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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 REGINALD TOSH JACKSON,

12 Plaintiff,

13 vs.

14 DR. DILEO, et al.,

15 Defendants.
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1:17-cv-01042-DAD-GSA-PC

**FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS CASE BE
DISMISSED, WITH PREJUDICE, FOR
FAILURE TO STATE A CLAIM
(ECF No. 19.)**

**OBJECTIONS, IF ANY, DUE WITHIN
FOURTEEN (14) DAYS**

18 **I. BACKGROUND**

19 Reginald Tosh Jackson (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma*
20 *pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. On July 19, 2017, Plaintiff
21 filed the Complaint commencing this action at the United States District Court for the Central
22 District of California. (ECF No. 1.) On August 3, 2017, the case was transferred to this court.
23 (ECF No. 5.)

24 On June 27, 2018, the court dismissed Plaintiff’s Complaint for failure to state a claim,
25 with leave to amend. (ECF No. 13.) On July 27, 2018, Plaintiff then filed a First Amended
26 Complaint. (ECF No. 14.) On December 19, 2018, Plaintiff lodged a Second Amended
27 Complaint, which the court construed as a motion for leave to amend. (ECF No. 16.) On
28 February 19, 2019, the court granted Plaintiff’s motion for leave to amend and filed the Second

1 Amended Complaint, which is now before the court for screening. (ECF No. 19.) 28 U.S.C. §
2 1915.

3 **II. SCREENING REQUIREMENT**

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

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

24 **III. SUMMARY OF SECOND AMENDED COMPLAINT**

25 Plaintiff is presently incarcerated at the California Institution for Men in Chino,
26 California. The events at issue in the Second Amended Complaint allegedly occurred at the
27 California City Correctional Facility in California City, California, when Plaintiff was
28 incarcerated there in the custody of the California Department of Corrections and Rehabilitation

1 (CDCR). Plaintiff names as defendants Dr. Dileo, Dr. Marvin Ross, Sergeant D. Palacios, and
2 the CDCR (collectively, “Defendants”).

3 Plaintiff’s allegations follow:

4 On January 11, 2017, Plaintiff fell down the stairs from the second tier. Plaintiff had
5 stated several times to building and medical staff that his mobility and medical condition
6 prohibits him from climbing and lifting. Plaintiff was hospitalized due to the injuries he sustained
7 in the accident. Plaintiff has nerve damage in his spine that was overlooked by defendant Dr.
8 Marvin Ross on more than one occasion. It causes Plaintiff severe lower back pain. Plaintiff
9 was denied several epidural shots that would have aided him in his rehabilitation and with his
10 overall medical conditions.

11 Plaintiff requests monetary damages, declaratory and injunctive relief, and costs of suit.

12 **IV. PLAINTIFF’S CLAIMS**

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

14 Every person who, under color of any statute, ordinance, regulation, custom, or
15 usage, of any State or Territory or the District of Columbia, subjects, or causes to
16 be subjected, any citizen of the United States or other person within the
17 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

18 42 U.S.C. § 1983.

19 “[Section] 1983 ‘is not itself a source of substantive rights,’ but merely provides ‘a
20 method for vindicating federal rights elsewhere conferred.’” Graham v. Connor, 490 U.S. 386,
21 393-94 (1989) (quoting Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)); see also Chapman v.
22 Houston Welfare Rights Org., 441 U.S. 600, 618 (1979); Hall v. City of Los Angeles, 697 F.3d
23 1059, 1068 (9th Cir. 2012); Crowley v. Nevada, 678 F.3d 730, 734 (9th Cir. 2012); Anderson v.
24 Warner, 451 F.3d 1063, 1067 (9th Cir. 2006). “To the extent that the violation of a state law
25 amounts to the deprivation of a state-created interest that reaches beyond that guaranteed by the
26 federal Constitution, Section 1983 offers no redress.” Id.

