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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

RAY YGLESIAS,  
Plaintiff,  
v.  
ISMAEL PATEL,  
Defendant.

1:17-cv-01282-LJO-GSA-PC

**FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT THIS CASE BE  
DISMISSED, WITH PREJUDICE, FOR  
FAILURE TO STATE A CLAIM  
(ECF No. 10.)**

**OBJECTIONS, IF ANY, DUE IN FOURTEEN  
DAYS**

**I. BACKGROUND**

Ray Yglesias (“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 September 27, 2017, Plaintiff filed the Complaint commencing this action. (ECF No. 1.) On July 17, 2018, the court screened the Complaint and issued an order dismissing the Complaint for failure to state a claim, with leave to amend. (ECF No. 9.) On August 18, 2018, Plaintiff filed the First Amended Complaint, which is now before the court for screening. 28 U.S.C. § 1915A.

**II. SCREENING REQUIREMENT**

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek

1 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).  
2 “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall  
3 dismiss the case at any time if the court determines that the action or appeal fails to state a claim  
4 upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

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

17 **III. SUMMARY OF FIRST AMENDED COMPLAINT**

18 Plaintiff is a state prisoner incarcerated at California State Prison-Los Angeles County in  
19 Lancaster, California. The events at issue in the First Amended Complaint allegedly occurred at  
20 Kern Valley State Prison in Delano, California, when Plaintiff was incarcerated there in the  
21 custody of the California Department of Corrections and Rehabilitation. Plaintiff names one  
22 defendant, Ismael Patel (M.D.) (“Defendant”).

23 Plaintiff’s allegations in the First Amended Complaint follow, in their entirety.

24 I asked Dr. Ismael Patel to do a “Nerve Conduction” Test on me. Dr. Patel  
25 said there is no such thing. I did not get a Nerve Conduction Test until I got to  
Lancaster State Prison in 2018.

26 I contend that if Dr. Patel ran tests, the tests that I notified him of instead  
27 of tests that he (being a capable doctor) should have known was going to come  
back as negative, I would not be impaired at this time. At the time that I notified  
28 him I walked, talked, and wrote on my own. At this time I need a walker to walk.  
I went from walking on my own to a cane, to getting denied a wheelchair (which

1 I am sure I “will” need in the future). I am sure this violates my Eighth  
Amendment rights.

2 Plaintiff requests \$100,000 in monetary damages.

3 **IV. PLAINTIFF’S MEDICAL CLAIM UNDER THE EIGHTH AMENDMENT**

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

5 Every person who, under color of any statute, ordinance, regulation, custom, or  
6 usage, of any State or Territory or the District of Columbia, subjects, or causes to  
7 be subjected, any citizen of the United States or other person within the  
8 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 . . . .

9 42 U.S.C. § 1983. “[Section] 1983 ‘is not itself a source of substantive rights,’ but merely  
10 provides ‘a method for vindicating federal rights elsewhere conferred.’” Graham v. Connor, 490  
11 U.S. 386, 393-94 (1989) (quoting Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)); see also  
12 Chapman v. Houston Welfare Rights Org., 441 U.S. 600, 618 (1979); Hall v. City of Los Angeles,  
13 697 F.3d 1059, 1068 (9th Cir. 2012); Crowley v. Nevada, 678 F.3d 730, 734 (9th Cir. 2012);  
14 Anderson v. Warner, 451 F.3d 1063, 1067 (9th Cir. 2006).

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

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1 637 F.2d 1350, 1355 (9th Cir. 1981); see also Harper v. City of Los Angeles, 533 F.3d 1010,  
2 1026 (9th Cir. 2008).

