

1 per 28 U.S.C. § 1915(g). An inmate who has had three or more prior actions or appeals dismissed
2 as frivolous, malicious, or for failure to state a claim upon which relief may be granted, and has
3 not alleged imminent danger of serious physical injury does not qualify to proceed *in forma*
4 *pauperis*. See 28 U.S.C. § 1915(g); *Richey v. Dahne*, 807 F.3d 1201, 1208 (9th Cir. 2015).

5 **B. Summary of Allegations**

6 Plaintiff, a double amputee, alleges that, on September 16, 2015, Officer Bradshaw
7 neglected his duty to properly secure his wheelchair in the back of the transport van on his return
8 from Mercy Hospital. (Doc. 17, p. 4.) As a result, Plaintiff alleges that his wheelchair came
9 loose and he was thrown around the back of the van and received a head injury. (*Id.*)

10 These allegations may state a claim for negligence under California law.¹ However,
11 despite having been provided the legal standards for a claim under the Eighth Amendment in the
12 prior screening order, (*see* Doc. 16), Plaintiff's allegations do not suffice to state a cognizable
13 claim for violation of Plaintiff's civil rights under 42 U.S.C. § 1983 and are DISMISSED with
14 prejudice.

15 **C. Plaintiff's Claim for Relief**

16 **1. Eighth Amendment -- Safety**

17 Though Plaintiff did not identify which of his civil rights he felt were violated in this
18 incident, the Eighth Amendment appears most applicable. "The treatment a prisoner receives in
19 prison and the conditions under which he is confined are subject to scrutiny under the Eighth
20 Amendment." *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (citing *Helling v. McKinney*, 509
21 U.S. 25, 31 (1993)). Prison officials have a duty "to take reasonable measures to guarantee the
22 safety of inmates, which has been interpreted to include a duty to protect prisoners." *Labatad v.*
23 *Corrections Corp. of America*, 714 F.3d 1155, 1160 (citing *Farmer*, 511 U.S. at 832-33; *Hearns*
24 *v. Terhune*, 413 F.3d 1036, 1040 (9th Cir. 2005)).

25 To establish a violation of this duty, the prisoner must "show that the officials acted with
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27 ¹ The Court specifically declines to make a finding as to whether Plaintiff's claims suffice under California law and
28 nothing herein should be construed one way or the other on that issue. If he decides to file an action in California
Superior Court, Plaintiff will be required to meet all of the requirements for any such action.

1 deliberate indifference to threat of serious harm or injury to an inmate." *Labatad*, at 1160 (citing
2 *Gibson v. County of Washoe*, 290 F.3d 1175, 1187 (9th Cir. 2002). This involves both objective
3 and subjective components.

4 First, objectively, the alleged deprivation must be "sufficiently serious" and where a
5 failure to prevent harm is alleged, "the inmate must show that he is incarcerated under conditions
6 posing a substantial risk of serious harm." *Id.* at 834, quoting *Rhodes v. Chapman*, 452 U.S. 337,
7 349, 101 S.Ct. 2392 (1981). Not properly securing a wheelchair bound inmate's wheelchair in a
8 van during transport suffices as a sufficiently serious situation which can pose a substantial risk of
9 serious harm.

10 However, Plaintiff's allegations do not meet the second, subjective requirement of
11 showing that Officer Bradshaw knew "of and disregard an excessive risk" to Plaintiff's safety.
12 *Id.* at 837; *Anderson v. County of Kern*, 45 F.3d 1310, 1313 (9th Cir. 1995). A prison official
13 must "be aware of facts from which the inference could be drawn that a substantial risk of serious
14 harm exists, and . . . must also draw the inference." *Farmer*, 511 U.S. at 837. Liability may
15 follow only if a prison official "knows that inmates face a substantial risk of serious harm and
16 disregards that risk by failing to take reasonable measures to abate it." *Id.* at 847.

