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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

NATHANIEL MARCUS GANN,

 Plaintiff,

 v.

DR. W. KOKOR, et al.,

 Defendants.

Case No. 1:18-cv-00084-AWI-BAM (PC)

FINDINGS AND RECOMMENDATIONS TO
DISMISS CERTAIN CLAIMS AND
DEFENDANTS

FOURTEEN-DAY DEADLINE

Plaintiff Nathaniel Marcus Gann (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action under 42 U.S.C. § 1983. On July 11, 2018, the Court screened Plaintiff’s complaint and granted him leave to amend. (ECF No. 21.) Plaintiff’s first amended complaint, filed on August 30, 2018, is currently before the Court for screening. (ECF No. 24.)

I. Screening Requirement and Standard

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b).

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

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

14 **I. Plaintiff’s Allegations**

15 Plaintiff is currently housed at Valley State Prison in Chowchilla, California. The events
16 in the complaint are alleged to have occurred at the California Substance Abuse Treatment
17 Facility (“CSATF”) in Corcoran, California. Plaintiff names the following defendants: (1) Dr.
18 Winfred Kokor; (2) Dr. J. Enenmoh, Chief Physician and Surgeon; (3) Dr. C. Cryer, Chief
19 Executive Officer; (4) CSATF/CDCR; (5) Dr. Nastran Hashemi; (6) CME/CMO Godwin
20 Ugwueze; (7) Dr. Ngozi Igbiosa; (8) D. Roberts, RN; (9) Stronach, RN; (10) Villasenor, LVN;
21 (11) L. Arietta, nurse; (12) M. Pacheco, nurse; and (13) Does 1, 2 and 3, CSATF nurses. Plaintiff
22 asserts claims for cruel and unusual punishment regarding his medical needs, and state tort claims
23 for medical malpractice and res ipsa loquitur.

24 Plaintiff alleges that he has pancreatic atrophy. In December 2014, Plaintiff was housed
25 at CSATF in Facility E and was assigned Dr. Kokor as his primary care physician.

26 On January 3, 2015, without having met Plaintiff, Dr. Kokor prescribed SUMAtriptan and
27 levalbuterol tartrate. Plaintiff is allergic to SUMAtriptan, which causes “sensory ephasia.”

28 On January 13, 2015, Plaintiff met with Dr. Kokor and raised concerns about his

1 neurological symptoms, asthma, hearing, and significant, worsening abdominal pain. Dr. Kokor
2 prescribed Topamax and SUMAtriptan. Plaintiff informed Dr. Kokor that he was mildly allergic
3 to SUMAtriptan and moderately to severely allergic to Topamax, causing “sensory ephasia” and
4 urine retention respectively, which was why Plaintiff was no longer taking them. Dr. Kokor
5 stated that it was not a real side effect, and said, “So what you can’t pee.” (ECF No. 24 at 14.)
6 When Plaintiff asked about his abdominal pain, Dr. Kokor opined that it was only heartburn and
7 prescribed Ranitidine. Plaintiff told Dr. Kokor that the pain was greatest when he tried to eat and
8 it caused vomiting. Dr. Kokor said, “If it hurts to eat, then don’t eat.” (Id.) Dr. Kokor then
9 prescribed ibuprofen and instructed Plaintiff to leave. Dr. Kokor reportedly did not perform any
10 evaluation.

11 On March 10, 2015, Dr. Kokor re-prescribed SUMAtriptan. Plaintiff was called to
12 medical and told to take the medication.

13 On March 16, 2015, Dr. Kokor re-prescribed SUMAtriptan. Plaintiff was called to
14 medical to take the medication.

15 On March 25, 2015, Plaintiff submitted a Health Care Services Request form for pain,
16 drowsiness, and stomach problems. The complaint was received by RN Stronach. Plaintiff met
17 with RN Stronach the following day and expressed his concerns. Plaintiff believed the cause was
18 his gastrointestinal problems, which had intensified, causing him to become ill when eating,
19 nausea and vomiting, and insatiable hunger. Plaintiff also had light-headedness, dizziness,
20 fatigue and lack of energy. RN Stronach reportedly made light of Plaintiff’s complaints and
21 stated, “So let me get this straight, you get tired during exercise?” (Id. at 15.) Plaintiff explained
22 that was not the case and emphasized his inability to eat without nausea or vomiting. RN
23 Stronach mocked Plaintiff and left the room allegedly to speak with Dr. Kokor. RN Stronach
24 instructed Plaintiff to take ibuprofen. Plaintiff believed that Dr. Kokor ordered routine blood
25 work.

26 On March 28, 2015, Dr. Kokor reviewed and re-prescribed medication.

27 On April 9, 2015, Plaintiff provided a blood sample for evaluation. The results were
28 reported on April 10, 2015, and Dr. Kokor received them on April 12, 2015. The sample revealed

1 that Plaintiff's blood was fairly healthy.

2 On April 13, 2015, Dr. Kokor authored a Notification of Diagnostic Test Results, noting
3 that the results were essentially within normal limits.

4 On April 21, 2015, Plaintiff met with Dr. Kokor, who did not conduct an examination.
5 Plaintiff expressed his concern regarding the numerous pills he was being told to take. Dr. Kokor
6 said, "Then don't take them and refuse treatment." (ECF No. 24 at 16.) Plaintiff asked Dr.
7 Kokor for help and reported that he could not eat and it hurt across his back and stomach.
8 Plaintiff also expressed difficulty urinating because of the Topamax. Dr. Kokor said, "You don't
9 want to take it because it is UHT heat medication." (Id.) Plaintiff then explained that ibuprofen
10 was only making his back and stomach pain worse. Dr. Kokor said, "I don't care. All inmates
11 are liars; you are a liar." (Id.) Dr. Kokor then stated that Plaintiff had a little heartburn. He also
12 stated that he could see Plaintiff's acne and runny nose, which he could treat. Plaintiff was on the
13 verge of tears because he was convinced he was dying. When Plaintiff asked for instruction and
14 assistance with his inability to eat or drink and his lack of energy, Dr. Kokor instructed him to eat
15 a piece of candy. Dr. Kokor denied Plaintiff's request to see a specialist, and prescribed
16 ibuprofen and SUMAtriptan.

17 On June 29, 2015, Plaintiff again met with Dr. Kokor and said that he had been coughing
18 up a thick, black, chunky substance (blood). Dr. Kokor said it was natural to cough up blood, but
19 Plaintiff told Dr. Kokor that the treatment was not working. Dr. Kokor told Plaintiff he could
20 refuse treatment and leave. Plaintiff tried to explain that he was in distress, but Dr. Kokor called
21 him a liar and said Plaintiff was only trying to get drugs. Dr. Kokor did not want to talk any more
22 with Plaintiff and directed correctional staff to escort Plaintiff out of medical. Dr. Kokor again
23 prescribed ibuprofen, Ranitidine, and SUMAtriptan.

24 On July 21 and 22, 2015, Dr. Kokor re-prescribed medication.

25 On September 2, 2015, Plaintiff again met with Dr. Kokor. Plaintiff's temperature and
26 pulse were above normal, but Dr. Kokor refused to address these issues. Plaintiff told Dr. Kokor
27 that he was suffering from significant abdominal pain. Dr. Kokor instructed Plaintiff to drink
28 more water. Dr. Kokor reportedly ignored Plaintiff's symptoms and said Plaintiff was fine. He

1 planned to refer Plaintiff for a contact lens fitting, which was later cancelled. Plaintiff asked Dr.
2 Kokor to evaluate him, explaining that the medications were making him worse not better.
3 Plaintiff also said that it was not heartburn or back pain, but stomach to kidney pain. Dr. Kokor
4 reportedly stated that he was the doctor and where he was from, Plaintiff would die. Dr. Kokor
5 then had custodial staff escort Plaintiff out of medical. Dr. Kokor re-prescribed the same
6 medication.

7 On October 28 and 29, 2015, Dr. Kokor reviewed and re-prescribed Plaintiff medication.

8 On December 20, 2015, Plaintiff's gastro-intestinal/abdominal pain intensified. He went
9 to medical, but was told to return on Monday by Doe 1.

10 On December 21, 2015, Plaintiff went to medical and was instructed to return later. When
11 Plaintiff later returned, he was told that he would be called out when medical had time. Plaintiff's
12 condition continued to worsen, but he was never called out by Doe 1.

13 On December 22, 2015, Plaintiff went to medical and was instructed to return to his
14 assigned housing. Plaintiff insisted that he be seen. Doe 2 told Plaintiff that the doctor would not
15 see him.

16 On December 23, 2015, Plaintiff was gravely ill and had been unable to consume water
17 for over 24 hours. Plaintiff again went to medical and was turned away by Doe 3. Plaintiff was
18 told to put in a slip and he would be seen within 5 days.

19 Plaintiff submitted a Health Care Services Request Form and indicated it was an
20 emergency, citing vomiting, vertigo, loss of extremity sensation and loss of consciousness. The
21 form was turned in to Doe 3, who scoffed and placed the request in the box. Plaintiff informed
22 Doe 3 that he needed to see a doctor and it was an emergency. Doe 3 told Plaintiff to wait until
23 he was called out.

24 That same day, Plaintiff went to chow at his assigned time. He was accompanied by other
25 inmates who assisted him to walk. While at the dining hall, Plaintiff lost the capacity to walk or
26 stand. He was picked up by other inmates and carried to correctional staff. Correctional staff
27 instructed the inmates to carry Plaintiff to the gym where medical was currently operating.