27 To state a claim under § 1983, a plaintiff must allege that (1) the defendant acted under
28 color of state law and (2) the defendant deprived him or her of rights secured by the Constitution

1 or federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006); see also
2 Marsh v. Cnty. of San Diego, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing “under color of
3 state law”). A person deprives another of a constitutional right, “within the meaning of § 1983,
4 ‘if he does an affirmative act, participates in another’s affirmative act, or omits to perform an act
5 which he is legally required to do that causes the deprivation of which complaint is made.’”
6 Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1183 (9th Cir. 2007) (quoting
7 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “The requisite causal connection may be
8 established when an official sets in motion a ‘series of acts by others which the actor knows or
9 reasonably should know would cause others to inflict’ constitutional harms.” Preschooler II, 479
10 F.3d at 1183 (quoting Johnson, 588 F.2d at 743). This standard of causation “closely resembles
11 the standard ‘foreseeability’ formulation of proximate cause.” Arnold v. Int’l Bus. Mach. Corp.,
12 637 F.2d 1350, 1355 (9th Cir. 1981); see also Harper v. City of Los Angeles, 533 F.3d 1010,
13 1026 (9th Cir. 2008).

14 **A. Defendant CDCR -- Eleventh Amendment Immunity**

15 Plaintiff names CDCR as a defendant. Plaintiff is advised that he may not sustain an
16 action against a state agency. The Eleventh Amendment prohibits federal courts from hearing
17 suits brought against an unconsenting state. Brooks v. Sulphur Springs Valley Elec. Co., 951
18 F.2d 1050, 1053 (9th Cir. 1991) (internal citations omitted); see also Tennessee v. Lane, 541 U.S.
19 509, 517 (2004); Idaho v. Coeur d’Alene Tribe of Idaho, 521 U.S. 261, 267-68 (1997); Clark v.
20 California, 123 F.3d 1267, 1269 (9th Cir. 1997). The Eleventh Amendment bars suits against
21 state agencies as well as those where the state itself is named as a defendant. See P.R. Aqueduct
22 & Sewer Auth. v. Metcalf & Eddy, Inc., 506 U.S. 139, 144 (1993); Beentjes v. Placer Cnty. Air
23 Pollution Control Dist., 397 F.3d 775, 777 (9th Cir. 2005); Savage v. Glendale Union High Sch.,
24 343 F.3d 1036, 1040 (9th Cir. 2003); see also Lucas v. Dep’t of Corr., 66 F.3d 245, 248 (9th Cir.
25 1995) (per curiam) (stating that Board of Corrections is agency entitled to immunity); Taylor v.
26 List, 880 F.2d 1040, 1045 (9th Cir. 1989) (concluding that Nevada Department of Prisons was a
27 state agency entitled to Eleventh Amendment immunity). Because CDCR is a state agency, it is
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1 entitled to Eleventh Amendment immunity from suit. Therefore, Plaintiff fails to state a claim
2 against defendant CDCR.

3 **B. Linkage Requirement -- defendants Dilio and Palacios**

4 Section 1983 requires that there be an actual connection or link between the actions of
5 the defendants and the constitutional deprivations alleged to have been suffered by Plaintiff. See
6 Monell v. Dept. of Social Servs., 436 U.S. 658 (1978). The Ninth Circuit has held that “[a]
7 person ‘subjects’ another to the deprivation of a constitutional right, within the meaning of
8 section 1983, if he does an affirmative act, participates in another’s affirmative acts or omits to
9 perform an act which he is legally required to do that causes the deprivation of which complaint
10 is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir.1978).

11 In order to state a claim for relief under § 1983, Plaintiff must satisfy the “linkage
12 requirement”—meaning that he must link each named Defendant with some affirmative act or
13 omission that demonstrates a violation of Plaintiff’s federal rights. Plaintiff must specify which
14 defendant(s) he feels are responsible for each violation of his constitutional rights and the factual
15 basis, as his complaint must put each defendant on notice of Plaintiff’s claims against him or her.
16 See Austin v. Terhune, 367 F.3d 1167, 1171 (9th Cir. 2004).

17 Plaintiff has not satisfied the linkage requirement as he fails to make any allegations
18 against defendants Dr. Dilio or Sgt. Palacios. To state a claim against an individual defendant
19 Plaintiff must demonstrate in his allegations that each of them, identified by name, personally
20 acted or failed to act, violating Plaintiff’s rights. Plaintiff fails to do so for defendants Dr. Dilio
21 and Sgt. Palacios. The court therefore finds that Plaintiff fails to state any claims against them.

22 **C. Eighth Amendment Medical Claim**

23 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate
24 must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d 1091,
25 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104 (1976)). The two-part test for
26 deliberate indifference requires the plaintiff to show (1) “‘a serious medical need’ by
27 demonstrating that ‘failure to treat a prisoner’s condition could result in further significant injury
28 or the unnecessary and wanton infliction of pain,’” and (2) “‘the defendant’s response to the need

1 was deliberately indifferent.” Jett, 439 F.3d at 1096 (quoting McGuckin v. Smith, 974 F.2d 1050,
2 1059 (9th Cir. 1992), overruled on other grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133,
3 1136 (9th Cir. 1997) (en banc) (internal quotations omitted)). Deliberate indifference is shown
4 by “a purposeful act or failure to respond to a prisoner’s pain or possible medical need, and harm
5 caused by the indifference.” Id. (citing McGuckin, 974 F.2d at 1060). Deliberate indifference
6 may be manifested “when prison officials deny, delay or intentionally interfere with medical
7 treatment, or it may be shown by the way in which prison physicians provide medical care.” Id.
8 Where a prisoner is alleging a delay in receiving medical treatment, the delay must have led to
9 further harm in order for the prisoner to make a claim of deliberate indifference to serious medical
10 needs. McGuckin at 1060 (citing Shapely v. Nevada Bd. of State Prison Comm’rs, 766 F.2d 404,
11 407 (9th Cir. 1985)).

12 “Deliberate indifference is a high legal standard.” Toguchi v. Chung, 391 F.3d 1051,
13 1060 (9th Cir. 2004). “Under this standard, the prison official must not only ‘be aware of the
14 facts from which the inference could be drawn that a substantial risk of serious harm exists,’ but
15 that person ‘must also draw the inference.’” Id. at 1057 (quoting Farmer v. Brennan, 511 U.S.
16 825, 837 (1994)). “‘If a prison official should have been aware of the risk, but was not, then the
17 official has not violated the Eighth Amendment, no matter how severe the risk.’” Id. (quoting
18 Gibson v. County of Washoe, Nevada, 290 F.3d 1175, 1188 (9th Cir. 2002)). “A showing of
19 medical malpractice or negligence is insufficient to establish a constitutional deprivation under
20 the Eighth Amendment.” Id. at 1060. “[E]ven gross negligence is insufficient to establish a
21 constitutional violation.” Id. (citing Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990)).

22 “A difference of opinion between a prisoner-patient and prison medical authorities
23 regarding treatment does not give rise to a § 1983 claim.” Franklin v. Oregon, 662 F.2d 1337,
24 1344 (9th Cir. 1981) (internal citation omitted). To prevail, a plaintiff “must show that the course
25 of treatment the doctors chose was medically unacceptable under the circumstances . . . and . . .
26 that they chose this course in conscious disregard of an excessive risk to plaintiff’s health.”
27 Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1996) (internal citations omitted).

1 Plaintiff alleges that he fell down two tiers of stairs and injured himself, and that he now
2 suffers from severe lower back pain. These allegations are sufficient to demonstrate that Plaintiff
3 has serious medical needs. However, Plaintiff fails to show that any of the defendants knew that
4 Plaintiff was at substantial risk of serious harm and yet deliberately ignored Plaintiff's medical
5 needs or acted unreasonably, causing him injury. Plaintiff states that defendant Dr. Marvin Ross
6 overlooked the nerve damage in his spine, causing him severe lower back pain. These allegations
7 do not contain facts showing that defendant Ross knew that Plaintiff was at an excessive risk of
8 harm and deliberately ignored the risk.

9 Therefore, the court finds that Plaintiff fails to state a medical claim against any of the
10 Defendants.

11 **D. Failure to Protect -- Eighth Amendment Claim**

12 The Eighth Amendment protects prisoners from inhumane methods of punishment and
13 from inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir.
14 2006). Although prison conditions may be restrictive and harsh, prison officials must provide
15 prisoners with food, clothing, shelter, sanitation, medical care, and personal safety. Farmer, 511
16 U.S. at 832-33. Prison officials have a duty to take reasonable steps to protect inmates from
17 physical abuse. Id. at 833; Hearns v. Terhune, 413 F.3d 1036, 1040 (9th Cir. 2005).

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

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

8 To the extent that Plaintiff seeks to bring a claim against any of the Defendants for failing
9 to protect him from harm, Plaintiff fails to do so. Plaintiff fails to name any defendant who knew
10 he was at risk of serious injury and yet deliberately ignored the risk, causing Plaintiff injuries.
11 Therefore, the court finds that Plaintiff fails to state a claim against any of the Defendants for
12 failure to protect him under the Eighth Amendment.

13 **E. Intentional Infliction of Emotional Distress -- State Law Claim**

14 Plaintiff brings a claim for intentional infliction of emotional distress, which is a state law
15 claim. Violation of state law is not sufficient to state a claim for relief under § 1983. To state a
16 claim under § 1983, there must be a deprivation of federal constitutional or statutory rights. See
17 Paul v. Davis, 424 U.S. 693 (1976). Although the court may exercise supplemental jurisdiction
18 over state law claims, Plaintiff must first have a cognizable claim for relief under federal law.
19 See 28 U.S.C. § 1367. In this instance, the court fails to find any cognizable federal claims in
20 the Second Amended Complaint. Therefore, Plaintiff’s claim for intentional infliction of
21 emotional distress fails.

22 **V. CONCLUSION AND RECOMMENDATIONS.**

23 For the reasons set forth above, the court finds that Plaintiff fails to state any cognizable
24 claim against any of the Defendants in the Second Amended Complaint. Therefore, the court
25 shall recommend that this case be dismissed for failure to state a claim.

26 Under Rule 15(a) of the Federal Rules of Civil Procedure, “[t]he court should freely give
27 leave to amend when justice so requires.” Here, the court previously granted Plaintiff leave to
28 amend the complaint, with ample guidance by the court, and Plaintiff has now filed three

1 complaints without stating any claims upon which relief may be granted under § 1983. The court
2 is persuaded that Plaintiff is unable to allege any facts, based upon the circumstances he
3 challenges, that would state a cognizable claim. “A district court may deny leave to amend when
4 amendment would be futile.” Hartmann v. CDCR, 707 F.3d 1114, 1130 (9th Cir. 2013). The
5 court finds that the deficiencies outlined above are not capable of being cured by amendment,
6 and therefore further leave to amend should not be granted. 28 U.S.C. § 1915(e)(2)(B)(ii); Lopez
7 v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000).

8 Therefore, based on the foregoing, **IT IS HEREBY RECOMMENDED** that:

- 9 1. This case be DISMISSED, with prejudice, for failure to state a claim upon which
10 relief may be granted under § 1983; and
- 11 2. The Clerk be directed to CLOSE this case.

12 These findings and recommendations will be submitted to the United States District Judge
13 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen days**
14 of the date of service of these findings and recommendations, Plaintiff may file written objections
15 with the court. The document should be captioned “Objections to Magistrate Judge’s Findings
16 and Recommendations.” Plaintiff is advised that failure to file objections within the specified
17 time may result in waiver of the right to appeal the district court’s order. Wilkerson v. Wheeler,
18 772 F.3d 834, 839 (9th Cir. Nov. 18, 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th
19 Cir. 1991)).

20
21 IT IS SO ORDERED.

22 Dated: August 20, 2019

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