

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

8 **III. SUMMARY OF COMPLAINT**

9 Plaintiff identifies Clinician Jane/John Doe, Chief Psychologist R. Coffin, Chief
10 Psychiatrist John/Jane Doe¹, Correctional Counselor I John/Jane Doe, Chief Medical
11 Executive G. Ugwueze, and Chief Executive Officer C. Cryer as Defendants. Plaintiff
12 alleges essentially the following:

13 On September 12, 2013, Plaintiff was attacked by fellow inmate Garcia. Garcia
14 was designated as an “Enhance Out Patient” (“EOP”) inmate and had been on suicide
15 watch. Defendants are members of the committee that determines the placement of
16 mental health inmates in the prison. On the date of the attack, Defendants approved
17 Garcia’s release from the EOP population to the general population despite knowing that
18 he needed regular monitoring. Garcia also informed Defendants that he needed help or
19 he would hurt himself or someone else. Defendants violated California Code of
20 Regulations and prison policies by failing to properly diagnose, monitor, and treat inmate
21 Garcia.

22 Upon his release to the general population, Garcia was pacing around and acting
23 in an aggressive manner. Two witnesses observed Garcia and informed staff of his
24 behavior. Garcia then attacked Plaintiff by attempting to throw him over the second floor
25 tier to the first floor.

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27 _____
28 ¹ Plaintiff alleges that this position was vacant during the relevant time period. As discussed
below, Plaintiff cannot state a claim against a non-existent person.

1 Plaintiff seeks damages for Defendants' failure to protect him in violation of the
2 Eighth Amendment.

3 **IV. ANALYSIS**

4 **A. Section 1983**

5 Section 1983 "provides a cause of action for the 'deprivation of any rights,
6 privileges, or immunities secured by the Constitution and laws' of the United States."
7 *Wilder v. Virginia Hosp. Ass'n*, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983).
8 Section 1983 "'is not itself a source of substantive rights,' but merely provides 'a method
9 for vindicating federal rights conferred elsewhere.'" *Graham v. Connor*, 490 U.S. 386,
10 393-94 (1989) (quoting *Baker v. McCollan*, 443 U.S. 137, 144, n. 3 (1979)).

11 To state a claim under Section 1983, a plaintiff must allege two essential
12 elements: (1) that a right secured by the Constitution and laws of the United States was
13 violated and (2) that the alleged violation was committed by a person acting under the
14 color of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988); see also *Ketchum v.*
15 *Cnty. of Alameda*, 811 F.2d 1243, 1245 (9th Cir. 1987).

16 A complaint must contain "a short and plain statement of the claim showing that
17 the pleader is entitled to relief" Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
18 are not required, but "[t]hreadbare recitals of the elements of a cause of action,
19 supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S.
20 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff
21 must set forth "sufficient factual matter, accepted as true, to 'state a claim to relief that is
22 plausible on its face.'" *Id.* Facial plausibility demands more than the mere possibility
23 that a defendant committed misconduct and, while factual allegations are accepted as
24 true, legal conclusions are not. *Id.*

25 **B. Linkage**

26 Under Section 1983, Plaintiff must demonstrate that each Defendant personally
27 participated in the deprivation of his rights. See *Jones v. Williams*, 297 F.3d 930, 934
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1 (9th Cir. 2002). In other words, there must be an actual connection or link between the
2 actions of the Defendants and the deprivation alleged to have been suffered by Plaintiff.
3 See *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691, 695 (1978).

4 While Plaintiff alleges that Chief Psychiatrist John/Jane Doe was on the panel that
5 decided to release Garcia into the general population, he states that the position was
6 vacant at the time. Plaintiff cannot state a claim against a position not occupied by an
7 actual person. Leave to amend is denied as futile.

8 **C. California Code of Regulations**

9 To the extent that Plaintiff alleges Defendants violated Title 15 of the CCR or
10 other prison policies, he does not state a cause of action. The existence of the CCR
11 does not necessarily entitle an inmate to sue civilly. The Court has found no authority to
12 support a finding of an implied private right of action under Title 15, and Plaintiff has
13 provided none. Several district court decisions hold that there is no such right. See e.g.,
14 *Vasquez v. Tate*, No. 1:10-cv-1876-JLT (PC), 2012 WL 6738167, at *9 (E.D. Cal. Dec.
15 28, 2012); *Davis v. Powell*, 901 F. Supp. 2d 1196, 1211 (S.D. Cal. 2012). Because
16 Plaintiff may not bring an independent claim solely for violation of prison regulations set
17 out in Title 15, leave to amend such a claim is futile and is denied on that basis.

18 **D. Eighth Amendment**

19 The Eighth Amendment “protects prisoners . . . from inhumane methods of
20 punishment . . . [and] inhumane conditions of confinement.” *Morgan v. Morgensen*, 465
21 F.3d 1041, 1045 (9th Cir. 2006). Although prison conditions may be restrictive and
22 severe, prison officials must provide prisoners with adequate food, clothing, shelter,
23 sanitation, medical care, and personal safety. *Farmer v. Brennan*, 511 U.S. 825, 832
24 (1994). They also have a duty to take reasonable steps to protect inmates from physical
25 harm by other inmates. *Id.* at 833.

26 To establish a violation of this duty, the prisoner must establish that prison
27 officials were “deliberately indifferent” to serious threats to the inmate's health or safety.
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1 *Id.* at 834. “Deliberate indifference is a high legal standard.” *Toguchi v. Chung*, 391
2 F.3d 1051, 1060 (9th Cir. 2004). “If a [prison official] should have been aware of the
3 risk, but was not, then the [official] has not violated the Eighth Amendment, no matter
4 how severe the risk.” *Id.* at 1057 (*quoting Gibson v. Cnty. of Washoe*, 290 F.3d 1175,
5 1188 (9th Cir. 2002)). The prisoner must show that “the official [knew] of and
6 disregard[ed] an excessive risk to inmate . . . safety; the official must both be aware of
7 facts from which the inference could be drawn that a substantial risk of serious harm
8 exists, and [the official] must also draw the inference.” *Id.* at 837; *Anderson v. Cnty. of*
9 *Kern*, 45 F.3d 1310, 1313 (9th Cir. 1995). To prove knowledge of the risk, the prisoner
10 may rely on circumstantial evidence; in fact, the very obviousness of the risk may be
11 sufficient to establish knowledge. *Farmer*, 511 U.S. at 842.

12 Plaintiff’s factual allegations do not state an Eighth Amendment claim. Plaintiff
13 alleges that Garcia informed Defendants that he would harm himself or someone else if
14 he was taken off of suicide watch and placed back into the general population. A failure
15 to respond and protect Plaintiff from such a broad, generalized risk will not support a
16 claim that any Defendant was deliberately indifferent to an excessive risk of harm to
17 Plaintiff. See *Hollis v. Laird*, No. 1:11-cv-00748-AWI-SKO, 2014 U.S. Dist. LEXIS
18 118289, at *43 (E.D. Cal. Aug. 25, 2014) (placement in a cell with inmate known to be
19 mentally unstable insufficient to establish subjective mental state of deliberate
20 indifference); See also *Johnson v. Hicks*, No. 1:11-cv-02162-GSA-PC, 2014 U.S. Dist.
21 LEXIS 54239, at *12-13 (E.D. Cal. April 17, 2014) (concerns regarding placement with
22 an inmate known for in-cell violence fails to state an Eighth Amendment claim). Plaintiff
23 fails to allege any specific threats that Garcia made to him, that he told any Defendant
24 he was the target of any such threats, or that any of the named Defendants had reason
25 to believe that Garcia was exhibiting aggressive behavior toward Plaintiff.

26 Plaintiff was advised of these deficiencies in his claim in the Court’s prior
27 screening order. (ECF No. 13.) Plaintiff’s failure to cure these deficiencies is reasonably
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1 construed as reflecting his inability to correct them. Further leave to amend would be
2 futile and is denied.

3 **V. CONCLUSION AND ORDER**

4 Plaintiff's First Amended Complaint does not state a claim upon which relief may
5 be granted. Plaintiff was advised in the prior screening order of deficiencies in his claims
6 and was given the opportunity to correct them. Plaintiff has failed to do so, and no
7 useful purpose would be served in allowing yet another opportunity to amend.

8 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

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- 10 1. The Clerk of Court shall send Plaintiff a copy of his First Amended
11 Complaint (ECF No. 13.), filed April 6, 2015;
 - 12 2. The action is DISMISSED WITH PREJUDICE for failure to state a claim;
 - 13 3. Dismissal shall count as a strike pursuant to the "three strikes" provision
14 set forth in 28 U.S.C. § 1915(g); and
 - 15 4. The Clerk of Court shall terminate all pending motions and CLOSE this
16 case.

17 IT IS SO ORDERED.

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19 Dated: April 28, 2015

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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