



1 relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b);  
2 1915(e)(2)(B)(ii).

3 A complaint must contain “a short and plain statement of the claim showing that the  
4 pleader is entitled to relief . . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
5 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
6 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell  
7 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are taken  
8 as true, courts “are not required to indulge unwarranted inferences.” Doe I v. Wal-Mart Stores,  
9 Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

10 To survive screening, Plaintiff’s claims must be facially plausible, which requires  
11 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable  
12 for the misconduct alleged. Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss v. U.S.  
13 Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted  
14 unlawfully is not sufficient, and mere consistency with liability falls short of satisfying the  
15 plausibility standard. Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss, 572 F.3d at 969.

## 16 **II. Plaintiff’s Allegations**

17 Plaintiff is currently housed at California State Prison, Sacramento in Represa, California.  
18 The events in the complaint are alleged to have occurred while Plaintiff was housed at California  
19 State Prison, Corcoran (SATF). Plaintiff asserts claims for deliberate indifference to medical  
20 needs in violation of the Eighth Amendment against the following defendants: (1) Dr. Metts; (2)  
21 Correctional Officer Jiminez; and (3) Commissioner, California Department of Corrections and  
22 Rehabilitation (“CDCR”).

23 Plaintiff alleges as follows: On March 5, 2016, Plaintiff was rehoused to Facility “C” 5  
24 Block and assigned to an upper/top bunk. At the time, Plaintiff informed Correctional Officer  
25 Jiminez that he was a member of the Americans with Disabilities Act and was having a hard time  
26 getting up and down from the upper/top bunk. Plaintiff showed Correctional Officer Jiminez the  
27 severity of his disability and asked if he could be assigned a bottom bunk as custody is  
28 responsible for the bunk assignments. Correctional Officer Jiminez stated that he would not

1 attempt to acquire Plaintiff a bottom bunk, and if Plaintiff wanted one, then he would have to  
2 speak with medical personnel.

3 Three days later, on May 9, 2016, while attempting to get off of his assigned upper/top  
4 bunk, Plaintiff sustained a fall, injuring his lower back, after his disabled leg gave out from under  
5 him. Plaintiff was rushed to the treatment center, where he was treated and released.

6 Due to the fall, Plaintiff submitted a 602 institutional grievance form on May 10, 2016,  
7 requesting a bottom bunk accommodation chrono. Plaintiff waited twenty-four days to receive a  
8 response to the grievance. The grievance was rejected on June 3, 2016, without a medical  
9 evaluation, and Plaintiff was directed to submit a medical request to see a doctor.

10 A medical request was submitted, and Plaintiff was seen by R.N. Lindsey on June 7, 2016.  
11 Plaintiff was scheduled to see a doctor on June 17, 2016. On the scheduled date, Plaintiff was  
12 seen by Dr. Metts, at which time Plaintiff explained that he suffered from a severe disability to his  
13 right leg. Plaintiff also informed Dr. Metts of the recent fall during which he sustained a lower  
14 back injury. Plaintiff requested an accommodation chrono because his right leg was extremely  
15 weak, he suffered from atrophy, and he had fallen once and injured himself. Dr. Metts examined  
16 Plaintiff and stated that he would speak to custody to determine what he would do with regard to  
17 an accommodation chrono. Plaintiff then informed Dr. Metts that it was an urgent matter because  
18 he was currently housed on an upper/top bunk and was seeking to prevent another fall. Dr. Metts  
19 stated he would get back to Plaintiff, and Plaintiff was sent back to his housing unit without an  
20 accommodation chrono.

21 For the next three weeks, Plaintiff slept on the floor waiting for Dr. Metts to call him  
22 back. However, due to bugs crawling on him, Plaintiff had to return to sleeping in his assigned  
23 upper/top bunk. On August 5, 2016, two weeks after returning to his assigned bunk, Plaintiff  
24 suffered another fall after his disabled leg gave out under him. Plaintiff sustained a fractured  
25 bone in his right foot. He was finally awarded an accommodation chrono after filing another  
26 grievance.

27 Plaintiff seeks declaratory and injunctive relief, along with compensatory and punitive  
28 damages.

1           **III. Discussion**

2           **A. Supervisory Liability – Commissioner, CDCR**

3           To the extent Plaintiff seeks to impose liability on the Commissioner based on a theory of  
4 supervisory liability, he may not do so. Liability may not be imposed on supervisory personnel  
5 for the actions or omissions of their subordinates under the theory of respondeat superior. Iqbal,  
6 556 U.S. at 676–77; Simmons v. Navajo Cty., Ariz., 609 F.3d 1011, 1020–21 (9th Cir. 2010);  
7 Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009); Jones v. Williams, 297 F.3d 930,  
8 934 (9th Cir. 2002). Supervisors may be held liable only if they “participated in or directed the  
9 violations, or knew of the violations and failed to act to prevent them.” Taylor v. List, 880 F.2d  
10 1040, 1045 (9th Cir. 1989); accord Starr v. Baca, 652 F.3d 1202, 1205–06 (9th Cir. 2011);  
11 Corales v. Bennett, 567 F.3d 554, 570 (9th Cir. 2009). Thus, a supervisor’s participation can  
12 include his “own culpable action or inaction in the training, supervision, or control of his  
13 subordinates,” “his acquiescence in the constitutional deprivations of which the complaint is  
14 made,” or “conduct that showed a reckless or callous indifference to the rights of others.” Starr,  
15 652 F.3d at 1205–06. Supervisory officials “cannot be held liable unless they themselves”  
16 violated a constitutional right. Iqbal, 556 U.S. at 676.

