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7 UNITED STATES DISTRICT COURT  
8 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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10 CHRISTINE M. HAGAN as  
11 Personal Representative  
12 and as GUARDIAN Ad LITEM  
13 for CONNOR HAGAN, a minor,

14 Plaintiffs,

NO. CIV. S-07-1095 LKK/DAD

15 v.

O R D E R

16 CALIFORNIA FORENSIC  
17 MEDICAL GROUP, et al.,

18 Defendants.  
19 \_\_\_\_\_/

20 Plaintiff Christina Hagan, on behalf of herself, her minor  
21 son, Connor Hagan, and her deceased husband, Michael Hagan, has  
22 brought this action against defendants California Department of  
23 Corrections and Rehabilitation ("CDCR"), the California Forensic  
24 Medical Group, and the County of Butte. The complaint includes an  
25 Eighth Amendment claim under 42 U.S.C. § 1983 as well as various  
26 state law claims. Pending before the court is CDCR's motion to  
dismiss, which argues that the state is immune from suit under the  
Eleventh Amendment. The court resolves the motion on the parties'

1 papers without oral argument. For the reasons explained below, the  
2 motion is granted.

### 3 **I. Background**

4 Plaintiffs Christina Hagan and Connor Hagan are the widow and  
5 minor son, respectively, of the decedent in this action, Michael  
6 Hagan.<sup>1</sup> FAC ¶¶ 1, 2. Defendant CDCR is a governmental entity and  
7 a subdivision of the state of California responsible for the  
8 operation of the High Desert State Prison (HDSP) and the provision  
9 of medical services to inmates housed at that facility. FAC ¶ 5.

10 Plaintiffs allege that defendant CDCR knew that Mr. Hagan, an  
11 inmate, was an asthmatic with severe breathing problems but  
12 intentionally deprived him of necessary medical treatment, which  
13 resulted in his death. FAC ¶ 18. Plaintiffs have brought an  
14 Eighth Amendment claim under section 1983 against CDCR as well as  
15 various state law claims, including wrongful death, FAC ¶¶ 17-25,  
16 medical malpractice, FAC ¶¶ 43-48, and intentional infliction of  
17 emotional distress, FAC ¶¶ 64-70.

### 18 **II. Standard**

19 In order to survive a motion to dismiss for failure to  
20 state a claim, plaintiffs must allege "enough facts to state a  
21 claim to relief that is plausible on its face." Bell Atlantic  
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23 <sup>1</sup> The caption of the complaint states that Christina Hagan has  
24 brought this action "as Personal Representative and as Guardian Ad  
25 Litem for Connor Hagan." The court will presume that Ms. Hagan has  
26 brought this action as a personal representative for the estate of  
Michael Hagan (although not expressly stated), given that the  
complaint attempts to assert Michael Hagan's Eighth Amendment  
rights.

1 Corp. v. Twombly, -- U.S. --, 127 S. Ct. 1955, 1974 (2007).

2 While a complaint need not plead "detailed factual allegations,"  
3 the factual allegations it does include "must be enough to raise  
4 a right to relief above the speculative level." Id. at 1964-65.

5 As the Supreme Court observed, Federal Rule of Civil  
6 Procedure 8(a)(2) requires a "showing" that the plaintiff is  
7 entitled to relief, "rather than a blanket assertion" of  
8 entitlement to relief. Id. at 1965 n.3. Though such assertions  
9 may provide a defendant with the requisite "fair notice" of the  
10 nature of a plaintiff's claim, only factual allegations can  
11 clarify the "grounds" on which that claim rests. Id. "The  
12 pleading must contain something more. . . than . . . a statement  
13 of facts that merely creates a suspicion [of] a legally  
14 cognizable right of action." Id. at 1965, quoting 5 C. Wright &  
15 A. Miller, Federal Practice and Procedure, § 1216, pp. 235-36  
16 (3d ed. 2004).<sup>2</sup>

17 On a motion to dismiss, the allegations of the complaint  
18 must be accepted as true. See Cruz v. Beto, 405 U.S. 319, 322  
19 (1972). The court is bound to give the plaintiff the benefit of  
20 every reasonable inference to be drawn from the "well-pleaded"  
21 allegations of the complaint. See Retail Clerks Intern. Ass'n,  
22 Local 1625, AFL-CIO v. Schermerhorn, 373 U.S. 746, 753 n.6

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24 <sup>2</sup> The holding in Twombly explicitly abrogates the well  
25 established holding in Conley v. Gibson that, "a complaint should  
26 not be dismissed for failure to state a claim unless it appears  
beyond doubt that the plaintiff can prove no set of facts in  
support of his claim which would entitle him to relief." 355 U.S.  
41, 45-46 (1957); Twombly, 127 S. Ct. at 1968.

1 (1963). In general, the complaint is construed favorably to the  
2 pleader. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974),  
3 overruled on other grounds by Harlow v. Fitzgerald, 457 U.S. 800  
4 (1982). That said, the court does not accept as true  
5 unreasonable inferences or conclusory legal allegations cast in  
6 the form of factual allegations. W. Mining Council v. Watt, 643  
7 F.2d 618, 624 (9th Cir. 1981).

### 8 III. Analysis

#### 9 A. Section 1983 Claim

10 Plaintiffs' section 1983 claim alleges that CDCR violated  
11 Mr. Hagan's Eighth Amendment rights against cruel and unusual  
12 punishment. Prison officials may be held liable under the  
13 Eighth Amendment for their deliberate indifference to an  
14 excessive risk to inmate health and safety. Farmer v. Brennan,  
15 511 U.S. 825, 837 (1994).

16 The Eleventh Amendment bars suit against a state as well as  
17 "arms of the state" in federal court. Alabama v. Pugh, 438 U.S.  
18 781 (1978); Hans v. Louisiana, 134 U.S. 1 (1890); Will v.  
19 Michigan Dep't of State Police, 491 U.S. 58, 70 (1989). The  
20 Eleventh Amendment does not bar suit, however, where state  
21 sovereign immunity has been abrogated by a federal statute  
22 passed under section 5 of the Fourteenth Amendment or where  
23 immunity has been expressly waived by the state. Seminole Tribe  
24 of Fla. v. Florida, 517 U.S. 44 (1996); Florida Dep't of Health  
25 and Rehabilitative Servs. v. Florida Nursing Home Ass'n, 450  
26 U.S. 147 (1981); Port. Auth. Trans-Hudson Corp. v. Feeney, 495

1 U.S. 299 (1990).<sup>3</sup>

2 Here, plaintiffs have brought a section 1983 claim against  
3 CDCR, which is undisputedly an "arm of the state" for Eleventh  
4 Amendment purposes. While section 1983 is the basis for suits  
5 against local governments, local government officers, and state  
6 officers, the state is not a "person" for purposes of that  
7 statute. Quern v. Jordan, 440 U.S. 332, 345 (1979) (noting that  
8 section 1983 "does not explicitly and by clear language indicate  
9 on its face an intent to sweep away the immunity of the States;  
10 nor does it have a history which focuses directly on the  
11 question of state liability"); Will, 491 U.S. at 64-65.  
12 Furthermore, California has not waived its sovereign immunity.<sup>4</sup>  
13 Accordingly, the Eleventh Amendment bars plaintiff's section  
14 1983 claim.

### 15 **B. State Law Claims**

16 With respect to plaintiffs' remaining state law claims  
17 against CDCR, they suffer the same fate. "[A] claim that state  
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19 <sup>3</sup> Moreover, of course, plaintiff may sue those state employees  
20 whose tortious conduct caused harm. Plaintiff makes no such claim  
in the instant case.

21 <sup>4</sup> Waiver requires "the most express language or [] such  
22 overwhelming implications from the text as (will) leave no room for  
any other reasonable construction." Edelman v. Jordan, 415 U.S.  
23 651, 673 (1974) (internal quotation marks omitted). Plaintiffs  
argue that the California Tort Claims Act, Cal. Gov. Code § 800,  
24 et seq., waives immunity. While that statute waives immunity for  
suit in state court, it does not waive immunity for suit in federal  
25 court. Riggle v. California, 577 F.2d 579, 586 (9th Cir. 1978)  
("The California Tort Claims Act does not appear to contain a  
26 waiver of immunity which extends further than the California state  
courts.").


1 officials violated state law in carrying out their official  
2 responsibilities is a claim against the State that is protected  
3 by the Eleventh Amendment." See Pennhurst State Sch. & Hosp. v.  
4 Halderman, 465 U.S. 89, 121 (1984). Accordingly, plaintiff's  
5 state law claims against CDCR must also be dismissed.

6 **IV. Conclusion**

7 For the reasons explained above, the motion to dismiss  
8 defendant CDCR (Dock. No. 21) is GRANTED without leave to amend.

9 IT IS SO ORDERED.

10 DATED: February 6, 2008.

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14 LAWRENCE K. KARLTON  
15 SENIOR JUDGE  
16 UNITED STATES DISTRICT COURT  
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