

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 as
6 true, courts “are not required to indulge unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*,
7 572 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. Secret*
11 *Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully
12 is not sufficient, and mere consistency with liability falls short of satisfying the plausibility
13 standard. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss*, 572 F.3d at 969.

14 **II. Plaintiff’s Allegations**

15 Plaintiff is currently housed at California Health Care Facility in Stockton, California.
16 Plaintiff alleges that the events in the complaint occurred while he was housed at California State
17 Prison at Corcoran. Plaintiff names Barbosa, Peace Officer, as the sole defendant.

18 Plaintiff alleges: “I was denied my right to medical care which lead to cruel and unusual
19 punishment.” As factual support of his claim, Plaintiff alleges: “On 12-24-22 during medication
20 pass c/o Barbosa refused to open my tray slot so the medical nurse could give me my medication
21 because I suffer from a mental disability which only got worse from me not taking my
22 medication.”

23 As remedies, Plaintiff requests compensatory damages.

24 **III. Discussion**

25 Plaintiff’s complaint fails to comply with Federal Rule of Civil Procedure 8 and fails to
26 state a cognizable claim under 42 U.S.C. § 1983.

27 **A. Federal Rule of Civil Procedure 8**

28 Pursuant to Rule 8, a complaint must contain “a short and plain statement of the claim

1 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). Detailed factual allegations
2 are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
3 conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678 (citation omitted). Plaintiff must
4 set forth “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on
5 its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). While factual allegations
6 are accepted as true, legal conclusions are not. *Id.*; *see also Twombly*, 550 U.S. at 556–57; *Moss*,
7 572 F.3d at 969.

8 Here, Plaintiff’s complaint is short, but not a plain statement of his claims. Much of
9 Plaintiff’s allegations is conclusory as to what happened or when it happened. In the Court’s
10 prior screening, Plaintiff was informed that he should state his key factual allegations in the body
11 of the complaint and to comply with the provided legal standards. Plaintiff has been unable to
12 cure this deficiency to include factual allegations identifying what happened, when it happened
13 and who was involved. Fed. R. Civ. P. 8.

14 **B. Eight Amendment Deliberate Indifference to Medical Care**

15 Plaintiff may be attempting to allege a claim for deliberate indifference to medical care.
16 A prisoner’s claim of inadequate medical care constitutes cruel and unusual punishment in
17 violation of the Eighth Amendment where the mistreatment rises to the level of “deliberate
18 indifference to serious medical needs.” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006)
19 (quoting *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)). The two-part test for deliberate
20 indifference requires Plaintiff to show (1) “a ‘serious medical need’ by demonstrating that failure
21 to treat a prisoner’s condition could result in further significant injury or the ‘unnecessary and
22 wanton infliction of pain,’” and (2) “the defendant’s response to the need was deliberately
23 indifferent.” *Jett*, 439 F.3d at 1096.

24 A defendant does not act in a deliberately indifferent manner unless the defendant “knows
25 of and disregards an excessive risk to inmate health or safety.” *Farmer v. Brennan*, 511 U.S. 825,
26 837 (1994). “Deliberate indifference is a high legal standard,” *Simmons v. Navajo Cty. Ariz.*, 609
27 F.3d 1011, 1019 (9th Cir. 2010); *Toguchi v. Chung*, 391 F.3d 1051, 1060 (9th Cir. 2004), and is
28 shown where there was “a purposeful act or failure to respond to a prisoner’s pain or possible

1 medical need” and the indifference caused harm. *Jett*, 439 F.3d at 1096. In applying this
2 standard, the Ninth Circuit has held that before it can be said that a prisoner’s civil rights have
3 been abridged, “the indifference to his medical needs must be substantial. Mere ‘indifference,’
4 ‘negligence,’ or ‘medical malpractice’ will not support this cause of action.” *Broughton v. Cutter*
5 *Labs.*, 622 F.2d 458, 460 (9th Cir. 1980) (citing *Estelle*, 429 U.S. at 105–06). Even gross
6 negligence is insufficient to establish deliberate indifference to serious medical needs. *See Wood*
7 *v. Housewright*, 900 F.2d 1332, 1334 (9th Cir. 1990).

8 Liberally construing the first amended complaint, Plaintiff states a serious medical need
9 for a mental disability. However, Plaintiff has not alleged facts that Defendant’s response was
10 deliberately different. Plaintiff alleges that Defendant did not open the tray slot during a
11 medication pass. Plaintiff fails to allege facts that Defendant knew of and disregarded an
12 excessive risk to inmate health or safety. Plaintiff fails to allege that Defendant knew he was
13 denying medication, knew Plaintiff needed medical or had a serious medical need, or that
14 Defendant deliberately did not allow medication. Plaintiff has been unable to cure this
15 deficiency.

16 **IV. Conclusion and Recommendation**

17 For the reasons discussed, the Court finds that Plaintiff fails to state a cognizable claim for
18 relief. Despite being provided with the relevant legal standards, Plaintiff has been unable to cure
19 the deficiencies in his complaint. Further leave to amend is not warranted. *Lopez v. Smith*, 203
20 F.3d 1122, 1130 (9th Cir. 2000).

21 Accordingly, the Court HEREBY DIRECTS the Clerk of the Court to randomly assign a
22 district judge to this action.

23 Further, for the reasons stated above, IT IS HEREBY RECOMMENDED that this action
24 be dismissed for failure to state a cognizable claim upon which relief may be granted.

25 These Findings and Recommendation will be submitted to the United States District Judge
26 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
27 **(14) days** after being served with these Findings and Recommendation, Plaintiff may file written
28 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s

1 Findings and Recommendation.” Plaintiff is advised that failure to file objections within the
2 specified time may result in the waiver of the “right to challenge the magistrate’s factual
3 findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v.*
4 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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6 IT IS SO ORDERED.

7 Dated: July 12, 2023

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

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