3 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate  
4 must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d 1091,  
5 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104 (1976)). The two-part test for  
6 deliberate indifference requires the plaintiff to show (1) “‘a serious medical need’ by  
7 demonstrating that ‘failure to treat a prisoner’s condition could result in further significant injury  
8 or the unnecessary and wanton infliction of pain,’” and (2) “‘the defendant’s response to the need  
9 was deliberately indifferent.” Jett, 439 F.3d at 1096 (quoting McGuckin v. Smith, 974 F.2d 1050,  
10 1059 (9th Cir. 1992), overruled on other grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133,  
11 1136 (9th Cir. 1997) (*en banc*) (internal quotations omitted)). Deliberate indifference is shown  
12 by “a purposeful act or failure to respond to a prisoner’s pain or possible medical need, and harm  
13 caused by the indifference.” Id. (citing McGuckin, 974 F.2d at 1060). Deliberate indifference  
14 may be manifested “when prison officials deny, delay or intentionally interfere with medical  
15 treatment, or it may be shown by the way in which prison physicians provide medical care.” Id.  
16 Where a prisoner is alleging a delay in receiving medical treatment, the delay must have led to  
17 further harm in order for the prisoner to make a claim of deliberate indifference to serious medical  
18 needs. McGuckin at 1060 (citing Shapely v. Nevada Bd. of State Prison Comm’rs, 766 F.2d 404,  
19 407 (9th Cir. 1985)).

20 “Deliberate indifference is a high legal standard.” Toguchi v. Chung, 391 F.3d 1051,  
21 1060 (9th Cir. 2004). “Under this standard, the prison official must not only ‘be aware of the  
22 facts from which the inference could be drawn that a substantial risk of serious harm exists,’ but  
23 that person ‘must also draw the inference.’” Id. at 1057 (quoting Farmer v. Brennan, 511 U.S.  
24 825, 837 (1994)). “‘If a prison official should have been aware of the risk, but was not, then the  
25 official has not violated the Eighth Amendment, no matter how severe the risk.’” Id. (quoting  
26 Gibson v. County of Washoe, Nevada, 290 F.3d 1175, 1188 (9th Cir. 2002)). “A showing of  
27 medical malpractice or negligence is insufficient to establish a constitutional deprivation under  
28 the Eighth Amendment.” Id. at 1060. “[E]ven gross negligence is insufficient to establish a

1 constitutional violation.” Id. (citing Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990)).  
2 “A difference of opinion between a prisoner-patient and prison medical authorities regarding  
3 treatment does not give rise to a § 1983 claim.” Franklin v. Oregon, 662 F.2d 1337, 1344 (9th  
4 Cir. 1981) (internal citation omitted).

5 Plaintiff alleges that he has a medical condition causing him to need a walker to ambulate.  
6 This is sufficient to demonstrate a serious medical need. However, Plaintiff alleges that at the  
7 time he notified defendant Dr. Patel that he needed tests, Plaintiff “walked, talked, and wrote on  
8 his own,” and it was not until later that he became impaired and needed a walker. Compl. at 4.  
9 Plaintiff’s allegations do not show that he demonstrated a serious medical need when he saw Dr.  
10 Patel. Moreover, Plaintiff’s allegations against defendant Dr. Patel do not meet the standard for  
11 deliberate indifference. Plaintiff has not alleged facts showing that Dr. Patel knew that Plaintiff  
12 had a serious medical need and yet failed to respond appropriately, disregarding a substantial risk  
13 of serious harm to Plaintiff and causing him harm. Further, Plaintiff’s allegations show a  
14 difference of opinion between a prisoner-patient and a prison medical authority regarding  
15 treatment, which does not give rise to a § 1983 claim. Franklin, 662 F.2d at 1344. Therefore,  
16 the court finds that Plaintiff fails to state a medical claim against defendant Dr. Patel.

17 **V. CONCLUSION AND RECOMMENDATIONS**

18 The court finds that Plaintiff’s First Amended Complaint fails to state any claim upon  
19 which relief may be granted under § 1983. The court previously granted Plaintiff leave to amend  
20 the complaint, with ample guidance by the court. Plaintiff has now filed two complaints without  
21 stating any claims upon which relief may be granted under § 1983. The court finds that the  
22 deficiencies outlined above are not capable of being cured by amendment, and therefore further  
23 leave to amend should not be granted. 28 U.S.C. § 1915(e)(2)(B)(ii); Lopez v. Smith, 203 F.3d  
24 1122, 1127 (9th Cir. 2000).

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

- 26 1. This case be DISMISSED, with prejudice, for failure to state a claim upon which  
27 relief may be granted under § 1983;

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2. This dismissal be subject to the “three strikes” provision set forth in 28 U.S.C. § 1915(g); and

3. The Clerk be ordered to CLOSE this case.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). **Within fourteen (14) days** from the date of service of these findings and recommendations, Plaintiff may file written objections with the court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: May 22, 2019

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE