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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LARRY WILLIAM CORTINAS,

 Plaintiff,

 v.

S. GATES, et al.,

 Defendants.

Case No. 1:19-cv-01709-SKO (PC)

**FINDINGS AND RECOMMENDATIONS
TO DISMISS ACTION FOR FAILURE TO
STATE A CLAIM**

21-DAY DEADLINE

Clerk of the Court to Assign District Judge

Plaintiff Larry William Cortinas alleges the defendants were deliberately indifferent to his serious medical needs. (Doc. 17.) The Court finds that Plaintiff’s second amended complaint fails to state a claim on which relief can be granted. Given that Plaintiff has received two opportunities to amend his complaint (*see* Docs. 12, 14), the Court finds that further amendment would be futile. *See Akhtar v. Mesa*, 698 F.3d 1202, 1212-13 (9th Cir. 2012). Accordingly, the Court recommends that this action be dismissed.

I. SCREENING REQUIREMENT

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the complaint is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant immune from such relief. 28 U.S.C. § 1915A(b). The Court should dismiss a complaint if it lacks

1 a cognizable legal theory or fails to allege sufficient facts to support a cognizable legal theory.
2 *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

3 **II. PLEADING REQUIREMENTS**

4 **A. Federal Rule of Civil Procedure 8(a)**

5 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited
6 exceptions.” *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 513 (2002). A complaint must contain
7 “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R.
8 Civ. Pro. 8(a)(2). “Such a statement must simply give the defendant fair notice of what the
9 plaintiff’s claim is and the grounds upon which it rests.” *Swierkiewicz*, 534 U.S. at 512 (internal
10 quotation marks and citation omitted).

11 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a
12 cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556
13 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must
14 set forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its face.’”
15 *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). Factual allegations are accepted as
16 true, but legal conclusions are not. *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555).

17 The Court construes pleadings of *pro se* prisoners liberally and affords them the benefit of
18 any doubt. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (citation omitted). However, “the
19 liberal pleading standard ... applies only to a plaintiff’s factual allegations,” not his legal theories.
20 *Neitze v. Williams*, 490 U.S. 319, 330 n.9 (1989). Furthermore, “a liberal interpretation of a civil
21 rights complaint may not supply essential elements of the claim that were not initially pled,”
22 *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) (internal quotation
23 marks and citation omitted), and courts “are not required to indulge unwarranted inferences.” *Doe*
24 *I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and
25 citation omitted). The “sheer possibility that a defendant has acted unlawfully” is not sufficient to
26 state a cognizable claim, and “facts that are merely consistent with a defendant’s liability” fall
27 short. *Iqbal*, 556 U.S. at 678 (internal quotation marks and citation omitted).

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1 **B. Linkage and Causation**

2 Section 1983 provides a cause of action for the violation of constitutional or other federal
3 rights by persons acting under color of state law. *See* 42 U.S.C. § 1983. To state a claim under
4 section 1983, a plaintiff must show a causal connection or link between the actions of the
5 defendants and the deprivation alleged to have been suffered by the plaintiff. *See Rizzo v. Goode*,
6 423 U.S. 362, 373-75 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the
7 deprivation of a constitutional right, within the meaning of section 1983, if he does an affirmative
8 act, participates in another’s affirmative acts, or omits to perform an act which he is legally
9 required to do that causes the deprivation of which complaint is made.” *Johnson v. Duffy*, 588
10 F.2d 740, 743 (9th Cir. 1978) (citation omitted).

11 **III. DISCUSSION**

12 **A. Plaintiff’s Allegations**

13 Plaintiff alleges he “filed numerous health care grievances between 2016 and 2019.”
14 (Doc. 17 at 4.) According to Plaintiff, in processing these grievances, healthcare appeals directors
15 Gates and Lewis “reviewed Plaintiff’s medical file at least 50 times.” (*Id.* at 3-4) Plaintiff’s
16 grievances stemmed from his disagreement with his physicians’ treatment of his spinal injuries
17 and associated chronic pain. (*See id.* at 4-5.) Plaintiff alleges that, at times, physicians would
18 prescribe methadone for his pain; and, at other times, without any improvement in his condition,
19 physicians would halt his pain medication without providing alternative treatment. (*Id.* at 5.)
20 Plaintiff alleges that Gates and Lewis never conducted an interview in response to his grievances
21 and “would just go with whatever the institution did.” (*Id.*) Plaintiff states that he also wrote
22 letters to the defendants asking why “pain specialist recommendations were not being followed.”
23 (*Id.* at 6.) He alleges that the defendants “have the authority and duty to correct medical
24 problems,” but failed to do so. (*Id.*)

25 **B. Claims for Relief**

26 “Prison officials violate the Eighth Amendment if they are ‘deliberate[ly] indifferen[t] to
27 [a prisoner’s] serious medical needs.’” *Peralta v. Dillard*, 744 F.3d 1076, 1081 (9th Cir. 2014)
28 (quoting *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)). “This is true whether the indifference is

1 manifested by prison doctors in their response to the prisoner’s needs or by prison guards in
2 intentionally denying or delaying access to medical care....” *Estelle*, 429 U.S. at 104-05. “A
3 medical need is serious if failure to treat it will result in significant injury or the unnecessary and
4 wanton infliction of pain.” *Peralta*, 744 F.3d at 1081 (internal quotation marks and citations
5 omitted). “A prison official is deliberately indifferent to that need if he ‘knows of and disregards
6 an excessive risk to inmate health.’” *Id.* at 1082 (quoting *Farmer v. Brennan*, 511 U.S. 825, 837
7 (1994)).

8 The test for deliberate indifference to medical need is thus two-pronged and has objective
9 and subjective components. See *Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir. 2012). To
10 establish such a claim, a prisoner must first “show a serious medical need by demonstrating that
11 failure to treat [the] prisoner’s condition could result in further significant injury or the
12 unnecessary and wanton infliction of pain. Second, the plaintiff must show the defendants’
13 response to the need was deliberately indifferent.” *Id.* (internal quotation marks and citation
14 omitted).

15 As to the first, objective prong, “[i]ndications that a plaintiff has a serious medical need
16 include ‘[t]he existence of an injury that a reasonable doctor or patient would find important and
17 worthy of comment or treatment; the presence of a medical condition that significantly affects an
18 individual’s daily activities; or the existence of chronic and substantial pain.’” *Colwell v.*
19 *Bannister*, 763 F.3d 1060, 1066 (9th Cir. 2014) (citation omitted).

20 As to the second, subjective prong, deliberate indifference “describes a state of mind more
21 blameworthy than negligence” and “requires more than ordinary lack of due care for the
22 prisoner’s interests or safety.” *Farmer v. Brennan*, 511 U.S. 825, 835 (1994) (internal quotation
23 marks and citation omitted). Deliberate indifference exists where a prison official “knows that
24 [an] inmate[] face[s] a substantial risk of serious harm and disregards that risk by failing to take
25 reasonable measures to abate it.” *Id.* at 847. In medical cases, this requires showing, “(a) a
26 purposeful act or failure to respond to a prisoner’s pain or possible medical need and (b) harm
27 caused by the indifference.” *Wilhelm*, 680 F.3d at 1122 (citation omitted). “A prisoner need not
28 show his harm was substantial; however, such would provide additional support for the inmate’s

1 claim that the defendant was deliberately indifferent to his needs.” *Jett v. Penner*, 439 F.3d 1091,
2 1096 (9th Cir. 2006) (citation omitted).

3 “Deliberate indifference is a high legal standard.” *Toguchi v. Chung*, 391 F.3d 1051, 1060
4 (9th Cir. 2004). “Under this standard, the prison official must not only ‘be aware of facts from
5 which the inference could be drawn that a substantial risk of serious harm exists,’ but [he] ‘must
6 also draw the inference.’” *Id.* at 1057 (quoting *Farmer*, 511 U.S. at 837). “If a [prison official]
7 should have been aware of the risk, but was not, then the [official] has not violated the Eighth
8 Amendment, no matter how severe the risk.” *Id.* (internal quotation marks and citation omitted).

9 Plaintiff alleges that he suffers from significant and chronic pain due to spinal injuries,
10 which limits his daily activities. (Doc. 17 at 4-6.) These allegations satisfy the first, objective
11 prong of an Eighth Amendment claim. *See Colwell*, 763 F.3d at 1066.

12 Plaintiff’s allegations, however, do not satisfy the second, subjective prong. The
13 allegations fail to show that Gates or Lewis purposefully failed to respond to Plaintiff’s pain or
14 medical needs. *See Wilhelm*, 680 F.3d at 1122. The fact that Plaintiff filed numerous
15 administrative grievances, and that Defendants denied those grievances, is insufficient to show
16 that Defendants “drew the inference” that he was at a substantial risk of serious harm and failed to
17 take reasonable measures to abate it. *See Farmer*, 511 U.S. at 847; *Toguchi*, 391 F.3d at 1057.

18 Moreover, Plaintiff does not show that Gates’ or Lewis’ actions or inactions caused the
19 harm or deprivation of which he complains. *See Johnson*, 588 F.2d at 743; *Wilhelm*, 680 F.3d at
20 1122. Plaintiff’s claims are based solely on the defendants’ denials of his administrative appeals
21 and failure to conduct an interview of Plaintiff in response to those appeals. (*See* Doc. 17 at 4-6.)
22 Inmates, however, “lack a ... constitutional entitlement to ... specific prison grievance
23 procedure[s].” *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003) (citation omitted). Plaintiff’s
24 allegations regarding the processing of his appeals thus fail to establish a cognizable claim under
25 the Eighth Amendment.

26 **IV. CONCLUSION AND ORDER**

27 For the reasons set forth above, Plaintiff’s second amended complaint (Doc. 17) fails to
28 state a claim on which relief can be granted. Given Plaintiff’s two prior opportunities to amend,