17           Plaintiff’s general allegation that the Commissioner is “legally responsible for the overall  
18 operation of the department and each institution . . . including California State Prison/Corcoran”  
19 is insufficient to state a claim. (ECF No. 14 at p. 9.) Plaintiff’s allegation relates only to the  
20 Commissioner’s supervisory role, and he has not alleged facts showing that the Commissioner  
21 participated in or directed the alleged violations or knew of the alleged violations and failed to  
22 prevent them. The Court will therefore recommend that Defendant Commissioner be dismissed  
23 from this action.

24           **B. Eighth Amendment – Deliberate Indifference to Medical Needs**

25           “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate  
26 must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d 1091,  
27 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104, 97 S. Ct. 285, 291, 50 L.Ed.2d  
28 251 (1976)). The two part test for deliberate indifference requires the plaintiff to show (1) “a

1 'serious medical need' by demonstrating that failure to treat a prisoner's condition could result in  
2 further significant injury or the 'unnecessary and wanton infliction of pain,'" and (2) "the  
3 defendant's response to the need was deliberately indifferent." Jett, 439 F.3d at 1096; Wilhelm v.  
4 Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012). The prison official must be aware of facts from  
5 which he could make an inference that "a substantial risk of serious harm exists" and he must  
6 actually make the inference. Farmer v. Brennan, 511 U.S. 825, 837 (1994).

7 "Deliberate indifference is a high legal standard." Id. at 1019; Toguchi v. Chung, 391 F.3d  
8 1051, 1060 (9th Cir. 2004). The indifference must be substantial, and "[m]ere 'indifference,'  
9 'negligence,' or 'medical malpractice' will not support this cause of action." Broughton v. Cutter  
10 Laboratories, 622 F.2d 458, 460 (9th Cir. 1980).

11 At the pleading stage, the Court finds that Plaintiff has stated a cognizable Eighth  
12 Amendment claim against Defendants Jiminez and Metts for deliberate indifference to a serious  
13 medical need.

#### 14 **C. Declaratory Relief**

15 Plaintiff seeks a declaration that his rights were violated by defendants. "A declaratory  
16 judgment, like other forms of equitable relief, should be granted only as a matter of judicial  
17 discretion, exercised in the public interest." Eccles v. Peoples Bank of Lakewood Village, 333  
18 U.S. 426, 431 (1948). "Declaratory relief should be denied when it will neither serve a useful  
19 purpose in clarifying and settling the legal relations in issue nor terminate the proceedings and  
20 afford relief from the uncertainty and controversy faced by the parties." United States v.  
21 Washington, 759 F.2d 1353, 1357 (9th Cir. 1985).

22 In the event that this action reaches trial and the trier of fact returns a verdict in favor of  
23 Plaintiff, the verdict will be a finding that Plaintiff's constitutional rights were violated.  
24 Accordingly, a declaration that a defendant violated Plaintiff's rights is unnecessary, and the  
25 Court will recommend that Plaintiff's request for declaratory relief be denied.

#### 26 **D. Injunctive Relief**

27 Plaintiff seeks injunctive relief. However, Plaintiff is no longer housed at California State  
28 Prison, Corcoran (SATF) where he alleges the incidents at issue occurred, and where Defendants

1 Jiminez and Metts are employed. Therefore, any injunctive relief he seeks against officials at  
2 California State Prison, Corcoran (SATF) is moot. See Andrews v. Cervantes, 493 F.3d 1047,  
3 1053 n.5 (9th Cir. 2007) (prisoner’s claims for injunctive relief generally become moot upon  
4 transfer) (citing Johnson v. Moore, 948 F.2d 517, 519 (9th Cir. 1991) (per curiam) (holding  
5 claims for injunctive relief “relating to [a prison’s] policies are moot” when the prisoner has been  
6 moved and “he has demonstrated no reasonable expectation of returning to [the prison]”). The  
7 Court will therefore recommend that Plaintiff’s request for injunctive relief be denied.

#### 8 **IV. Conclusion and Recommendation**

9 The Court finds that Plaintiff has stated a cognizable Eighth Amendment claim against  
10 Defendants Jiminez and Metts for deliberate indifference to serious medical needs. However,  
11 Plaintiff has failed to state any other cognizable claims. The remaining deficiencies in his  
12 complaint cannot be cured by amendment, and thus further leave to amend is not warranted.  
13 Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000).

14 Accordingly, the Clerk of the Court is HEREBY DIRECTED to randomly assign a district  
15 judge to this action.

16 Further, it is HEREBY RECOMMENDED as follows:

- 17 1. This action proceed on Plaintiff’s Eighth Amendment claim against Defendants  
18 Jiminez and Metts for deliberate indifference to serious medical needs in violation of  
19 the Eighth Amendment as set forth in his First Amended Complaint filed on December  
20 21, 2017;
- 21 2. Plaintiff’s request for injunctive and declaratory relief be denied; and
- 22 3. All other claims and defendants be dismissed from this action.

23 These Findings and Recommendations will be submitted to the United States District  
24 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
25 **fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may  
26 file written objections with the Court. The document should be captioned “Objections to  
27 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file  
28 objections within the specified time may result in the waiver of the “right to challenge the

1 magistrate's factual findings" on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)  
2 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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IT IS SO ORDERED.

Dated: December 22, 2017

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE