g., Martin v. PGA Tour, Inc.*, 204 F.3d 994,
7 999–1000 (9th Cir. 2000) (holding that a golf association rule banning use of golf carts in certain
8 tournaments violated the ADA when it failed to modify this rule for a disabled golfer with a
9 mobility impairment), *aff’d*, 532 U.S. 661 (2001).

11 A plaintiff may bring a claim under Title II of the ADA against state entities for injunctive
12 relief and damages. *See Phiffer v. Colum. River Corr. Inst.*, 384 F.3d 791 (9th Cir. 2004); *Lovell*,
13 303 F.3d at 1050-51. However, a plaintiff cannot seek damages pursuant to the ADA against the
14 defendants in their individual capacities. *Vinson v. Thomas*, 288 F.3d 1145, 1156 (9th Cir. 2002).
15 To the extent a plaintiff seeks to pursue claims against any individual defendant for violations of
16 the ADA, he may do so only with respect to seeking injunctive relief and only as to individual
17 defendants he has named in their official capacities. *Miranda B. v. Kitzhaber*, 328 F.3d 1181,
18 1187–88 (9th Cir. 2003) (Title II’s statutory language does not prohibit injunctive action against
19 state officials in their official capacities); *see also Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir.
20 2002) (plaintiffs seeking only prospective injunctive relief from defendants in their official
21 capacities).

24 Here, the Court finds that Plaintiff fails to state an ADA claim against any defendants.
25 Although Plaintiff alleges that he has a qualified disability, he fails to state what, if any, programs
26 or services he has been excluded from by reason of his disability. *Lovell*, 303 F.3d at 1052.
27 Plaintiff’s conclusory statement that prison officials barred Plaintiff from participating in the only
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1 federal vocational activities/services is insufficient to state a claim. *Ashcroft v. Iqbal*, 556 U.S.
2 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Accordingly,
3 Plaintiff has not stated an ADA claim against any defendants.

4 **IV. Conclusion and Order**

5 Plaintiff's complaint fails to state any cognizable federal claims against any defendants.
6 The Court will provide Plaintiff with an opportunity to file an amended complaint curing the
7 deficiencies identified by the Court in this order. *Noll v. Carlson*, 809 F.2d 1446, 1448-49 (9th
8 Cir. 1987). Plaintiff may not change the nature of this suit by adding new, unrelated claims in his
9 amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no "buckshot"
10 complaints). Plaintiff is further advised that the Court cannot direct the United States Marshal to
11 effect service of process for any cognizable claims in an amended complaint until Plaintiff is able
12 to provide the identity of at least one defendant.

13 If Plaintiff decides to amend, Plaintiff's amended complaint should be brief, Fed. R. Civ.
14 P. 8(a), but must state what each named defendant did that led to the deprivation of Plaintiff's
15 constitutional or other federal rights. *See Iqbal*, 556 U.S. at 678. Although accepted as true, the
16 "[f]actual allegations must be [sufficient] to raise a right to relief above the speculative level . . ."
17 *Twombly*, 550 U.S. at 555.

18 Finally, Plaintiff is advised that an amended complaint supersedes the original complaint,
19 *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997) overruled in part on other grounds,
20 *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (en banc); *King v. Atiyeh*, 814 F.2d
21 565, 567 (9th Cir. 1987), and must be "complete in itself without reference to the prior or
22 superseded pleading," Local Rule 220.

23 Accordingly, it is HEREBY ORDERED that:

- 24 1. The Clerk's Office shall send Plaintiff a complaint form;
- 25 2. Plaintiff's complaint is dismissed for failure to state a claim, with leave to file an
26 amended complaint within thirty (30) days from the date of service of this order;

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