

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

4 **B. Summary of Allegations**

5 Plaintiff alleges that when he was taken to see his doctor for a “follow up on” Plaintiff’s
6 leg, Officer R. Renteria placed him in a holding cage with sensitive needs inmates. (Doc. 7, p. 3.)
7 The other inmates assaulted Plaintiff because he is a general population inmate. (*Id.*) Despite
8 having been provided the legal standards for a claim under the Eighth Amendment in the prior
9 screening order, (*see* Doc. 6, pp. 5-6), these are Plaintiff’s *only* factual allegations in the First
10 Amended Complaint. While Plaintiff may be able to state a claim for negligence under California
11 law,¹ his allegations are insufficient to state a cognizable claim for violation of his civil rights
12 under 42 U.S.C. § 1983.

13 **C. Plaintiff’s Claim for Relief**

14 **1. Eighth Amendment -- Safety**

15 Though Plaintiff again did not identify which of his civil rights he felt were violated in
16 this incident, the Eighth Amendment appears most applicable. “The treatment a prisoner receives
17 in prison and the conditions under which he is confined are subject to scrutiny under the Eighth
18 Amendment.” *Farmer v. Brennan*, 511 U.S. 825, 832, 114 S.Ct. 1970 (1994) (citing *Helling v.*
19 *McKinney*, 509 U.S. 25, 31 (1993)). Prison officials have a duty “to take reasonable measures to
20 guarantee the safety of inmates, which has been interpreted to include a duty to protect prisoners.”
21 *Labatad v. Corrections Corp. of America*, 714 F.3d 1155, 1160 (citing *Farmer*, 511 U.S. at 832-
22 33; *Hearns v. Terhune*, 413 F.3d 1036, 1040 (9th Cir. 2005)).

23 To establish a violation of this duty, the prisoner must “show that the officials acted with
24 deliberate indifference to threat of serious harm or injury to an inmate.” *Labatad*, at 1160 (citing
25 *Gibson v. County of Washoe*, 290 F.3d 1175, 1187 (9th Cir. 2002)). This involves both objective
26 and subjective components.

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 that type of action.

1 First, objectively, the alleged deprivation must be “sufficiently serious” and where a
2 failure to prevent harm is alleged, "the inmate must show that he is incarcerated under conditions
3 posing a substantial risk of serious harm." *Id.* at 834, quoting *Rhodes v. Chapman*, 452 U.S. 337,
4 349, 101 S.Ct. 2392 (1981). Placing a general population inmate in a holding cage with a group
5 of sensitive needs inmates suffices as a sufficiently serious situation that poses a substantial risk
6 of serious harm.

7 However, Plaintiff’s allegations still do not meet the second, subjective requirement of
8 showing that Officer Renteria knew “of and disregard an excessive risk” to Plaintiff’s safety. *Id.*
9 at 837; *Anderson v. County of Kern*, 45 F.3d 1310, 1313 (9th Cir. 1995). A prison official must
10 "be aware of facts from which the inference could be drawn that a substantial risk of serious harm
11 exists, and . . . must also draw the inference." *Farmer*, 511 U.S. at 837, 114 S.Ct. 1970. Liability
12 may follow only if a prison official "knows that inmates face a substantial risk of serious harm
13 and disregards that risk by failing to take reasonable measures to abate it." *Id.* at 847, 114 S.Ct.
14 1970.

15 Plaintiff’s allegations do not show that Officer Renteria was deliberately indifferent to the
16 risk of harm to Plaintiff when he placed Plaintiff in the holding cage with the sensitive needs
17 inmates. At most, Plaintiff’s allegations of Officer Renteria’s actions may amount to negligence.
18 However, mere negligence will not support a cause of action under the Eighth Amendment. *See*
19 *Broughton v. Cutter Laboratories*, 622 F.2d 458, 460 (9th Cir.1980) (citing *Estelle*, 429 U.S. at
20 105-06); *Toguchi v. Chung*, 391 F.3d 1051, 1060 (9th Cir.2004). Plaintiff’s First Amended
21 Complaint does not state a cognizable claim against Officer Renteria.

22 2. Claims Under California Law

23 a. California Government Claims Act

24 As indicated above, Plaintiff may be able to pursue a negligence claim under California
25 law against Officer Renteria. However, under California’s Government Claims Act (“CGCA”),²
26 set forth in California Government Code sections 810 et seq., a plaintiff may not bring a suit for

27 ² The Government Claims Act was formerly known as the California Tort Claims Act. *City of Stockton v. Superior*
28 *Court*, 42 Cal.4th 730, 741-42 (Cal. 2007) (adopting the practice of using Government Claims Act rather than
California Tort Claims Act).

1 monetary damages against a public employee or entity unless the plaintiff first presented the
2 claim to the California Victim Compensation and Government Claims Board (“VCGCB” or
3 “Board”), and the Board acted on the claim, or the time for doing so expired. “The Tort Claims
4 Act requires that any civil complaint for money or damages first be presented to and rejected by
5 the pertinent public entity.” *Munoz v. California*, 33 Cal.App.4th 1767, 1776 (1995). The
6 purpose of this requirement is “to provide the public entity sufficient information to enable it to
7 adequately investigate claims and to settle them, if appropriate, without the expense of litigation,”
8 *City of San Jose v. Superior Court*, 12 Cal.3d 447, 455 (1974) (citations omitted), and “to confine
9 potential governmental liability to rigidly delineated circumstances: immunity is waived only if
10 the various requirements of the Act are satisfied,” *Nuveen Mun. High Income Opportunity Fund*
11 *v. City of Alameda, Cal.*, 730 F.3d 1111, 1125 (9th Cir. 2013). Compliance with this “claim
12 presentation requirement” constitutes an element of a cause of action for damages against a public
13 entity or official. *State v. Superior Court (Bodde)*, 32 Cal.4th 1234, 1244 (2004). Thus, in the
14 state courts, “failure to allege facts demonstrating or excusing compliance with the claim
15 presentation requirement subjects a claim against a public entity to a demurrer for failure to state
16 a cause of action.” *Id.* at 1239 (fn.omitted).

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

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

28 Despite being previously informed of the above requirements, Plaintiff failed to state any

1 allegations to show his compliance with the CTCA. However, even if Plaintiff met this
2 requirement, for the reasons discussed in the next section, the Court would decline to exercise
3 supplemental jurisdiction over Plaintiff's claims under California law.

4 **b. Supplemental Jurisdiction**

5 Pursuant to 28 U.S.C. § 1367(a), in any civil action in which the district court has original
6 jurisdiction, the district court "shall have supplemental jurisdiction over all other claims in the
7 action within such original jurisdiction that they form part of the same case or controversy under
8 Article III," except as provided in subsections (b) and (c). "[O]nce judicial power exists under §
9 1367(a), retention of supplemental jurisdiction over state law claims under 1367(c) is
10 discretionary." *Acri v. Varian Assoc., Inc.*, 114 F.3d 999, 1000 (9th Cir. 1997). "The district
11 court may decline to exercise supplemental jurisdiction over a claim under subsection (a) if . . .
12 the district court has dismissed all claims over which it has original jurisdiction." 28 U.S.C. §
13 1367(c)(3). The Supreme Court has cautioned that "if the federal claims are dismissed before
14 trial, . . . the state claims should be dismissed as well." *United Mine Workers of America v.*
15 *Gibbs*, 383 U.S. 715, 726 (1966). As discussed above, Plaintiff fails to state a cognizable federal
16 claim against Officer Renteria. Thus, this Court lacks discretion to retain supplemental
17 jurisdiction over Plaintiff's claims under state law.

18 **ORDER**

19 The First Amended Complaint does not state a cognizable claim against Officer Renteria.
20 Given this persistent deficiency, despite having previously been provided the requisite legal
21 standards, it appears futile to allow further amendment. Plaintiff need not be granted leave to
22 amend as the defects in his pleading are not capable of being cured through amendment. *Akhtar*
23 *v. Mesa*, 698 F.3d 1202, 1212-13 (9th Cir. 2012).

24 ///

25 ///

26 ///

27 ///

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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: June 20, 2017

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE