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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA
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10 JOHN GILLIAN, et al.,

11 Plaintiffs,

12 v.

13 CDCR, et al.,

14 Defendants.
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Case No. 1:15-cv-00037-MJS

GRANT, IN PART, AND DENY, IN PART,
DEFENDANTS' MOTION TO DISMISS

(ECF No. 6)

AMENDED COMPLAINT DUE WITHIN
THIRTY (30) DAYS

16
17 **I. PROCEDURAL HISTORY**

18 Plaintiffs John Gillian, Mary Whitaker, James Plaisted, Alice Aaron, and Meg
19 Wright, individually and on behalf of the estate of David Gillian, filed this civil rights
20 action pursuant to 42 U.S.C. § 1983 on November 14, 2014 in the Superior Court of
21 California – Fresno County. (ECF No. 1.) On January 7, 2015, Defendants California
22 Department of Corrections and Rehabilitation (“CDCR”) and Scott Frauenheim, Warden
23 of Pleasant Valley State Prison (“PVSP”), removed the case to federal court.¹ (ECF No.
24 1.) The parties have consented to Magistrate Judge jurisdiction. (ECF Nos. 5 & 10.)

25 Defendants moved to dismiss this action pursuant to Federal Rules of Civil
26 Procedure 8 and 12 for failure to put Defendant CDCR on notice of the claims against it,
27 failure to state a claim upon which relief may be granted, failure to comply with the

28 ¹ Plaintiffs also sue twenty unnamed Defendant Does who they allege are agents or employees of CDCR.

1 California Tort Claims Act (“CTCA”), and lack of standing to sue on behalf of a
2 deceased son and brother. (ECF No. 6.) Plaintiffs filed an opposition (ECF No. 13) and
3 Defendants replied. (ECF No. 14.) The matter is deemed submitted. Local Rule 230(f).

4 **II. LEGAL STANDARDS**

5 **A. Motion to Dismiss**

6 Rule 8(a)(2) of the Federal Rules of Civil Procedure requires “a short and plain
7 statement of the claim showing that the pleader is entitled to relief.” Rule 8(a)(2) serves
8 to “give the defendant fair notice of what the . . . claim is and the grounds upon which it
9 rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*,
10 355 U.S. 41, 47 (1957)). Failure to comply with Rule 8(a)(2) may result in dismissal of
11 the complaint for failure to state a claim upon which relief can be granted. Fed. R. Civ.
12 P. 12(b)(6).

13 A motion to dismiss brought pursuant to Rule 12(b)(6) “tests the legal sufficiency
14 of a claim”, and dismissal is proper “if there is a ‘lack of a cognizable legal theory or the
15 absence of sufficient facts alleged under a cognizable legal theory.” *Conservation*
16 *Force v. Salazar*, 646 F.3d 1240, 1241-42 (9th Cir. 2011) (quoting *Balistreri v. Pacifica*
17 *Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990)). In resolving a 12(b)(6) motion, a
18 court’s review is generally limited to the operative pleading. *Daniels-Hall v. Nat’l Educ.*
19 *Ass’n*, 629 F.3d 992, 998 (9th Cir. 2010). However, the court may also consider material
20 that is submitted as part of the complaint, relied upon in the complaint, or subject to
21 judicial notice. See *Lee v. City of Los Angeles*, 250 F.3d 668, 668-69 (9th Cir. 2001).

22 “To survive a motion to dismiss, a complaint must contain sufficient factual
23 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft*
24 *v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 570); *Conservation*
25 *Force*, 646 F.3d at 1242. The Court must accept the factual allegations as true and
26 draw all reasonable inferences in favor of the non-moving party. *Daniels-Hall*, 629 F.3d
27 at 998.

1 **B. Liability of State Agencies**

2 “State agencies . . . are not ‘persons’ within the meaning of § 1983, and are
3 therefore not amenable to suit under that statute.” *Maldonado v. Harris*, 370 F.3d 945,
4 951 (9th Cir. 2004) (*citing Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 70 (1989)). In
5 addition, “[i]n the absence of a waiver by the state or a valid congressional override,
6 ‘under the [E]leventh [A]mendment, agencies of the state are immune from private
7 damage actions or suits for injunctive relief brought in federal court.” *Dittman v.*
8 *California*, 191 F.3d 1020, 1025 (9th Cir. 1999) (*quoting Mitchell v. Los Angeles Cmty.*
9 *Coll. Dist.*, 861 F.2d 198, 201 (9th Cir. 1989)). “The State of California has not waived
10 its Eleventh Amendment immunity with respect to claims brought under § 1983 in
11 federal court” *Id.* at 1025-26; *see also Brown v. Cal. Dep’t of Corr.*, 554 F.3d 747,
12 752 (9th Cir. 2009).

13 California Government Code § 815.2(a) provides for state liability of a public
14 entity “for injury proximately caused by an act or omission of an employee of the public
15 entity within the scope of his employment” A public entity may also be liable under
16 California state law for failure to discharge its statutory duty or for its employees’ failure
17 to furnish proper medical care. *See Cal. Gov. Code § 815.6 & § 845.6.*

18 **C. Linkage and Supervisory Liability**

19 Under Section 1983, a plaintiff must demonstrate that each defendant personally
20 participated in the deprivation of his rights. *See Jones v. Williams*, 297 F.3d 930, 934
21 (9th Cir. 2002). In other words, there must be an actual connection or link between the
22 actions of the defendant and the deprivation alleged to have been suffered by a plaintiff.
23 *See Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 691, 695 (1978).

24 Government officials may not be held liable for the actions of their subordinates
25 under a theory of *respondeat superior*. *Id.* Since a government official cannot be held
26 liable under a theory of vicarious liability in § 1983 actions, a plaintiff must plead
27 sufficient facts showing that the official has violated the Constitution through his own
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1 individual actions by linking each named defendant with some affirmative act or
2 omission that demonstrates a violation of the plaintiff's federal rights. *Iqbal*, 556 U.S. at
3 676.

4 Liability may be imposed on a supervisory defendant under § 1983 only if the
5 supervisor: (1) personally participated in the deprivation of constitutional rights or
6 directed the violations or (2) knew of the violations and failed to act to prevent them.
7 *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Taylor v. List*, 880 F.2d 1040, 1045
8 (9th Cir. 1989).

9 **D. Failure to Protect**

10 The Eighth Amendment “protects prisoners . . . from inhumane methods of
11 punishment . . . [and] inhumane conditions of confinement.” *Morgan v. Morgensen*, 465
12 F.3d 1041, 1045 (9th Cir. 2006). Although prison conditions may be restrictive and
13 severe, prison officials must provide prisoners with adequate food, clothing, shelter,
14 sanitation, medical care, and personal safety. *Farmer v. Brennan*, 511 U.S. 825, 832
15 (1994). They also have a duty to take reasonable steps to protect inmates from
16 physical harm. *Id.* at 833.

17 To establish a violation of this duty, the prisoner must establish that prison
18 officials were “deliberately indifferent” to serious threats to the inmate's health or safety.
19 *Id.* at 834. “Deliberate indifference is a high legal standard.” *Toguchi v. Chung*, 391
20 F.3d 1051, 1060 (9th Cir. 2004). “If a [prison official] should have been aware of the
21 risk, but was not, then the [official] has not violated the Eighth Amendment, no matter
22 how severe the risk.” *Id.* at 1057 (*quoting Gibson v. Cnty. of Washoe*, 290 F.3d 1175,
23 1188 (9th Cir. 2002)). The prisoner must show that “the official [knew] of and
24 disregard[ed] an excessive risk to inmate . . . safety; the official must both be aware of
25 facts from which the inference could be drawn that a substantial risk of serious harm
26 exists, and [the official] must also draw the inference.” *Id.* at 837; *Anderson v. Cnty. of*
27 *Kern*, 45 F.3d 1310, 1313 (9th Cir. 1995). To prove knowledge of the risk, the prisoner
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1 may rely on circumstantial evidence; in fact, the very obviousness of the risk may be
2 sufficient to establish knowledge. *Farmer*, 511 U.S. at 842.

3 **E. Medical Indifference**

4 A claim of medical indifference requires: 1) a serious medical need, and 2) a
5 deliberately indifferent response by defendant. *Jett v. Penner*, 439 F.3d 1091, 1096
6 (9th Cir. 2006). A serious medical need may be shown by demonstrating that “failure to
7 treat a prisoner's condition could result in further significant injury or the ‘unnecessary
8 and wanton infliction of pain.’” *Id.*; *See also McGuckin v. Smith*, 974 F.2d 1050, 1059-
9 60 (9th Cir. 1992) (“The existence of an injury that a reasonable doctor or patient would
10 find important and worthy of comment or treatment; the presence of a medical condition
11 that significantly affects an individual's daily activities; or the existence of chronic and
12 substantial pain are examples of indications that a prisoner has a ‘serious’ need for
13 medical treatment.”).

14 The deliberate indifference standard is met by showing: a) a purposeful act or
15 failure to respond to a prisoner's pain or possible medical need, and b) harm caused by
16 the indifference. *Id.* “Deliberate indifference is a high legal standard.” *Toguchi*, 391
17 F.3d at 1060. “Under this standard, the prison official must not only ‘be aware of the
18 facts from which the inference could be drawn that a substantial risk of serious harm
19 exists,’ but that person ‘must also draw the inference.’” *Id.* at 1057 (*quoting Farmer*, 511
20 U.S. at 837). “If a prison official should have been aware of the risk, but was not, then
21 the official has not violated the Eighth Amendment, no matter how severe the risk.” *Id.*
22 (brackets omitted) (*quoting Gibson v. Cnty. of Washoe*, 290 F.3d 1175, 1188 (9th Cir.
23 2002)). “[A]n inadvertent failure to provide adequate medical care” does not, by itself,
24 state a deliberate indifference claim for § 1983 purposes. *McGuckin*, 974 F.2d at 1060
25 (internal quotation marks omitted); *See also Estelle v. Gamble*, 429 U.S. 97, 106 (1976)
26 (“[A] complaint that a physician has been negligent in diagnosing or treating a medical
27 condition does not state a valid claim of medical mistreatment under the Eighth
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1 Amendment. Medical malpractice does not become a constitutional violation merely
2 because the victim is a prisoner.”). “A defendant must purposefully ignore or fail to
3 respond to a prisoner's pain or possible medical need in order for deliberate indifference
4 to be established.” *McGuckin*, 974 F.2d at 1060.

5 **F. Failure to Properly Hire, Supervise, and Train**

6 A supervisor's failure to train subordinates may give rise to individual liability
7 under § 1983 where the failure amounts to deliberate indifference to the rights of
8 persons with whom the subordinates are likely to come into contact. *Canell v. Lightner*,
9 143 F.3d 1210, 1213-14 (9th Cir. 1998). To impose liability under this theory, a plaintiff
10 must demonstrate that the subordinate’s training was inadequate, that the inadequate
11 training was a deliberate choice on the part of the supervisor, and that the inadequate
12 training caused a constitutional violation. *Id.* at 1214; *See also City of Canton v. Harris*,
13 489 U.S. 378, 388-90 (1989).

14 An employer can be held liable for negligent hiring, supervising, or training of its
15 employees, “if he knows the employee is unfit, or has reason to believe the employee
16 is unfit or fails to use reasonable care to discover the
17 employee's unfitness before hiring him.” *Juarez v. Boy Scouts of America, Inc.*, 81 Cal.
18 App. 4th 377, 395 (Ct. App. 2000).

19 **G. Due Process**

20 The Due Process Clause protects a plaintiff against the deprivation of life and
21 liberty without the procedural protections to which he is entitled under the law.
22 *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005). To state a claim, a plaintiff must first
23 identify the interest at stake. *Id.* Liberty interests may arise from the Due Process
24 Clause or from state law. *Id.*

25 **H. California State and Prison Regulations**

26 The existence of the California Code of Regulations and state prison regulations
27 do not necessarily entitle an inmate to sue civilly. Several district court decisions hold
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1 that there is no such right. See e.g., *Vasquez v. Tate*, No. 1:10-cv-1876-JLT (PC), 2012
2 WL 6738167, at *9 (E.D. Cal. Dec. 28, 2012); *Davis v. Powell*, 901 F. Supp. 2d 1196,
3 1211 (S.D. Cal. 2012).

4 **I. CTCA**

5 Under the CTCA, a plaintiff may not maintain an action for damages against a
6 public employee unless he has presented a written claim to the state Victim
7 Compensation and Government Claims Board within six months of accrual of the action.
8 Cal. Gov't Code §§ 905, 911.2(a), 945.4 & 950.2; *Mangold v. California Pub. Utils.*
9 *Comm'n*, 67 F.3d 1470, 1477 (9th Cir. 1995). Failure to demonstrate such compliance
10 constitutes a failure to state a cause of action and will result in the dismissal of state law
11 claims. *State of California v. Superior Court (Bodde)*, 32 Cal.4th 1234, 1240 (2004).

12 **J. Standing**

13 A wrongful death action may be brought by a decedent's personal representative
14 or by "[t]he decedent's surviving spouse, domestic partner, children, and issue of
15 deceased children, or, if there is no surviving issue of the decedent, the persons, . . .
16 who would be entitled to the property of the decedent by intestate succession." Cal.
17 Code Civ. Pro. § 377.60(a). The administrator of the estate and the heirs cannot both
18 sue. *Gordon v. Reynolds*, 10 Cal. Rptr. 73, 75 (Ct. App. 1960).

19 **III. PLAINTIFFS' CLAIMS**

20 Plaintiffs Mary Whitaker and John Gillian are the parents of David Gillian
21 ("Gillian"), and Plaintiffs James Plaisted, Alice Aaron, and Meg Wright are his siblings.
22 Plaintiffs bring suit individually and on behalf of the estate of Gillian against Defendants
23 CDCR, Warden Scott Frauenheim, and Does 1-20.

24 Plaintiffs' allegations can be summarized essentially as follows:

25 On October 15, 2013, Gillian committed suicide while incarcerated at PVSP. A
26 Psychiatric Technician found Gillian at approximately 6:10 a.m. that morning hanging in
27 his cell by a piece of cloth. The Technician could not find a pulse and observed Gillian
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1 to be “ashen and cyanotic . . . with signs of full body rigor mortis and lividity.” (ECF No.
2 1 at 11.) Gillian’s cell area was declared a crime scene, resulting in medical staff having
3 limited access to him. At 6:55 a.m., a Paramedic declared Gillian dead. The Coroner
4 determined that Gillian had been hanging in his cell for a minimum of four to eight hours
5 prior to being brought down.

6 Gillian was a disabled 52-year-old inmate with chronic neck and back pain and a
7 history of mental illness. On September 27, 2013, during a mental health screening, he
8 denied any mental health issues. However, in documents found among his belongings,
9 he noted feeling depressed and had a previous diagnosis of Major Depressive Disorder,
10 Recurrent, Severe with Psychotic Features.

11 In a post-death review, concerns were raised regarding whether the guards
12 conducted appropriate counts and rounds (given the Coroner’s estimation of how long
13 Gillian had been hanging) and the decision to declare the area a crime scene and limit
14 medical personnel’s access to Gillian. Defendant Frauenheim referred the matter to
15 Internal Affairs.

16 Plaintiffs requested information regarding Gillian’s death and were repeatedly
17 informed the reports were not yet available, even though they had already been
18 prepared.

19 On March 14, 2014, Plaintiff John Gillian filed a tort claim regarding his son’s
20 death with the California Victim Compensation and Government Claims Board. On May
21 15, 2014, the Board rejected the claim. Plaintiffs Whitaker, Plaisted, Aaron, and Wright
22 filed a request to file a late claim on June 9, 2014, which the Board denied on October
23 16, 2014. They filed a petition for relief from the October 16th denial in state court so
24 that they could join in the state tort claims for negligent supervision and wrongful death.

25 Defendants Frauenheim and Does 1-20 were deliberately indifferent to Gillian’s
26 health and safety by failing to provide proper mental health services, inmate monitoring,
27 and prompt medical treatment and denied him his right to life and liberty without due
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1 process in violation of the Eighth and Fourteenth Amendments. All Defendants are
2 liable for wrongful death and negligent supervision, training, hiring and retention.

3 Plaintiffs seek compensatory and punitive damages and attorney's fees and
4 costs.

5 **IV. ARGUMENTS**

6 **A. Defendants' Motion to Dismiss**

7 Defendants argue that Plaintiffs' Complaint should be dismissed on the following
8 four grounds: 1) it fails to plead any facts against Defendant CDCR or link Defendant
9 CDCR to any alleged wrongdoing in violation of Rule 8; 2) Defendant Frauenheim
10 cannot be held liable under a theory of *respondeat superior* and the Complaint fails to
11 identify who he negligently supervised, trained, hired, and/or retained; 3) Plaintiffs
12 Whitaker, Plaisted, Aaron, and Wright failed to comply with the CTCA, and 4) Plaintiffs
13 failed to sufficiently plead they have standing to bring a wrongful death suit.

14 More specifically, Defendants contend that Plaintiffs Whitaker, Plaisted, Aaron,
15 and Wright's CTCA claim was untimely and rejected by the Board. Plaintiffs failed to
16 obtain relief from the Board's order prior to filing the instant cause of action in violation
17 of Cal. Gov. Code § 945.4. Since their request for relief was denied by the Superior
18 Court, their state law claims for negligence and wrongful death should be dismissed
19 without leave to amend. In so arguing, Defendants ask this Court to take judicial notice
20 of the following two exhibits which they attach to their motion: 1) the court docket for
21 *John Gillian v. CDCR*, Case No. 14 CECG03434, reflecting the tentative January 8,
22 2015 ruling on Plaintiff's petition for relief from the claims filing requirement, and 2) the
23 California Victim Compensation and Government Claims Board records for Claim
24 Number G 608510.

25 Defendants contend that Plaintiffs have not specifically pled whether they are the
26 father, mother, and siblings of Plaintiff by blood or marriage. Therefore, their Complaint
27 fails to demonstrate they have standing to bring suit for wrongful death.

1 **B. Plaintiffs’ Opposition**

2 Plaintiffs argue that they have sufficiently alleged facts to put CDCR on notice of
3 its liability under a theory of negligent supervision and training and wrongful death by
4 alleging that CDCR employees committed the above violations.

5 Plaintiffs stipulate to the dismissal of Defendant Frauenheim without prejudice so
6 they can add him at a later time if, through discovery, they are able to learn sufficient
7 facts to support his individual and/or supervisory liability.

8 Plaintiffs Whitaker, Plaisted, Aaron, and Wright concede that they have not yet
9 complied with the CTCA, but argue that they have also not yet asserted any state tort
10 claims against Defendants; they contend they are only joining in the § 1983 claim
11 against Defendants Frauenheim and Does 1 – 20. Plaintiffs contend they have
12 submitted a second claim for relief from the Board’s decision in state court, and if and
13 when it is granted, they will seek leave to amend.

14 Lastly, Plaintiffs concede that Plaisted, Aaron, and Wright cannot bring suit for
15 wrongful death since Gillian has surviving parents. However, they contend that only
16 John Gillian, Gillian’s father, is bringing the state law claims for negligence and wrongful
17 death and to the extent that they have not plead that Gillian died without a spouse or
18 issue pursuant to Cal. Code Civ. Pro. § 377.60(a) or that John Gillian is the successor in
19 interest and personal representative of the Estate of Gillian, they seek leave to amend.

20 **C. Defendants’ Reply**

21 Defendants reply that Plaintiffs should not be granted leave to amend because
22 based on their concessions, amendment would be futile. Defendants argue that CDCR
23 should be dismissed because Plaintiffs have not identified the Defendant employees by
24 name. Because Defendant Frauenheim is the only identified Defendant in Plaintiffs’ first
25 cause of action under § 1983, the entire claim should be dismissed. Plaintiffs Whitaker,
26 Plaisted, Aaron, and Wright’s second petition for relief from the CTCA has not been
27 granted, barring them from bringing the state tort claims. Finally, Plaintiffs effectively
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1 acknowledge they have not demonstrated their capacity to sue.

2 **V. ANALYSIS**

3 **A. CDCR**

4 Plaintiffs cannot bring a § 1983 claim against CDCR. However, the Court may
5 exercise supplemental jurisdiction over the state claims against CDCR, if Plaintiffs state
6 a cognizable federal claim. 28 U.S.C. § 1367(a); *Herman Family Revocable Trust v.*
7 *Teddy Bear*, 254 F.3d 802, 805 (9th Cir. 2001).

8 Plaintiffs allege that Defendant Does 1-20 are CDCR employees or agents, they
9 were acting within the scope of their agency or employment, and that CDCR knew of or
10 subsequently ratified their actions. They further allege that negligence of Defendant
11 Does 1-20 proximately caused Gillian's wrongful death. These allegations are sufficient
12 to state claims against CDCR for violation of California state law. While the use of
13 "John Doe" to identify a defendant is not looked upon favorably, a plaintiff is entitled to
14 learn the identity of unknown defendants through discovery unless it is clear that
15 discovery would not reveal the identities. See *Gillespie v. Civiletti*, 629 F.2d 637, 642
16 (9th Cir. 1980). At this stage in the proceedings, it is not clear. Defendants' motion to
17 dismiss on this basis is denied.

18 **B. Defendant Frauenheim**

19 Plaintiffs stipulate to the dismissal of Defendant Frauenheim without prejudice.
20 He is so dismissed. Defendants contend this should necessarily result in the dismissal
21 of Plaintiffs' § 1983 claim because the only other Defendants named in that cause of
22 action are John Does. As noted above, the use of John Doe Defendants does not
23 necessitate dismissal here.

24 **C. CTCA**

25 Defendants request that the Court take judicial notice of two exhibits attached to
26 their motion that pertain to their CTCA argument. Plaintiffs do not address Defendants'
27 request for judicial notice. Having no objection, the Court will take judicial notice of the
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1 court documents attached to Defendants' motion to dismiss. *Reyn's Pasta Bella, LLC v.*
2 *Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (noting court may take judicial
3 notice of court files and matters of public record).

4 These documents support the conclusion, conceded by Plaintiffs Whitaker,
5 Plaisted, Aaron, and Wright, that these putative Plaintiffs have not yet complied with the
6 CTCA. Plaintiffs contention that they have not yet joined in the two state law claims
7 against Defendants is not clear from the Complaint. Plaintiffs allege in the Complaint
8 that they all may sue individually and on behalf of the Estate of David Gillian. The two
9 state law claims are brought by Plaintiff John Gillian and the Estate of David Gillian. To
10 the extent that these Plaintiffs are joined in the state tort claims, they are dismissed
11 without prejudice.

12 **D. Standing**

13 Plaintiffs concede that Plaisted, Aaron, and Wright cannot bring suit for wrongful
14 death since Gillian has surviving parents (Plaintiffs John Gillian and Mary Whitaker).
15 However, they allege in the Complaint that they have standing to bring claims on behalf
16 of the Estate of David Gillian. In light of their concession, Plaintiffs Plaisted, Aaron, and
17 Wright are dismissed from the state tort claims in the second and third causes of action.
18 Likewise, these Plaintiffs do not have standing to bring a § 1983 claim. *Byrd v. Guess*,
19 137 F.3d 1126, 1131 (9th Cir. 1998) (survival actions under § 1983 are only permitted to
20 the extent that they are authorized by state law).

21 Plaintiffs also seem to argue that John Gillian can sue for wrongful death of his
22 son, both as administrator and in his individual capacity. "Either the administrat[or] or
23 the heirs, but not both, may sue, and if the administrat[or] sues, the heirs may not."
24 *Gordon*, 10 Cal. Rptr. at 75. Plaintiff John Gillian must plead facts to support that he is
25 the administrator of the Estate or that David Gillian had no surviving issue and he is
26 entitled to his property by intestate succession. See Cal. Code Civ. Pro. § 377.60(a). It
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1 is also unclear whether Plaintiff Mary Whitaker is asserting either of these claims. If so,
2 she must properly allege standing and compliance with the CTCA.

3 **E. Section 1983 Claim**

4 Plaintiffs title their § 1983 claim as a claim under the Eighth and Fourteenth
5 Amendments for "Failure to Protect." (ECF No. 1 at 17.) Within this cause of action,
6 Plaintiffs allege violations of the California Code of Regulations and CDCR and PVSP
7 rules and regulations. It also appears that Plaintiffs are claiming Defendants were
8 medically indifferent, committed due process violations, and failed to properly train and
9 supervise personnel. Additionally, they group all John Doe Defendants together rather
10 than linking each individual Defendant to a particular constitutional violation. To the
11 extent that Plaintiffs wish to state any of these federal claims against Defendants, in
12 amending their Complaint, they should comply with the applicable legal standards
13 provided above.

14 **VI. CONCLUSION AND ORDER**

15 Based on the foregoing, the Court HEREBY ORDERS that:

- 16 1. Defendants' motion to dismiss (ECF No. 6.) is granted, in part, and
17 denied, in part;
18 2. Plaintiffs shall file an amended complaint within thirty (30) days; and
19 3. If Plaintiffs fail to file an amended complaint in compliance with this order,
20 the Court will recommend that this action be dismissed, with prejudice, for
21 failure to state a claim and failure to comply with a court order.
22

23 IT IS SO ORDERED.

24 Dated: April 26, 2015

25 /s/ Michael J. Seng
26 UNITED STATES MAGISTRATE JUDGE
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