17 Plaintiff's allegations do not show that Officer Bradshaw was deliberately indifferent to
18 the risk of harm to Plaintiff when he failed to properly secure Plaintiff's wheelchair in the back of
19 the transport van. At most, Plaintiff's allegations of Officer Bradshaw's actions amount to
20 negligence. Indeed, Plaintiff admits that Officer Bradshaw "neglected" his duty to properly
21 secure his wheelchair. (Doc. 17, p. 4.) Mere negligence will not support a cause of action under
22 the Eighth Amendment. *See Broughton v. Cutter Laboratories*, 622 F.2d 458, 460 (9th Cir.1980)
23 (citing *Estelle*, 429 U.S. at 105-06); *Toguchi v. Chung*, 391 F.3d 1051, 1060 (9th Cir.2004).
24 Plaintiff's First Amended Complaint does not state a cognizable claim against Officer Bradshaw.

25 **2. Claims Under California Law**

26 **a. California Government Claims Act**

27 As indicated above, Plaintiff may be able to pursue a negligence claim under California
28 law against Officer Bradshaw. However, under California's Government Claims Act ("CGCA"),

1 set forth in California Government Code sections 810 et seq., a plaintiff may not bring a suit for
2 monetary damages against a public employee or entity unless the plaintiff first presented the
3 claim to the California Victim Compensation and Government Claims Board (“VCGCB” or
4 “Board”), and the Board acted on the claim, or the time for doing so expired. “The Tort Claims
5 Act requires that any civil complaint for money or damages first be presented to and rejected by
6 the pertinent public entity.” *Munoz v. California*, 33 Cal.App.4th 1767, 1776 (1995). The
7 purpose of this requirement is “to provide the public entity sufficient information to enable it to
8 adequately investigate claims and to settle them, if appropriate, without the expense of litigation,”
9 *City of San Jose v. Superior Court*, 12 Cal.3d 447, 455 (1974) (citations omitted), and “to confine
10 potential governmental liability to rigidly delineated circumstances: immunity is waived only if
11 the various requirements of the Act are satisfied,” *Nuveen Mun. High Income Opportunity Fund*
12 *v. City of Alameda, Cal.*, 730 F.3d 1111, 1125 (9th Cir. 2013). Compliance with this “claim
13 presentation requirement” constitutes an element of a cause of action for damages against a public
14 entity or official. *State v. Superior Court (Bodde)*, 32 Cal.4th 1234, 1244 (2004). Thus, in the
15 state courts, “failure to allege facts demonstrating or excusing compliance with the claim
16 presentation requirement subjects a claim against a public entity to a demurrer for failure to state
17 a cause of action.” *Id.* at 1239 (fn.omitted).

18 To be timely, a claim must be presented to the VCGCB “not later than six months after
19 the accrual of the cause of action.” Cal. Govt.Code § 911.2. Thereafter, “any suit brought against
20 a public entity” must be commenced no more than six months after the public entity rejects the
21 claim. Cal. Gov. Code, § 945.6, subd. (a)(1).

22 Federal courts must require compliance with the CTCA for pendant state law claims that
23 seek damages against state employees or entities. *Willis v. Reddin*, 418 F.2d 702, 704 (9th
24 Cir.1969); *Mangold v. California Public Utilities Commission*, 67 F.3d 1470, 1477 (9th
25 Cir.1995). State tort claims included in a federal action, filed pursuant to 42 U.S.C. § 1983, may
26 proceed only if the claims were first presented to the state in compliance with the applicable
27 requirements. *Karim-Panahi v. Los Angeles Police Department*, 839 F.2d 621, 627 (9th
28 Cir.1988); *Butler v. Los Angeles County*, 617 F.Supp.2d 994, 1001 (C.D.Cal.2008).

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Accordingly, the Court **ORDERS** that the First Amended Complaint is **DISMISSED** with prejudice and the Clerk of the Court is directed to close the action.

IT IS SO ORDERED.

Dated: May 9, 2017

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE