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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KORY ARMES,

Plaintiff,

vs.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et al.,

Defendants.

1:16-cv-01847-GSA-PC

SCREENING ORDER

**ORDER DISMISSING COMPLAINT FOR
FAILURE TO STATE A CLAIM, WITH
LEAVE TO AMEND
(ECF No. 1.)**

**THIRTY-DAY DEADLINE FOR
PLAINTIFF TO FILE AMENDED
COMPLAINT**

**ORDER FOR CLERK TO SEND
PLAINTIFF A CIVIL COMPLAINT FORM**

I. BACKGROUND

Kory Armes (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. On November 29, 2016, Plaintiff filed the Complaint commencing this action. (ECF No. 1.)

On December 27, 2016, Plaintiff consented to Magistrate Judge jurisdiction in this action pursuant to 28 U.S.C. § 636(c), and no other parties have made an appearance. (ECF No. 7.) Therefore, pursuant to Appendix A(k)(4) of the Local Rules of the Eastern District of California, the undersigned shall conduct any and all proceedings in the case until such time as reassignment to a District Judge is required. Local Rule Appendix A(k)(3).

1 Plaintiff's Complaint is now before the court for screening.

2 **II. SCREENING REQUIREMENT**

3 The court is required to screen complaints brought by prisoners seeking relief against a
4 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
5 The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
6 legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or
7 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
8 § 1915A(b)(1),(2). "Notwithstanding any filing fee, or any portion thereof, that may have been
9 paid, the court shall dismiss the case at any time if the court determines that the action or
10 appeal fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

11 A complaint is required to contain "a short and plain statement of the claim showing
12 that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are
13 not required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere
14 conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
15 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff's allegations are
16 taken as true, courts "are not required to indulge unwarranted inferences." Doe I v. Wal-Mart
17 Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).
18 To state a viable claim, Plaintiff must set forth "sufficient factual matter, accepted as true, to
19 'state a claim to relief that is plausible on its face.'" Iqbal, 556 U.S. at 678-79; Moss v. U.S.
20 Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). While factual allegations are accepted as
21 true, legal conclusions are not. Id. The mere possibility of misconduct falls short of meeting
22 this plausibility standard. Id.

23 **III. SUMMARY OF COMPLAINT**

24 Plaintiff is presently incarcerated at Wasco State Prison (WSP) in Wasco, California, in
25 the custody of the California Department of Corrections and Rehabilitation (CDCR), where the
26 events at issue in the Complaint allegedly occurred. Plaintiff names as defendants CDCR,
27 Correctional Officer (C/O) Silva, John Doe #1 (C/O), John Doe #2 (Sergeant), and John Doe #3
28 (C/O & Appeals Coordinator).

1 Plaintiff's allegations follow. On August 2, 2016 at approximately 8:40 a.m., WSP D6
2 facility officers began running escorts to the outdoor recreation cages. John Doe #1 came to
3 Plaintiff's cell with several pairs of handcuffs. (Rather than properly escort the inmates, the
4 C/Os usually have one officer handcuff everyone and send them downstairs unescorted to an
5 awaiting officer at the bottom of the stairs.) Plaintiff and his cell mate were handcuffed behind
6 their backs. Plaintiff exited the cell first, and John Doe #1 instructed him to walk down the
7 stairs unescorted. Two steps into Plaintiff's descent, the toe of his shoe caught in the metal
8 grating, causing him to fall forward. Plaintiff instinctively turned his body in an attempt to
9 protect his head, and his left shoulder struck the stairs causing him to somersault backwards,
10 tumbling approximately three times before reaching the bottom and hitting his head on the
11 concrete. Defendant Silva made an arm motion mimicking a baseball umpire and yelled
12 "Safe!" (ECF No. 1 at 5.) Plaintiff complained of head and back pain. A code-1 medical
13 alarm was sounded. Plaintiff was placed on a stretcher, examined by the prison doctor and sent
14 out for treatment to San Joaquin Medical Center via ambulance.

15 John Doe #2 (Sergeant) was the sergeant on duty for WSP Ad-Seg building D6 when
16 Plaintiff fell. John Doe #2 was therefore responsible for overseeing the officers escorting
17 inmates to the yard. If he had been paying attention, Plaintiff would not have fallen. He failed
18 to properly train and supervise his/her subordinate officers, which resulted in Plaintiff falling
19 downstairs while in restraints and injuring himself. CDCR is also accountable as the
20 government entity that employs and is responsible for the training of all of the Defendants.
21 CDCR neglects to monitor its employees and their training, which results in accidents like
22 Plaintiff's.

23 On August 25, 2016, Plaintiff filed a 602 appeal to bring a complaint about the officers
24 involved in his fall down the stairs. Although Plaintiff submitted the appeal to John Doe #3
25 (Appeals Coordinator), he never received a response. On September 22, 2016, Plaintiff filed
26 Form 22 requests for interview but was ignored and never received a response from John Doe
27 #3. CDCR has never attempted to look into this matter or resolve it. Plaintiff's appeal was

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1 thrown away or lost by John Doe #3, who works as the appeals coordinator. Even though the
2 appeal was filed within the time restraints, Plaintiff was unable to exhaust his remedies.

3 Plaintiff requests monetary damages and equitable relief.

4 **IV. PLAINTIFF’S CLAIMS**

5 The Civil Rights Act under which this action was filed provides:

6 Every person who, under color of any statute, ordinance, regulation, custom, or
7 usage, of any State or Territory or the District of Columbia, subjects, or causes
8 to be subjected, any citizen of the United States or other person within the
9 jurisdiction thereof to the deprivation of any rights, privileges, or immunities
secured by the Constitution and laws, shall be liable to the party injured in an
action at law, suit in equity, or other proper proceeding for redress

10 42 U.S.C. § 1983.

11 “[Section] 1983 ‘is not itself a source of substantive rights,’ but merely provides ‘a
12 method for vindicating federal rights elsewhere conferred.’” Graham v. Connor, 490 U.S. 386,
13 393-94 (1989) (quoting Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)); see also Chapman
14 v. Houston Welfare Rights Org., 441 U.S. 600, 618 (1979); Hall v. City of Los Angeles, 697
15 F.3d 1059, 1068 (9th Cir. 2012); Crowley v. Nevada, 678 F.3d 730, 734 (9th Cir. 2012);
16 Anderson v. Warner, 451 F.3d 1063, 1067 (9th Cir. 2006). “To the extent that the violation of
17 a state law amounts to the deprivation of a state-created interest that reaches beyond that
18 guaranteed by the federal Constitution, Section 1983 offers no redress.” Id.

19 To state a claim under § 1983, a plaintiff must allege that (1) the defendant acted under
20 color of state law and (2) the defendant deprived him or her of rights secured by the
21 Constitution or federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir.
22 2006); see also Marsh v. Cnty. of San Diego, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing
23 “under color of state law”). A person deprives another of a constitutional right, “within the
24 meaning of § 1983, ‘if he does an affirmative act, participates in another’s affirmative act, or
25 omits to perform an act which he is legally required to do that causes the deprivation of which
26 complaint is made.’” Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1183 (9th
27 Cir. 2007) (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “The requisite
28 causal connection may be established when an official sets in motion a ‘series of acts by others

1 which the actor knows or reasonably should know would cause others to inflict' constitutional
2 harms.” Preschooler II, 479 F.3d at 1183 (quoting Johnson, 588 F.2d at 743). This standard of
3 causation “closely resembles the standard ‘foreseeability’ formulation of proximate cause.”
4 Arnold v. Int’l Bus. Mach. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981); see also Harper v. City
5 of Los Angeles, 533 F.3d 1010, 1026 (9th Cir. 2008).

6 **A. Defendant CDCR – Eleventh Amendment Immunity**

7 Plaintiff names CDCR as a defendant. Plaintiff is advised that he may not sustain an
8 action against a state agency. The Eleventh Amendment prohibits federal courts from hearing
9 suits brought against an unconsenting state. Brooks v. Sulphur Springs Valley Elec. Co., 951
10 F.2d 1050, 1053 (9th Cir. 1991) (internal citations omitted); see also Tennessee v. Lane, 541
11 U.S. 509, 517 (2004); Idaho v. Coeur d’Alene Tribe of Idaho, 521 U.S. 261, 267-68 (1997);
12 Clark v. California, 123 F.3d 1267, 1269 (9th Cir. 1997). The Eleventh Amendment bars suits
13 against state agencies as well as those where the state itself is named as a defendant. See P.R.
14 Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc., 506 U.S. 139, 144 (1993); Beentjes v. Placer
15 Cnty. Air Pollution Control Dist., 397 F.3d 775, 777 (9th Cir. 2005); Savage v. Glendale Union
16 High Sch., 343 F.3d 1036, 1040 (9th Cir. 2003); see also Lucas v. Dep’t of Corr., 66 F.3d 245,
17 248 (9th Cir. 1995) (per curiam) (stating that Board of Corrections is agency entitled to
18 immunity); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) (concluding that Nevada
19 Department of Prisons was a state agency entitled to Eleventh Amendment immunity).
20 Because CDCR is a state agency, it is entitled to Eleventh Amendment immunity from suit.
21 Therefore, Plaintiff fails to state a claim against defendant CDCR.

22 **B. Failure to Protect – Eighth Amendment Claim**

23 The Eighth Amendment protects prisoners from inhumane methods of punishment and
24 from inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th
25 Cir. 2006). Although prison conditions may be restrictive and harsh, prison officials must
26 provide prisoners with food, clothing, shelter, sanitation, medical care, and personal safety.
27 Farmer v. Brennan, 511 U.S. 825, 832-33 (1994) (internal citations and quotations omitted).
28 Prison officials have a duty to take reasonable steps to protect inmates from physical abuse.

1 Farmer, 511 U.S. at 833; Hearns v. Terhune, 413 F.3d 1036, 1040 (9th Cir. 2005). The failure
2 of prison officials to protect inmates from attacks by other inmates may rise to the level of an
3 Eighth Amendment violation where prison officials know of and disregard a substantial risk of
4 serious harm to the plaintiff. E.g., Farmer, 511 U.S. at 847; Hearns, 413 F.3d at 1040.

5 To establish a violation of this duty, the prisoner must establish that prison officials
6 were “deliberately indifferent to a serious threat to the inmate’s safety.” Farmer, 511 U.S. at
7 834. The question under the Eighth Amendment is whether prison officials, acting with
8 deliberate indifference, exposed a prisoner to a sufficiently “substantial risk of serious harm” to
9 his future health. Id. at 843 (citing Helling v. McKinney, 509 U.S. 25, 35 (1993)). The
10 Supreme Court has explained that “deliberate indifference entails something more than mere
11 negligence . . . [but] something less than acts or omissions for the very purpose of causing harm
12 or with the knowledge that harm will result.” Farmer, 511 U.S. at 835. The Court defined this
13 “deliberate indifference” standard as equal to “recklessness,” in which “a person disregards a
14 risk of harm of which he is aware.” Id. at 836-37.

15 The deliberate indifference standard involves both an objective and a subjective prong.
16 First, the alleged deprivation must be, in objective terms, “sufficiently serious.” Id. at 834.
17 Second, subjectively, the prison official must “know of and disregard an excessive risk to
18 inmate health or safety.” Id. at 837; Anderson v. County of Kern, 45 F.3d 1310, 1313 (9th Cir.
19 1995). To prove knowledge of the risk, however, the prisoner may rely on circumstantial
20 evidence; in fact, the very obviousness of the risk may be sufficient to establish knowledge.
21 Farmer, 511 U.S. at 842; Wallis v. Baldwin, 70 F.3d 1074, 1077 (9th Cir. 1995).

22 Plaintiff has shown that he was seriously harmed when he fell down the stairs.
23 However, Plaintiff has not shown that any of the Defendants acted with deliberate indifference
24 by failing to prevent or contributing to Plaintiff’s fall. Plaintiff has not alleged facts
25 demonstrating that any of the Defendants knew that Plaintiff was at substantial risk of serious
26 harm and yet acted, or failed to act, while deliberately ignoring the risk. At most, Plaintiff
27 states a claim for negligence, which is not actionable under § 1983. Therefore, Plaintiff fails to
28 state an Eighth Amendment claim against any of the Defendants for failing to protect him.

1 **C. State Law Claims & Supervisory Liability**

2 Plaintiff alleges that supervisory Defendants failed to properly supervise and train their
3 employees. Plaintiff also alleges that Defendants violated Government Code § 19572(d).
4 These are state law claims. Plaintiff is informed that violation of state tort law, state
5 regulations, rules and policies of the CDCR, or other state law is not sufficient to state a claim
6 for relief under § 1983. Section 1983 does not provide a cause of action for violations of state
7 law. See Galen v. Cnty. of Los Angeles, 477 F.3d 652, 662 (9th Cir. 2007). To state a claim
8 under § 1983, there must be a deprivation of federal constitutional or statutory rights. See Paul
9 v. Davis, 424 U.S. 693 (1976); also see Buckley v. City of Redding, 66 F.3d 188, 190 (9th Cir.
10 1995); Gonzaga University v. Doe, 536 U.S. 273, 279 (2002). Although the court may exercise
11 supplemental jurisdiction over state law claims, Plaintiff must first have a cognizable claim for
12 relief under federal law. See 28 U.S.C. § 1367. In this instance, the court fails to find any
13 cognizable federal claims in the Complaint. Therefore, Plaintiff’s state law claims fail.

14 Furthermore, supervisors are not liable under § 1983 for the actions of their
15 subordinates. Plaintiff is advised that “[I]iability under [§] 1983 arises only upon a showing of
16 personal participation by the defendant. A supervisor is only liable for the constitutional
17 violations of . . . subordinates if the supervisor participated in or directed the violations, or
18 knew of the violations and failed to act to prevent them. There is no *respondeat superior*
19 liability under [§] 1983.” Taylor, 880 F.2d at 1045. Plaintiff must demonstrate that each
20 defendant, through his or her own individual actions, violated Plaintiff’s constitutional rights.
21 Iqbal, 556 U.S. at 676; Corales v. Bennett, 567 F.3d 554, 570 (9th Cir. 2009). Therefore, to the
22 extent that Plaintiff seeks to impose liability upon any of the Defendants in their supervisory
23 capacity, Plaintiff fails to state a claim.

24 **D. Appeals Process**

25 Plaintiff’s allegations against Doe Defendant #4 (Appeals Coordinator) pertain to the
26 handling of Plaintiff’s inmate appeal.

27 “[I]nmates lack a separate constitutional entitlement to a specific prison grievance
28 procedure.” Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (no liberty interest in

1 processing of appeals because no entitlement to a specific grievance procedure), citing Mann v.
2 Adams, 855 F.2d 639, 640 (9th Cir. 1988). “[A prison] grievance procedure is a procedural
3 right only, it does not confer any substantive right upon the inmates.” Azeez v. DeRobertis,
4 568 F. Supp. 8, 10 (N.D. Ill. 1982) accord Buckley v. Barlow, 997 F.2d 494, 495 (8th Cir.
5 1993); see also Massey v. Helman, 259 F.3d 641, 647 (7th Cir. 2001) (existence of grievance
6 procedure confers no liberty interest on prisoner). “Hence, it does not give rise to a protected
7 liberty interest requiring the procedural protections envisioned by the Fourteenth Amendment.”
8 Azeez, 568 F. Supp. at 10; Spencer v. Moore, 638 F. Supp. 315, 316 (E.D. Mo. 1986).

9 Thus, Plaintiff's allegations that Doe Defendant #4 failed to properly process Plaintiff's
10 appeal fails to state a cognizable claim.

11 **E. Doe Defendants**

12 Plaintiff is advised that his “John Doe” defendants must be named or otherwise
13 identified before service can go forward. “As a general rule, the use of ‘John Doe’ to identify a
14 defendant is not favored.” Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980). Plaintiff is
15 advised that John Doe or Jane Doe defendants cannot be served by the United States Marshal
16 until Plaintiff has identified them as actual individuals and amended his complaint to substitute
17 names for John Doe or Jane Doe. For service to be successful, the Marshal must be able to
18 identify and locate defendants.

19 **V. CONCLUSION AND ORDER**

20 The court finds that Plaintiff's Complaint fails to state any claim upon which relief may
21 be granted under § 1983. The court will dismiss the Complaint for failure to state a claim and
22 give Plaintiff leave to file an amended complaint addressing the issues described above.

23 Under Rule 15(a) of the Federal Rules of Civil Procedure, “[t]he court should freely
24 give leave to amend when justice so requires.” Accordingly, the court will provide Plaintiff an
25 opportunity to file an amended complaint curing the deficiencies identified above. Lopez v.
26 Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000). Plaintiff is granted leave to file the First
27 Amended Complaint within thirty days.

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1 The First Amended Complaint must allege facts showing what each named defendant
2 did that led to the deprivation of Plaintiff's constitutional rights. Fed. R. Civ. P. 8(a); Iqbal,
3 556 U.S. at 678; Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff must
4 demonstrate that each defendant *personally* participated in the deprivation of his rights by his
5 or her actions. Id. at 676-77 (emphasis added).

6 Plaintiff should note that although he has been given the opportunity to amend, it is not
7 for the purpose of changing the nature of this suit or adding unrelated claims. George v. Smith,
8 507 F.3d 605, 607 (7th Cir. 2007) (no "buckshot" complaints). Furthermore, Plaintiff is not
9 granted leave to add allegations of events occurring after the date he filed the Complaint,
10 November 29, 2016.

11 Plaintiff is advised that an amended complaint supercedes the original complaint, Lacey
12 v. Maricopa County, 693 F.3d. 896, 907 n.1 (9th Cir. 2012), and it must be complete in itself
13 without reference to the prior or superceded pleading, Local Rule 220. Therefore, in an
14 amended complaint, as in an original complaint, each claim and the involvement of each
15 defendant must be sufficiently alleged. The amended complaint should be clearly and boldly
16 titled "First Amended Complaint," refer to the appropriate case number, and be an original
17 signed under penalty of perjury.

18 Based on the foregoing, it is **HEREBY ORDERED** that:

- 19 1. Plaintiff's Complaint is dismissed for failure to state a claim, with leave to
20 amend;
- 21 2. The Clerk's Office shall send Plaintiff a civil rights complaint form;
- 22 3. Plaintiff is granted leave to file a First Amended Complaint curing the
23 deficiencies identified by the court in this order, within **thirty (30) days** from
24 the date of service of this order;
- 25 4. Plaintiff shall caption the amended complaint "First Amended Complaint" and
26 refer to the case number 1:16-cv-01847-GSA-PC; and

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1 5. If Plaintiff fails to file a First Amended Complaint within thirty days, this case
2 shall be dismissed for failure to state a claim.

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4 IT IS SO ORDERED.

5 Dated: September 15, 2017

/s/ Gary S. Austin
6 UNITED STATES MAGISTRATE JUDGE

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