28 After being carried to the gym, Plaintiff was placed onto a small armless chair. Doe 3

1 stated, “I told you, go away—we’ll call you in a few days.” (Id. at 20.) Plaintiff responded, “I
2 can’t walk. I can’t stand. I can’t feel my body.” Doe 3 turned away from Plaintiff and left.
3 Sometime later, Plaintiff began to vomit blood and bile. He was given a trashcan. After
4 vomiting, Plaintiff fell to the floor, knocking his head and beginning to choke. Doe 3 stated, “I
5 don’t give a f[***], he can lay there and die.” (Id.)

6 Correctional staff entered the gym, saw Plaintiff on the floor and instructed him to rise.
7 Plaintiff was unable to comply. Correctional staff then asked if they were going to check Plaintiff
8 or if staff had to hit the alarm. Doe 3 then came over and placed a blood pressure machine on
9 Plaintiff. The first three attempts resulted in an error. Doe 3 then had Plaintiff held upright to get
10 a reading. Plaintiff was placed back onto a chair that had been moved so that Plaintiff could lean
11 against the wall. At that time, Plaintiff began to heave, fell to the floor and lost consciousness.
12 He later awoke on a gurney.

13 Plaintiff’s vitals revealed that his temperature was approximately 3 degrees above normal,
14 his heartrate was 50% higher than normal and he had pain and measurable symptoms in his
15 abdomen. Plaintiff was evaluated by Dr. Scharffenberg, who sent Plaintiff via ambulance to the
16 emergency room at Mercy Hospital. Prior to transport, he was given intravenous fluids for
17 dehydration.

18 Upon arrival at the hospital, an ultrasound revealed abnormalities in Plaintiff’s abdomen.
19 A CT scan with contrast revealed pancreatic atrophy, particularly of the pancreatic head and
20 ulcinate process. Plaintiff also had abnormal bilirubin.

21 On December 24, 2015, Plaintiff met with a specialist, Dr. Rajeev Krishan. Dr. Krishan
22 ordered an esophagogastroduodenoscopy, which revealed systemic disease, including a hiatal
23 hernia, gastritis, and duodenitis.

24 On December 25, 2015, Plaintiff advanced from IV feeding to clear fluids. Dr. Mushtaq
25 Ahmed, who was in charge of Plaintiff’s care, spoke to Plaintiff about his illness, tests and
26 results. A CAT scan revealed pancreatic atrophy resulting from a chronic illness. Plaintiff’s
27 stomach and upper intestines also were swollen and bleeding, which had prevented Plaintiff from
28 being able to eat or drink, and there was a herniation of the connective tissue. Plaintiff was

1 instructed to be careful with his diet and should avoid fatty and spicy foods along with NSAIDs.
2 It was explained to Plaintiff that the pancreatic atrophy was believed to be caused by repeated
3 episodes of pancreatitis.

4 On December 26, 2015, Plaintiff was discharged from the hospital with final diagnoses of:
5 duodenitis, gastritis, hiatal hernia, asthma, dehydration and chronic pancreatic atrophy. Plaintiff
6 had no current signs of active pancreatitis and his gallbladder was clear. The pancreatic atrophy
7 was documented upon Plaintiff's return to CSATF by Dr. Scharffenberg. Plaintiff was instructed
8 to eat a high protein diet and continue with a vitamin/food supplement.

9 On December 30, 2015, Plaintiff saw Defendant Kokor for medical care. Dr. Kokor did
10 not conduct an examination, but Plaintiff shared what led him to the hospital. Dr. Kokor
11 interrupted and told Plaintiff, "You are fine; just heartburn. Take antacid and Ibuprofen for pain.
12 I not give it so you buy it at canteen." (Doc. No. 24 at 24.) Plaintiff explained that he was
13 specifically told not to take NSAIDs, but remained in significant pain when eating or moving
14 around. Dr. Kokor stated, "You don't need to eat every day. Let it heal." (Id.) Plaintiff claims
15 that this shows Dr. Kokor knew there was an injury, damage and pain.

16 Plaintiff also showed Dr. Kokor the paperwork and instructions from the hospital. Dr.
17 Kokor pushed them away, stating "I don't care what is wrong with you; if it doesn't say it in
18 computer it no exist." (Id.) Plaintiff advocated for another doctor or a referral to a specialist, but
19 Dr. Kokor retorted, "We are not required to do what they say. I am physician, you are inmate.
20 You don't ask for specialist." (Id.) Dr. Kokor said that he would see Plaintiff in six months and
21 had custodial staff escort him out of medical.

22 On January 18-19, 2016, Plaintiff was evaluated, and it was documented that he was still
23 suffering from untreated pain across his abdomen and lower back.

24 On February 9, 2016, Plaintiff was interviewed by Nurse Carrasquillo for his appeal. It
25 was documented that Plaintiff's instructions for discharge included a low-fat diet, vitamins, high
26 protein, high carbohydrates, and avoid NSAIDs. Dr. Kokor's notes were used to deny the appeal,
27 but Nurse Carrasquillo took the information directly to the CME (CMO) Defendant Dr. C. Cryer.

28 On February 19, 2016, the information was taken to Defendant Dr. J. Enenmoh. It was

1 documented that he was to have a low-fat diet, vitamins and calcium supplements, high protein
2 and high carbohydrates. Dr. Kokor's notes again were used to deny the appeal and treatment. It
3 was determined that Plaintiff would be followed by his new primary care physician at an
4 unspecified time.

5 On April 7, 2016, Plaintiff met with his new primary care physician, Defendant Dr. Ngozi
6 Igbinosa. Dr. Igbinosa did not conduct an examination of Plaintiff, but Plaintiff shared that he
7 was suffering from continued pain in his abdomen, was having difficulty eating, was suffering
8 from a severely damaged back and leg from a seizure induced fall, and he was unable to exercise
9 or exert himself. The possibility of a heart problem was discussed but dismissed after Plaintiff
10 reported that a previous EKG had revealed only a minor artifact. Dr. Igbinosa told Plaintiff that
11 he was fine and not suffering any ill effects. Plaintiff objected and expressed concern with his
12 continued pain in his leg, back, abdomen and head.

13 On April 19, 2016, Plaintiff submitted a Health Care Services Request form that was
14 received by Defendant Roberts. Defendant Roberts did not refer Plaintiff to his primary care
15 physician after Plaintiff reported that he could not take Ibuprofen because of the problems with
16 his abdomen. Defendant Roberts told Plaintiff to "man up" and wait a month for the doctor.
17 Defendant Roberts then claimed that Plaintiff had refused pain medication.

18 On May 11, 2016, Plaintiff submitted an urgent request for medical help, which was
19 received by Defendant Arietta. Defendant Arietta told Plaintiff to take Ibuprofen and drink water.
20 Defendant Igbinosa agreed.

21 Later that day, Plaintiff was carried from his cell to the officer's station by other inmates.
22 The correctional officer instructed Plaintiff to walk to medical, but Plaintiff was unable to comply
23 and collapsed. Plaintiff subsequently awoke on a gurney while being administered oxygen by
24 LVN Villasenor. Plaintiff was in severe pain and taken to TTA.

25 Upon arriving at TTA, Defendant Igbinosa was consulted and ordered that Plaintiff be
26 administered Ibuprofen. She also prescribed a daily regimen of ibuprofen despite Plaintiff's
27 health concerns. Plaintiff was carried back to the facility, limping heavily and in severe pain.

28 On May 12, 2016, Plaintiff met with Defendant Igbinosa. Plaintiff was brought to

1 medical in a wheelchair. At Defendant Igbinsa's instruction, Plaintiff was forcibly removed
2 from the wheelchair and dropped into the holding cage. Defendant Igbinsa insisted that Plaintiff
3 was fine and told him to take Ibuprofen for five days. When Plaintiff informed her that he was
4 unable to take any NSAIDs, she stated that they would inject him with it and perform an x-ray.
5 Defendant Igbinsa also prescribed five days of ibuprofen and an injection of Toradol. An x-ray
6 revealed spinal disease.

7 On May 17, 2016, Plaintiff submitted another urgent Health Care Services Request form.
8 Plaintiff alleges that it was effectively screened out by Defendant Arietta, who refused to refer
9 Plaintiff to his primary care physician. Plaintiff requested pain management, because the
10 ibuprofen was ineffective and causing abdominal pain.

11 On May 19, 2016, Plaintiff was referred to medical by his work supervisor, C. Flores, due
12 to a severe pain incident during which Plaintiff lay on the floor and sweated out the pain while his
13 body shook. C. Flores saw that Plaintiff was pale, and despite his objections, ordered Plaintiff to
14 report to medical.

15 Plaintiff was seen by Defendants Arietta and Igbinsa. Defendant Arietta told Plaintiff
16 the problem was all in his head, despite having a broken back and pancreatic atrophy. Defendant
17 Igbinsa instructed Plaintiff to drink water and take ibuprofen. Although Plaintiff informed
18 Defendant Igbinsa of the side effects that he was suffering from the ibuprofen and its
19 ineffectiveness, along with his concern that the hospital instructed him to avoid NSAIDs,
20 Defendant Igbinsa stated that she did not care, and that Plaintiff could accept her advice or
21 leave. Defendant Igbinsa ultimately instructed Plaintiff to wait in the holding tank until
22 custodial staff could take him to TTA for another Toradol injection.

23 On May 24, 2016, Plaintiff met with Defendant Igbinsa, who ordered physical therapy
24 and more ibuprofen. Plaintiff was referred to the MAR committee. Defendant Igbinsa told him
25 that she did not want to see him for the next three months. She also accused Plaintiff of being a
26 drug addict seeking drugs.

27 On May 26, 2016, the MAR committee met and decided to continue Plaintiff on NSAIDs
28 (ibuprofen). The case was presented by Defendant Igbinsa.

1 On May 29, 2016, Plaintiff submitted a Health Care Services Request form, which was
2 screened out by Defendant M. Pacheco. Plaintiff reported that the injection was not working, and
3 he had taken all of the NSAID ibuprofen.

4 On May 31, 2016, Plaintiff met with Defendant M. Pacheco and reiterated the problem
5 with his stomach and pancreas, along with the restriction on taking NSAIDs. Plaintiff also
6 reported severe pain. Plaintiff was instructed to take ibuprofen and not permitted to see the
7 doctor.

8 On June 11, 2016, Plaintiff submitted a Health Care Services Request form, which was
9 screened out by Defendant Arietta. Plaintiff reported the severity of his pain, but Defendant
10 Arietta refused to refer Plaintiff to his primary care physician.

11 On June 13, 2016, Plaintiff met with Defendant Arietta, who instructed Plaintiff to stop
12 submitting Health Care Service Request forms. Defendant Arietta said it would not help Plaintiff
13 to see the doctor. Defendant Arietta then instructed Plaintiff to rub some ointment and take the
14 ibuprofen. She also told him to get out and that she was tired of seeing him.

15 On July 1, 2016, Plaintiff submitted a Health Care Services Request form, which was
16 screened out by Defendant Arietta. Defendant Arietta refused to refer Plaintiff to his primary
17 care physician.

18 On July 5, 2016, Plaintiff met with Defendant Arietta, who told Plaintiff that he was
19 already getting all the care he needed, and he should continue taking the ibuprofen.

20 On July 6, 2016, Plaintiff submitted a Health Care Services Request form, which was
21 screened out by Defendant Arietta. Plaintiff was denied an interview, but Defendant Arietta later
22 said that Plaintiff did not want to wait and was verbally defiant.

23 On July 13, 2016, Defendant Igbinosa prescribed ibuprofen and an ointment without
24 contact with Plaintiff.

25 On July 15, 2016, Plaintiff underwent physical therapy, but remained in severe pain.
26 Plaintiff continued on July 21 and August 3, 2016.

27 On August 1, 2016, Defendant Godwin Ugwueze was informed of Plaintiff's problems
28 and severe pain. Defendant Ugwueze reviewed and approved the treatment.

1 On August 10, 2016, Defendant Nastran Hashemi re-prescribed Plaintiff's medication
2 without consultation. Plaintiff believed that Defendant Igbiosa was moved to another area of the
3 prison at this time due to complaints. He also believed that she was assisted by her husband, Dr.
4 Felix Igbiosa, at another prison to avoid culpability for her actions.

5 On August 28, 2016, Plaintiff submitted a Health Care Services Request form that was
6 screened out by Defendant Arietta. Plaintiff was denied an interview and referral to his new
7 primary care provider. Plaintiff specifically requested a follow up on his pancreas.

8 On September 7, 2016, Plaintiff met with FNP-C A. Hales and Defendant Ugwueze.
9 Plaintiff alleges that Defendant Ugwueze's primary purpose was to deter Plaintiff's family and
10 friends from calling the prison concerning his treatment. Plaintiff was meeting with FNP Hales
11 regarding a medical appeal about neurological symptoms. Defendant Ugwueze asked to watch
12 the interview, but allegedly used his position to interfere with Plaintiff's medical appeal. As FNP
13 Hales began to examine Plaintiff, Defendant Ugwueze physically stepped between them, stating
14 it was not important and that he was fine. FNP Hales responded, "No, I will do my own
15 examination." (Doc. No. 24 at 33.) Through the interview, Defendant Ugwueze would take
16 Plaintiff's body parts from FNP Hales, twisting and turning them causing additional pain.
17 Defendant Ugwueze stated that Plaintiff should have his people stop calling.

18 On January 18, 2017, Plaintiff had been prescribed Topamax because Defendant Kokor
19 failed to document the allergic reaction. Emergency medical care was needed because Plaintiff
20 could not empty his bladder. The allergy was finally properly documented.

21 Plaintiff asserts that he continues to suffer from pancreatitis without care or treatment due
22 to the actions of defendants. He claims that the repeated prescription of NSAIDs combined with
23 the threat to stop all medical treatment, including for his broken back, repeatedly forced Plaintiff
24 to take the NSAIDs after defendants knew of the painful side effects and its ineffectiveness.
25 Plaintiff continued to undergo mental health treatment as a result of the issues.

26 As relief, Plaintiff seeks compensatory and punitive damages, medical expenses, and
27 injunctive relief.

28 **III. Discussion**

1 **A. Defendant CSATF/CDCR - Eleventh Amendment Immunity**

2 Plaintiff is informed that the Eleventh Amendment prohibits federal courts from hearing a
3 Section 1983 lawsuit in which damages or injunctive relief is sought against state agencies (such
4 as CDCR) and individual prisons, absent “a waiver by the state or a valid congressional
5 override....” Dittman v. California, 191 F.3d 1020, 1025 (9th Cir. 1999). “The Eleventh
6 Amendment bars suits which seek either damages or injunctive relief against a state, ‘an arm of
7 the state,’ its instrumentalities, or its agencies.” See Fireman’s Fund Ins. Co. v. City of Lodi, Cal.,
8 302 F.3d 928, 957 n. 28 (9th Cir. 2002) (internal quotation and citations omitted), cert. denied,
9 538 U.S. 961 (2003). “The State of California has not waived its Eleventh Amendment immunity
10 with respect to claims brought under § 1983 in federal court....” Dittman, 191 F.3d at 1025–26
11 (citing Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 241 (1985)); see also Brown v. Cal.
12 Dep’t. of Corrs., 554 F.3d 747, 752 (9th Cir. 2009) (finding California Department of Corrections
13 and California Board of Prison Terms entitled to Eleventh Amendment immunity). “However,
14 under *Ex Parte Young*, 209 U.S. 123 [] (1908), the Eleventh Amendment does not bar actions
15 seeking only prospective declaratory or injunctive relief against state officers in their official
16 capacities.” Fireman’s Fund, 302 F.3d at 957 n. 28 (internal quotation and citation omitted).
17 Therefore, Plaintiff cannot pursue claims for damages against CDCR or CSATF in this action.
18 Further, as discussed below, Plaintiff’s request for injunctive relief is now moot.

19 **B. Federal Rule of Civil Procedure 18 and 20**

20 Plaintiff may not bring unrelated claims against unrelated parties in a single action. Fed.
21 R. Civ. P. 18(a), 20(a)(2); Owens v. Hinsley, 635 F.3d 950, 952 (7th Cir. 2011); George v. Smith,
22 507 F.3d 605, 607 (7th Cir. 2007). Plaintiff may bring a claim against multiple defendants so long
23 as (1) the claim arises out of the same transaction or occurrence, or series of transactions and
24 occurrences, and (2) there are common questions of law or fact. Fed. R. Civ. P. 20(a)(2);
25 Coughlin v. Rogers, 130 F.3d 1348, 1351 (9th Cir. 1997). The “same transaction” requirement
26 refers to similarity in the factual background of a claim. Id. at 1349. Only if the defendants are
27 properly joined under Rule 20(a) will the Court review the other claims to determine if they may
28 be joined under Rule 18(a), which permits the joinder of multiple claims against the same party.

1 Plaintiff may not raise different claims against different defendants in a single action. For
2 instance, Plaintiff may not, in a single case, assert a claim against Defendant Kokor for events in
3 2015 related to his medical treatment while simultaneously asserting claim against Defendant
4 Igbiosa related to Plaintiff's medical treatment in 2016. Unrelated claims involving multiple
5 defendants belong in different suits. Plaintiff may not simply assert all claims related to his
6 medical care during the entirety of his incarceration at CSATF in a single suit.

7 C. Eighth Amendment

8 A prisoner's claim of inadequate medical care does not constitute cruel and unusual
9 punishment in violation of the Eighth Amendment unless the mistreatment rises to the level of
10 "deliberate indifference to serious medical needs." Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir.
11 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104 (1976)). The two-part test for deliberate
12 indifference requires Plaintiff to show (1) "a 'serious medical need' by demonstrating that failure
13 to treat a prisoner's condition could result in further significant injury or the 'unnecessary and
14 wanton infliction of pain,'" and (2) "the defendant's response to the need was deliberately
15 indifferent." Jett, 439 F.3d at 1096.

16 A defendant does not act in a deliberately indifferent manner unless the defendant "knows
17 of and disregards an excessive risk to inmate health or safety." Farmer v. Brennan, 511 U.S. 825,
18 837 (1994). "Deliberate indifference is a high legal standard," Simmons v. Navajo Cty. Ariz., 609
19 F.3d 1011, 1019 (9th Cir. 2010); Toguchi v. Chung, 391 F.3d 1051, 1060 (9th Cir. 2004), and is
20 shown where there was "a purposeful act or failure to respond to a prisoner's pain or possible
21 medical need" and the indifference caused harm. Jett, 439 F.3d at 1096.

22 In applying this standard, the Ninth Circuit has held that before it can be said that a
23 prisoner's civil rights have been abridged, "the indifference to his medical needs must be
24 substantial. Mere 'indifference,' 'negligence,' or 'medical malpractice' will not support this cause
25 of action." Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980) (citing Estelle,
26 429 U.S. at 105–106). "[A] complaint that a physician has been negligent in diagnosing or
27 treating a medical condition does not state a valid claim of medical mistreatment under the Eighth
28 Amendment. Medical malpractice does not become a constitutional violation merely because the

1 victim is a prisoner.” Estelle, 429 U.S. at 106; see also Anderson v. County of Kern, 45 F.3d
2 1310, 1316 (9th Cir. 1995). Even gross negligence is insufficient to establish deliberate
3 indifference to serious medical needs. See Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir.
4 1990).

5 Further, a “difference of opinion between a physician and the prisoner—or between
6 medical professionals—concerning what medical care is appropriate does not amount to
7 deliberate indifference.” Snow v. McDaniel, 681 F.3d 978, 987 (9th Cir. 2012) (citing Sanchez v.
8 Vild, 891 F.2d 240, 242 (9th Cir. 1989)), overruled in part on other grounds, Peralta v. Dillard,
9 744 F.3d 1076, 1082–83 (9th Cir. 2014); Wilhelm v. Rotman, 680 F.3d 1113, 1122–23 (9th Cir.
10 2012) (citing Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1986)). Rather, Plaintiff “must
11 show that the course of treatment the doctors chose was medically unacceptable under the
12 circumstances and that the defendants chose this course in conscious disregard of an excessive
13 risk to [his] health.” Snow, 681 F.3d at 988 (citing Jackson, 90 F.3d at 332) (internal quotation
14 marks omitted).

15 Defendant Kokor

16 With respect to Defendant Kokor’s treatment of Plaintiff between January 3, 2015, and his
17 subsequent hospitalization on December 24, 2015, Plaintiff’s allegations are not sufficient to state
18 a cognizable claim for deliberate indifference to serious medical needs. At best, Plaintiff has
19 asserted a claim for negligence or medical malpractice, which does not rise to the level of an
20 Eighth Amendment violation. Further, Plaintiff’s complaint does not include any factual
21 allegations suggesting that Defendant Kokor was present on December 24, 2015, the date that
22 Plaintiff required hospitalization, and failed to provide any treatment.

23 With respect to the period after Plaintiff’s hospitalization Defendant Kokor, Plaintiff’s
24 complaint appears to suggest only a difference of opinion concerning what medical care was
25 appropriate, which will not support a deliberate indifference claim. Plaintiff has not demonstrated
26 that the course of treatment chosen by Dr. Kokor was medically unacceptable or that Plaintiff
27 suffered any harm from Dr. Kokor’s treatment following Plaintiff’s hospitalization through
28 February 19, 2016.

1 Defendant Enenmoh

2 Plaintiff complains that on February 19, 2016, Defendant Dr. J. Enenmoh affirmed Dr.
3 Kokor's treatment plan and denied Plaintiff's appeal. Plaintiff's allegations are insufficient to
4 state a cognizable claim against Defendant Enenmoh. There is no indication that Defendant
5 Enenmoh knew of a serious medical need that was not being treated by Plaintiff's primary care
6 physician or that Plaintiff suffered any harm from Defendant Enenmoh's affirmance of the appeal.

7 Defendant Cryer

8 Plaintiff alleges that Defendant Cryer received information regarding Plaintiff's appeal
9 from Nurse Carrasquillo. Plaintiff's allegations are insufficient to state a cognizable claim against
10 Defendant Cryer. There is no indication from the allegations that Defendant Cryer knew that
11 Plaintiff suffered from a serious medical need or was not receiving treatment or that Plaintiff was
12 at risk of serious harm.

13 Defendant Hashemi

14 Plaintiff alleges that on August 10, 2016, Defendant Nastran Hashemi re-prescribed
15 Plaintiff's medication without consultation. Plaintiff's allegation is not sufficient to state a
16 cognizable deliberate indifference claim against Defendant Hashemi. Plaintiff's mere
17 disagreement with treatment will not support an Eighth Amendment claim.

18 Defendant Ugwueze

19 Plaintiff's allegations involving Defendant Ugwueze concern review of Plaintiff's
20 treatment plan and appeal. As previously stated, however, Plaintiff's disagreement with treatment
21 recommendations is not sufficient to support an Eighth Amendment claim.

22 Defendant Roberts

23 Plaintiff alleges that he submitted Plaintiff submitted a Health Care Services Request form
24 on April 19, 2016, which was received by Defendant Roberts. Plaintiff further alleges that
25 Defendant Roberts did not refer Plaintiff to his primary care physician despite Plaintiff's report
26 that he could not take ibuprofen because of the problems with his abdomen. Defendant Roberts
27 allegedly told Plaintiff to "man up" and wait a month for the doctor. Defendant Roberts also
28 claimed that Plaintiff had refused pain medication.

1 Plaintiff's allegations are not sufficient to demonstrate deliberate indifference to serious
2 medical needs by Defendant Roberts. There is no indication that Plaintiff was suffering pain or
3 was experiencing a serious medical need at the time of the alleged incident involving Defendant
4 Roberts. There also is no indication that Plaintiff suffered any harm based on Defendant Roberts'
5 reported failure to refer Plaintiff to his primary care physician. According to the allegations in the
6 complaint, Plaintiff did not request any further treatment until May 11, 2016.

7 Defendant Stronach,

8 Plaintiff alleges that on March 25, 2015, he submitted a Health Care Services Request
9 form for pain, drowsiness, and stomach problems. The form was received by Defendant Stronach
10 and she met with Plaintiff the following day. Plaintiff further alleges that Defendant Stronach
11 made light of Plaintiff's complaints, but conferred with Defendant Kokor. Defendant Stronach
12 then instructed Plaintiff to take ibuprofen and Defendant Kokor ordered routine blood work,
13 which was normal.

14 Plaintiff's allegations involving Defendant Stronach are insufficient to state a claim for
15 deliberate indifference to serious medical needs. Plaintiff's mere disagreement with the treatment
16 that he received does not rise to the level of an Eighth Amendment claim.

17 Defendant Villasenor

18 Plaintiff alleges only that Defendant Villasenor administered him oxygen on May 11,
19 2016, after Plaintiff collapsed. There is no indication from Plaintiff's allegations that Defendant
20 Villasenor failed to respond to any serious medical need. Plaintiff's complaint therefore fails to
21 state a cognizable claim against Defendant Villasenor.

22 Defendant Arietta

23 Plaintiff's allegations involving Defendant Arietta relate to the purported "screening out"
24 of Plaintiff's health care services requests. Plaintiff's allegations are not sufficient to state a
25 cognizable claim against Defendant Arietta. According to the amended complaint, Defendant
26 Arietta continually advised Plaintiff to take ibuprofen and essentially continue with his treatment.
27 There is no indication that Defendant Arietta failed to respond to a serious medical need or that
28 Plaintiff suffered harm from any alleged screen out of any request for services. Plaintiff's

1 disagreement with the recommended treatment does not rise to the level of an Eighth Amendment
2 violation.

3 Defendant Pacheco

4 Plaintiff alleges that he submitted a Health Care Services Request form a health care
5 services form on May 29, 2016, which was screened out by Defendant M. Pacheco. However,
6 two days later, Plaintiff met with Defendant Pacheco regarding his issues, including pain and the
7 inability to take NSAIDs. Defendant Pacheco reportedly instructed Plaintiff to take ibuprofen.

8 Plaintiff's allegations involving Defendant Pacheco are insufficient to state a claim for
9 deliberate indifference to serious medical needs. Plaintiff's mere disagreement with the treatment
10 that he received does not rise to the level of an Eighth Amendment claim.

11 Does 1-3

12 At the pleading stage, the Court finds that Plaintiff has stated a cognizable claim against
13 Defendants Does 1-3 for deliberate indifference to serious medical needs in violation of the
14 Eighth Amendment. However, "[a]s a general rule, the use of 'John Doe' to identify a defendant
15 is not favored." Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir.1980). Plaintiff is advised that
16 John Doe or Jane Doe defendants (i.e., unknown defendants) cannot be served by the United
17 States Marshal until Plaintiff has identified them as actual individuals and amended his complaint
18 to substitute names for John Doe.

19 **D. Injunctive Relief**

20 Plaintiff is no longer housed at CSATF, where he alleges the incidents at issue occurred,
21 and where the prison officials are employed. Therefore, any injunctive relief he seeks against the
22 officials at CSATF is moot. See Andrews v. Cervantes, 493 F.3d 1047, 1053 n.5 (9th Cir. 2007)
23 (prisoner's claims for injunctive relief generally become moot upon transfer) (citing Johnson v.
24 Moore, 948 F.2d 517, 519 (9th Cir. 1991) (per curiam) (holding claims for injunctive relief
25 "relating to [a prison's] policies are moot" when the prisoner has been moved and "he has
26 demonstrated no reasonable expectation of returning to [the prison]")).

27 **IV. Conclusion and Recommendation**

28 Based on the foregoing, the Court finds that Plaintiff's first amended complaint states a

1 cognizable claim for deliberate indifference to serious medical needs in violation of the Eighth
2 Amendment against Defendants Doe 1 and Doe 3. However, Plaintiff's amended complaint fails
3 to state any other cognizable claim for relief against the remaining defendants. Despite being
4 provided with the relevant legal standards, Plaintiff has been unable to cure the remaining
5 deficiencies in his complaint. Further leave to amend is not warranted. Lopez v. Smith, 203 F.3d
6 1122, 1130 (9th Cir. 2000).

7 Accordingly, IT IS HEREBY RECOMMENDED as follows:

8 1. This action proceed on Plaintiff's first amended complaint, filed on August 30,
9 2018, against Defendants Doe 1 and Doe 3 for deliberate indifference to serious medical
10 needs in violation of the Eighth Amendment;

11 2. All other claims and defendants, including any claim for injunctive relief, be
12 dismissed from this action based on Plaintiff's failure to state claims upon which relief
13 may be granted.

14 These Findings and Recommendation will be submitted to the United States District Judge
15 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
16 **(14) days** after being served with these Findings and Recommendation, Plaintiff may file written
17 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
18 Findings and Recommendation." Plaintiff is advised that failure to file objections within the
19 specified time may result in the waiver of the "right to challenge the magistrate's factual findings"
20 on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan,
21 923 F.2d 1391, 1394 (9th Cir. 1991)).

22
23 IT IS SO ORDERED.

24 Dated: July 15, 2019

25 /s/ Barbara A. McAuliffe
26 UNITED STATES MAGISTRATE JUDGE
27
28