UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SANDIPKUMAR TANDEL,

Plaintiff,

v.

COUNTY OF SACRAMENTO, et al.,

Defendants.

No. 2:09-cv-00842-MCE-GGH
(Consolidated with Case
No. 2:11-cv-00353-MCE-GGH)

MEMORANDUM AND ORDER

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Plaintiff Sandipkumar Tandel ("Plaintiff") seeks redress for several federal and state law claims alleging that the County of Sacramento ("County"), Sheriff of Sacramento County, John McGinness ("McGinness"), Chief of Sacramento County Jail Correctional Health Services, Ann Marie Boylan ("Boylan"), Medical Director of Sacramento County Jail Correctional Health Services, Asa Hambly, M.D. ("Hambly"), Chris Smith, M.D. ("Smith"), Hank Carl, R.N. ("Carl"), Sergeant Tracie Keillor ("Keillor"), and Officer Pablito Gaddis ("Gaddis") violated Plaintiff's civil rights during Plaintiff's detention at the Sacramento County Main Jail.

Plaintiff further claims that said Defendants committed certain state-law violations. In his Second Amended Complaint ("SAC"), Plaintiff seeks compensatory and punitive damages, attorneys' fees and costs, and declaratory and injunctive relief. Presently before the Court are the Motion to Dismiss of Defendants County, McGinness, Boylan, Hambly, Carl, Keillor and Gaddis (collectively "County Defendants"). (See County Defs.' Mot. to Dismiss Pl.'s Second Am. Compl. ["CDMTD"], filed July 22, 2011 [ECF No. 44].), and the Motion to Dismiss of Defendant Smith filed pursuant to Federal Rule of Civil Procedure 12(b)(6). (See Def. Smith's Mot. to Dismiss Pl.'s Second Am. Compl. ["SMTD"], filed July 27, 2011 [ECF No. 45].) For the reasons set forth below, Defendants' motions are granted in part and denied in part.[1]

BACKGROUND[2]

On February 7, 2007, Plaintiff was arrested and incarcerated at the Sacramento County Main Jail ("the Jail") as a pre-trial detainee. Plaintiff alleges that, because of his dark skin color, he was housed with the African-American inmates. On April 27, 2007, Plaintiff suffered a head injury as a result of a racial altercation at the Jail.

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[1] Because oral argument will not be of material assistance, the Court ordered this mater submitted on the briefing. E.D. Cal. R. 230(g).

[2] The following facts are taken from Plaintiff's Second Amended Complaint ("SAC"), filed July 11, 2011 [ECF No. 43].

Plaintiff was sent to the Emergency Room at the Doctor's Center in Sacramento, where Dr. Gray, M.D., treated Plaintiff's injury by cleaning and suturing the wound and vaccinating Plaintiff for tetanus. The same day, Dr. Gray sent Plaintiff back to the Jail with instructions to remove the sutures in five days, leaving the wound open to air and keeping the wound clean. Upon Plaintiff's return to the Jail, he was seen by the Jail's medical personnel who evaluated Plaintiff, noted the treatment and vaccination, and referred the matter to a doctor. Plaintiff informed Jail medical personnel that he had a headache. Plaintiff alleges that Defendant Hambly reviewed Plaintiff's chart on April 30, 2007.

After returning to the Jail, Plaintiff was placed into Administrative Segregation, where he remained for approximately two weeks. Plaintiff alleges that during his stay in the Administrative Segregation: (1) he repeatedly requested, but was denied, showers and items required for regular hygiene and for keeping his wound clean, and medical products for proper wound care; (2) he requested, but was denied, the removal of his sutures after five days; and (3) he requested, but was denied, a steady flow of clean water in the sink in his cell rather than a dripping faucet with brown water.

Plaintiff goes on to allege that the unit where he was housed was an indirect supervision unit and that, if he wanted to communicate with the staff, he had to push the call button in his cell. Plaintiff claims that many of his calls went unanswered and that when the calls were answered, he was told, "We are working on it" and to "stop using the call button," and finally to "stop complaining."

Eventually, the Jail staff stopped answering Plaintiff's calls altogether. Plaintiff alleges that, without running water in his cell and regular showers, he could not keep his wound clean as prescribed by Dr. Gray.

On or about May 12, 2007, Plaintiff was moved to a regular cell and immediately requested medical care. Defendant Carl allegedly saw Plaintiff on May 13, 2007. Plaintiff informed Carl that he had been suffering from headaches for the past four days. Carl consulted with Defendant Dr. Smith who ordered the stitches removed and gave Motrin to Plaintiff.

On or about May 14, 2007, Plaintiff again sought medical attention, complaining of headaches, sensitivity to light and nasal drip. Plaintiff was examined by a nurse, Jim Austin, and was returned to his cell. On or about May 17, 2007, Plaintiff collapsed while taking a shower when he lost control of his legs. Defendant Officer Gaddis responded to Plaintiff's request for help but allegedly failed to use the radio to properly alert medical and custody staff of the emergency. According to Plaintiff, Gaddis also failed to file an incident or casualty report following the incident, in violation of Jail policy. On May 17, 2007, Defendant Sergeant Keillor was the supervising officer on duty.

When Plaintiff was wheeled in a wheelchair for evaluation, he told Defendant Carl, "My legs don't work." Plaintiff alleges that Carl failed to conduct an adequate medical assessment of a patient presenting with an apparent spinal cord injury or neurological disorder. Carl ordered Plaintiff returned to his cell without arranging for any medical follow-up.

Plaintiff alleges that, upon returning to his cell, he was dumped out of the wheelchair and left on the floor of his cell.

On May 18, 2007, Plaintiff had a sudden and acute loss of vision in his left eye and started noticing that he was not able to move his lower extremities. He was also suffering from urinary retention and constipation. He repeatedly rang the emergency bell to summon help and informed the officers on duty that his legs did not work, that he could not urinate and that he was going blind, but was told to stop using the call button and that "these things would not kill him."

On May 20, 2007, at 11:44 a.m., Defendant Carl saw Plaintiff and referred him to see Defendant Dr. Smith. Dr. Smith saw Plaintiff at 12:30 p.m. but allegedly "failed to take any appropriate medical action." At 9:45 p.m., Dr. Horowitz evaluated Plaintiff and noted that Plaintiff had been on the floor of his cell for three days. Plaintiff claimed to be suffering from vision loss, an inability to control his extremities, get up to "void or defecate," and other neurological impairments. Dr. Horowitz sent Plaintiff to a local emergency room where he was found to have an expansive lesion in the spine and brain involvement.

On May 21, 2007, Plaintiff was admitted to the University of California, Davis, Medical Center ("UCD"). Upon admission, Plaintiff was found to have bilateral lower extremity paraparesis, vision loss, occasional shakes to upper extremities, and an inability to eat or drink on his own.

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Because Plaintiff's medical history allegedly did not accompany him to the hospital, the UCD treating physicians were unaware of the treatment already rendered to Plaintiff, including the Tetanus vaccination. By May 24, 2007, Plaintiff could not open his eyes or speak. On May 26, 2012, Plaintiff was diagnosed with Acute Disseminated Encephalomyelitis ("ADEM"). ADEM is a neurological disorder characterized by inflammation of the brain and spinal cord caused by damage to the myelin sheath. Vaccination for tetanus is allegedly a known cause of ADEM. Plaintiff alleges that, due to the lengthy delay in diagnosis and treatment, he was rendered paralyzed and near death. While Plaintiff's condition improved with treatment, he still remains dependent for his activities in daily living and must use a catheter and diaper. Plaintiff alleges ongoing serious bouts of depression and emotional distress.

STANDARD

On a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6),[3] all allegations of material fact must be accepted as true and construed in the light most favorable to the nonmoving party. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 337-38 (9th Cir. 1996). The Court must also assume that "general allegations embrace those specific facts that are necessary to support a claim." Smith v. Pacific Props. & Dev. Corp., 358 F.3d 1097, 1106 (9th Cir. 2004).

[3] All further references to "Rule" or "Rules" are to the Federal Rules of Civil Procedure unless otherwise noted.

Rule 8(a)(2) "requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant a fair notice of what the [. . .] claim is and the grounds upon which it rests.'" Bell. Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). A complaint attacked by a Rule 12(b)(6) motion to dismiss does not require detailed factual allegations. Id. However, "a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Id. (internal citations and quotations omitted). A court is not required to accept as true a "legal conclusion couched as a factual allegation." Ashcroft v. Iqbal,129 S. Ct. 1937, 1950 (2009) (quoting Twombly, 550 U.S. at 555). The Court also is not required "to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." In re Gilead Sciences Sec. Litig., 536 F.3d 1049, 1055 (9th Cir. 2008). "Factual allegations must be enough to raise a right to relief above the speculative level." Twombly, 550 U.S. at 555 (citing 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004) (stating that the pleading must contain something more than a "statement of facts that merely creates a suspicion [of] a legally cognizable right of action.")).

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Furthermore, "Rule 8(a)(2) . . . requires a 'showing,' rather than a blanket assertion, of entitlement to relief." Twombly, 550 U.S. at 556 n.3 (internal citations and quotations omitted). "Without some factual allegation in the complaint, it is hard to see how a claimant could satisfy the requirements of providing not only 'fair notice' of the nature of the claim, but also 'grounds' on which the claim rests." Id. (citing 5 Charles Alan Wright & Arthur R. Miller, supra, at § 1202). A pleading must contain "only enough facts to state a claim to relief that is plausible on its face." Id. at 570. If the "plaintiffs . . . have not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed." Id. However, "a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and 'that a recovery is very remote and unlikely.'" Id. at 556 (quoting Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)).

A court granting a motion to dismiss a complaint must then decide whether to grant a leave to amend. Leave to amend should be "freely given" where there is no "undue delay, bad faith or dilatory motive on the part of the movant, . . . undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of the amendment . . . ." Foman v. Davis, 371 U.S. 178, 182 (1962); Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (listing the Foman factors as those to be considered when deciding whether to grant leave to amend). Not all of these factors merit equal weight. Rather, "the consideration of prejudice to the opposing party . . . carries the greatest weight."

Eminence Capital, 316 F.3d at 1052 (citing DCD Programs, Ltd. v. Leighton, 833 F. 2d 183, 185 (9th Cir. 1987)). Dismissal without leave to amend is proper only if it is clear that "the complaint could not be saved by any amendment." Intri-Plex Techs., Inc. v. Crest Group, Inc., 499 F. 3d 1048, 1056 (9th Cir. 2007) (internal citations and quotations omitted).

ANALYSIS

The Court examines Plaintiff's claims in the following order: (1) Plaintiff's § 1983 claims for failure to provide appropriate medical care against all individual Defendants (First Claim for Relief); (2) Plaintiff's § 1983 claim for violation of the Equal Protection Clause against all individual Defendants (Sixth Claim for Relief); (3) Plaintiff's § 1983 claim for violation of the First Amendment against all individual defendants (Eighth Claim for Relief); (4) Plaintiff's Monell liability claims against Sacramento County (Second, Third, Fourth, Fifth, Seventh and Ninth Claims for Relief); and (5) Plaintiff's claim under the Americans with Disabilities Act and Rehabilitation Act against Sacramento County (Tenth Claim for Relief).[4]

[4] Plaintiff has expressed no opposition, and the parties have agreed, to dismiss the County from Counts 1, 6 and 8 of the SAC. (See Pl.'s Am. Consol. Opp. To Defs.' Mot. To Dismiss, filed August 26, 2011 [ECF No. 59], at 29:23-25.) The parties have also agreed to the dismissal from the SAC of all individual defendants when alleged to be acting in their official capacities. (See id. at 29:10-23.) Finally, the parties have agreed to the dismissal of Counts 11, 12 and 13 of the SAC in their entirety. (See id. at 30:4-8.) Based on the parties' agreement, this Court dismisses the County from Counts 1, 6 and 8 (continued...)

I. First Claim for Relief: Claims Brought Pursuant to 42 U.S.C. § 1983 for Violations of the Fourteenth Amendment to the United States Constitution for Failure to Provide Appropriate Medical Care against Defendants McGinness, Boylan, Hambly, Smith, Carl, Keillor and Gaddis in Their Individual Capacities

Plaintiff's first claim arises under 42 U.S.C. § 1983. The SAC alleges that all individual Defendants failed to provide appropriate medical care to Plaintiff, and that Plaintiff suffered and continues to suffer personal injury and emotional distress and incurred damages as a result of such failure. (SAC ¶¶ 50-52.) Defendants argue that Plaintiff's first claim should be dismissed because Plaintiff groups all the Defendants together and fails to plead specific allegations as to how each Defendant violated Plaintiff's constitutional rights in failing to provide adequate medical care. (CDMTD at 8:1-3; SMTD at 6:12-14, 7:9-11).

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of the SAC, dismisses all individual defendants when alleged to be acting in their official capacities from the SAC, and dismisses Counts 11, 12 and 13 of the SAC.

To the extent that Plaintiff alleges supervisory responsibility of some Defendants, Defendants argue that Plaintiff failed to state a claim because he failed to allege: (1) personal participation by supervisory Defendants in the alleged violation of Plaintiff's rights, and/or (2) that a supervisory Defendant directed any actions which caused violations of Plaintiff's rights, and/or (3) that any supervisory Defendant was aware of widespread abuse and, with deliberate indifference, failed to act. (CDMTD at 9:8-12).

Under 42 U.S.C. § 1983, an individual may sue "[e]very person, who, under color of [law] subjects" him "to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws." Individual capacity suits "seek to impose individual liability upon a government officer for actions taken under color of state law." Hafer v. Melo, 502 U.S. 21, 25 (1991). Government officials may not be held liable for the unconstitutional conduct of their subordinates under a theory of respondeat superior. Iqbal, 129 S. Ct. at 1948. Rather, an individual may be liable for deprivation of constitutional rights "within the meaning of section 1983, if he does an affirmative act, participates in another's affirmative acts, or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made." Preschooler II v. Clark County Sch. Bd. of Trs., 479 F.3d 1175, 1183 (9th Cir. 2007). Thus, a plaintiff cannot demonstrate that an individual officer is liable "without a showing of individual participation in the unlawful conduct." Jones v. Williams, 297 F.3d 930, 935 (9th Cir. 2002).

Plaintiff must "establish the 'integral participation' of the officers in the alleged constitutional violation," id., which requires "some fundamental involvement in the conduct that allegedly caused the violation." Blankenhorn v. City of Orange, 485 F.3d 463, 481 n.12 (9th Cir. 2007).

Government officials acting as supervisors may be liable under § 1983 under certain circumstances. "[W]hen a supervisor is found liable based on deliberate indifference, the supervisor is being held liable for his or her own culpable action or inaction, not held vicariously liable for the culpable action or inaction of his or her subordinate." Starr v. Baca, 652 F.3d 1202, 1207 (9th Cir. 2011). A defendant may be held liable as a supervisor under § 1983 if there exists "either (1) his or her personal involvement in the constitutional deprivation; or (2) a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation." Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989); Starr, 652 F.3d at 1207.

A supervisor's physical presence is not required for supervisory liability. Starr, 652 F.3d at 1205. Rather, the requisite causal connection between a supervisor's wrongful conduct and the violation of the prisoner's Constitutional rights can be established in a number of ways. The plaintiff may show that the supervisor set in motion a series of acts by others, or knowingly refused to terminate a series of acts by others, which the supervisor knew or reasonably should have known would cause others to inflict a constitutional injury. Dubner v. City & County of S.F., 266 F.3d 959, 968 (9th Cir. 2001); Larez v. City of L.A., 946 F.2d 630, 646 (9th Cir. 1991).

Similarly, a supervisor's own culpable action or inaction in the training, supervision, or control of his subordinates may establish supervisory liability. Starr, 652 F.3d at 1208; Larez, 946 F.2d at 646. Finally, a supervisor's acquiescence in the alleged constitutional deprivation, or conduct showing deliberate indifference toward the possibility that deficient performance of the task may violate the rights of others, may establish the requisite causal connection. Starr, 652 F.3d at 1208; Menotti v. City of Seattle, 409 F.3d 1113, 1149 (9th Cir. 2005).

As opposed to prisoner claims under the Eighth Amendment, a pretrial detainee is entitled to be free of cruel and unusual punishment under the Due Process Clause of the Fourteenth Amendment. Bell v. Wolfish, 441 U.S. 520, 537 n. 16 (1979); Simmons v. Navajo County, Ariz., 609 F.3d 1011, 1017 (9th Cir. 2010). The Due Process Clause requires that "persons in custody have the established right to not have officials remain deliberately indifferent to their serious medical needs." Gibson v. County of Washoe, Nev., 290 F.3d 1175, 1187 (9th Cir. 2002) (quoting Carnell v. Grimm, 74 F.3d 977, 979 (9th Cir. 1996)). A pretrial detainee's due process right in this regard is violated when a jailer fails to promptly and reasonably procure competent medical aid when the pretrial detainee suffers a serious illness or injury while confined. Estelle v. Gamble, 429 U.S. 97, 104-105 (1976). Deliberate indifference can be "manifested by prison doctors in their response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed." Id.

In order to establish a plausible claim for failure to provide medical treatment, Plaintiff must plead sufficient facts to permit the Court to infer that (1) Plaintiff had a "serious medical need," and that (2) individual Defendants were "deliberately indifferent" to that need. Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006); Cf. Farmer v. Brennan, 511 U.S. 825, 834, 837 (1994).

Plaintiff can satisfy the "serious medical need" prong by demonstrating that "failure to treat [his] condition could result in further significant injury or the unnecessary and wonton infliction of pain." Jett, 439 F.3d at 1096 (internal citations and quotations omitted); Clement v. Gomez, 298 F.3d 898, 904 (9th Cir. 2002). Examples of such serious medical needs include "[t]he existence of an injury that a reasonable doctor or patient would find important and worthy of comment or treatment, the presence of a medical condition that significantly affects an individual's daily activities, or the existence of chronic and substantial pain." Lopez v. Smith, 203 F.3d 1122, 1131 (9th Cir. 2000). The Court finds that Plaintiff has alleged sufficient facts to make a plausible showing that his medical need was serious. Plaintiff suffered a head injury which required sutures, was suffering from persistent headaches, sensitivity to light, loss of vision, inability to move his lower extremities, and urinary retention and constipation. (See SAC ¶¶ 23, 24, 27, 28, 31, 32.) The Court recognizes that such symptoms not only affected Plaintiff's daily activities but, also, that a reasonable doctor would find such symptoms noteworthy.

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The next issue for the Court is whether individual Defendants were deliberately indifferent to Plaintiff's serious medical need. The Supreme Court, in Farmer, explained in detail the contours of the "deliberate indifference" standard. Specifically, individual Defendants are not liable under the Fourteenth Amendment for their part in allegedly denying necessary medical care unless they knew "of and disregard[ed] an excessive risk to [Plaintiff's] health and safety." Farmer, 511 U.S. at 837; Gibson, 290 F.3d at 1187-88. Deliberate indifference contains both an objective and subjective component: "the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw that inference." Farmer, 511 U.S. at 837. "If a person should have been aware of the risk, but was not," then the standard of deliberate indifference is not satisfied "no matter how severe the risk." Gibson, 290 F.3d at 1188 (citing Jeffers v. Gomez, 267 F.3d 895, 914 (9th Cir. 2001)). Plaintiff "need not show that a prison official acted or failed to act believing that harm actually would befall on inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm." Farmer, 511 U.S. at 842.

Important for purposes of the motions at issue, "[w]hether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence, . . . and a fact finder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious."

Id. (emphasis added) (internal citations omitted); see also Lolli v. County of Orange, 351 F.3d 410, 421 (9th Cir. 2003) ("Much like recklessness in criminal law, deliberate indifference to medical needs may be shown by circumstantial evidence when the facts are sufficient to demonstrate that a defendant actually knew of a risk of harm.").

"The indifference to medical needs must be substantial; a constitutional violation is not established by negligence or 'an inadvertent failure to provide adequate medical care.'" Anderson v. County of Kern, 45 F.3d 1310, 1316 (9th Cir. 1995) (quoting Estelle, 429 U.S. at 105-06). Generally, defendants are "deliberately indifferent to a prisoner's serious medical needs when they deny, delay, or intentionally interfere with medical treatment." Hallett v. Morgan, 296 F.3d 732, 744 (9th Cir. 2002); Lolli, 351 F.3d at 419. However, "[i]solated incidents of neglect do not constitute deliberate indifference." Bowell v. Cal. Substance Abuse Treatment Facility at Concord, No. 1:10-cv-02336, 2011 WL 2224817, at *3 (E.D. Cal. June 7, 2011) (citing Jett, 439 F.3d at 1096). Further, a mere delay in receiving medical treatment, without more, does not constitute "deliberate indifference," unless the plaintiff can show that the delay caused serious harm to the plaintiff. Wood v. Housewright, 900 F.2d 1332, 1335 (9th Cir. 1990).

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In the SAC, Plaintiff makes a general allegation that all individual defendants violated Plaintiff's constitutionally protected rights by: (1) failing to provide Plaintiff with necessary medical treatment; (2) failing to monitor Plaintiff once he reported signs of a serious neurological disorder; (3) failing to transport Plaintiff to a hospital or appropriate diagnostic facility upon learning that he has suffered from a serious medical condition; (4) failing to maintain appropriate medical records and history; (5) failing to supply the outside care provider with Plaintiff's accurate medical history upon transport. (SAC ¶ 51.) While these general allegations create a context for Plaintiff's allegations against individual Defendants, they are not sufficient to state a claim as to each Defendant without specific allegations demonstrating each Defendant's participation in the alleged constitutional deprivation. See Jones, 297 F.3d at 935.

(1) Defendant McGinness

The only facts in the SAC alleged specifically against McGinness are as follows: (1) McGinness "was, at all relevant times, employed by the County as the Sacramento County Sheriff," and (2) McGinness "was, at all relevant times, acting within the scope of his employment and/or agency with the County." (SAC ¶ 8.)

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As was discussed earlier, to sustain a § 1983 claim for individual liability, Plaintiff must establish the "personal involvement" of each defendant, including supervisors, in a constitutional deprivation or a "causal connection" between each defendant's wrongful conduct and the deprivation. Hansen, 885 F.2d at 646. Plaintiff's allegations that McGinness was employed as the County Sheriff and that he was acting within the scope of his employment are insufficient to demonstrate either his "personal involvement" in the alleged constitutional deprivation or the "causal connection" between McGinness' actions or omissions and the deprivation.

In his opposition to Defendants' motions to dismiss, Plaintiff relies on Redman v. County of San Diego, 942 F.2d 1435 (9th Cir. 1990), and Starr, 652 F.3d 1202, in asserting that, under California law, the Sheriff is required by statute to take charge of and keep the county jail and the prisoners in it, and is answerable for the prisoner's safekeeping. (Pl.'s Opp. at 14:14-15:21.) Inactions of the person "answerable for the prison's safekeeping," Plaintiff argues, is sufficient to state a claim for supervisory liability for deliberate indifference. (Id.) County Defendants contend that, in both Redman and Starr, plaintiffs alleged specific facts as to how the Sheriff was liable as a supervisor and how the Sheriff's actions or inactions caused the plaintiff's constitutional deprivation. (County Defs.' Reply to Pl.'s Opp., filed August 30, 2011 [ECF No. 60], at 5:13-19).

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Defendants further contend that Plaintiff here, unlike plaintiffs in Redman and Starr, failed to make any specific allegations to demonstrate McGinness' supervisory liability. (Id. at 5:8-19.) The Court agrees with County Defendants.

In Redman, a plaintiff specifically alleged that the Sheriff was ultimately in charge of the facility's operations, that the Sheriff knew that the facility was not a proper place to detain the plaintiff and posed a risk of harm to the plaintiff but placed the plaintiff there anyway. Redman, 942 F.2d at 1446-47. In Starr, the plaintiff similarly alleged that the Sheriff knew of the unconstitutional activities in the jail, including that his subordinates were engaging in some culpable actions. Starr, 652 F.3d at 1208. In fact, the plaintiff's complaint in Starr contained numerous specific factual allegations demonstrating the Sheriff's knowledge of unconstitutional acts at the jail and the Sheriff's failure to terminate those acts, including that the U.S. Department of Justice gave the Sheriff clear written notice of a pattern of constitutional violations at the jail, that the Sheriff received "weekly reports from his subordinates responsible for reporting deaths and injuries in the jails," that the Sheriff personally signed a Memorandum of Understanding that required him to address and correct the violations at the Jail, and that the Sheriff was personally made aware of numerous concrete instances of constitutional deprivations at the jail. Starr, 652 F.3d at 1209-12. Here, on the other hand, Plaintiff's SAC does not contain any factual allegations demonstrating that McGinness was aware of Plaintiff's constitutional deprivations or of any other wrongful acts by Jail personnel.

Thus, nothing in the SAC plausibly suggests that McGinness "acquiesced" in the wrongful conduct of his subordinates.

Accordingly, Plaintiff has not pleaded sufficient facts to support the inference that McGinness was deliberately indifferent to Plaintiff's medical needs. The Court dismisses Defendant McGinness from Plaintiff's first claim with leave to amend.

(2) Defendant Boylan

Plaintiff's allegations against Boylan are similarly limited to statements that Boylan (1) was, at all relevant times, employed by the County as the Chief of the Sacramento County Jail Correctional Health Services ["CHS"], and (2) was at all relevant times acting within the scope of her employment and/or agency with the County. (SAC ¶ 9.) Plaintiff has not alleged that Boylan participated in or directed alleged violations, or knew of the violations and failed to act. In his opposition, Plaintiff argues that it is reasonable to infer that Boylan, because of her position as the CHS Chief for the Jail, was responsible for and knew of the pervasive deficiencies in the Jail's delivery of medical care. (Pl.'s Opp. at 15.) The Court finds Plaintiff's contention unavailing.

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Nowhere in the SAC does Plaintiff allege that Boylan, as a supervisor, knew or reasonably should have known of any "pervasive deficiencies" in the provision of medical care at the Jail and refused to cure these deficiencies, or that Boylan's own culpable action or inaction in the training, supervision, or control of her subordinates were the cause of the alleged constitutional deprivation, or that Boylan acquiesced in the alleged constitutional deprivation. A mere recitation of the defendant's official title is not sufficient, by itself, to infer that the defendant should be individually liable for Plaintiff's constitutional deprivations. Accordingly, Defendants' Motion to Dismiss Plaintiff's first claim against Defendant Boylan is granted with leave to amend.

(3) Defendant Hambly

In addition to allegations that Hambly was, at all relevant times, employed as Interim Medical Director of the Jail CHS, and that he was acting within the scope of his employment, the SAC states that Hambly was also a physician employed by the County to provide medical treatment to inmates at the Jail, and that he was responsible for providing treatment to Plaintiff. (SAC ¶¶ 10-11.) However, absent from the SAC are any allegations of personal contact between Plaintiff and Hambly, or any demonstration of Hambly's other personal participation in the alleged constitutional deprivation.

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The only indication of Hambly's knowledge about Plaintiff is a statement in the SAC that, on Plaintiff's information and belief, Hambly reviewed Plaintiff's chart on Aril 30, 2007 (two days after Plaintiff returned to the Jail after his head surgery). (Id. ¶ 24.) Plaintiff claims that this allegation is sufficient to demonstrate that Hambly had direct knowledge of Plaintiff's medical condition as one of Plaintiff's treating physicians, and that "acquiescence" or "culpable indifference" are sufficient to show that Hambly, as a supervisor, personally participated in the alleged constitutional violation. (Pl.'s Opp. at 15:7-9, 15:27-28.) The Court disagrees. Nowhere in the SAC does Plaintiff allege that Hambly, as Plaintiff's treating physician, personally denied, delayed, or intentionally interfered with Plaintiff's medical treatment. See Hallett, 296 F.3d at 744; Lolli, 351 F.3d at 419. An allegation that Hambly reviewed Plaintiff's medical chart two days after the surgery is plainly insufficient to demonstrate that Hambly was deliberately indifferent to Plaintiff's serious medical needs.

Similarly absent from the SAC are any allegations of Hambly's supervisory liability. As the Court explained earlier, a statement that a defendant was employed in a supervisory capacity and acted within the scope of his employment is not sufficient, by itself, to infer that the defendant should be personally liable for Plaintiff's constitutional deprivations.

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Plaintiff's general allegations that all medical defendants failed to provide Plaintiff with necessary medical treatment, failed to monitor him, delayed transporting him to an outside medical facility, and failed to maintain appropriate medical records are also insufficient to state a claim of deliberate indifference against Hambly without further demonstration that Hambly either personally participated or "acquiesced" in those wrongful acts. Accordingly, Defendants' Motion to Dismiss Plaintiffs' first claim against Defendant Hambly is granted with leave to amend.

(4) *Defendant Smith*

Plaintiff alleges that Smith was the physician responsible for providing treatment to Plaintiff. (SAC ¶ 11.) Plaintiff further alleges that Smith treated Plaintiff on two occasions. On May 13, 2007, in response to Plaintiff's complaints about persistent headaches, Smith ordered Plaintiff's stitches removed and gave Plaintiff Motrin for pain. (Id. ¶¶ 26,27.) On May 20, 2007, after Plaintiff told the officers that "his legs did not work, that he could not urinate, and that he was going blind," Smith allegedly saw Plaintiff but "failed to take any appropriate medical action." (Id. ¶¶ 31,32.) Plaintiff further alleges that later that day he was seen by another doctor, Dr. Horowitz, who determined that Plaintiff "had been on the floor of his cell for three days" and that Plaintiff "had been suffering from vision loss, an inability to control his extremities, get up to 'void or defecate,' and obvious other neurological impairments."

(Id. ¶ 32.) Dr. Horowitz sent Plaintiff to an emergency room, where MRI scans revealed an expansive lesion of Plaintiff's spine and brain involvement. (Id. ¶ 33.) Subsequently, Plaintiff was admitted to UCD, where he was eventually diagnosed with a rare neurological disorder, ADEM. (Id. ¶¶ 34-36.) Plaintiff alleges that, because of the delays in his diagnosis and treatment, "he had been rendered paralyzed and near death." (Id. ¶ 36.)

Defendant Smith argues that Plaintiff's first claim for relief fails to set forth specific facts or, alternatively, that it fails to state facts sufficient to constitute a claim under § 1983. (SMTD at 5-8.) In particular, Defendant Smith contends that Plaintiff's only specific allegations against Smith in ¶¶ 27 and 32 of the SAC lack specific details or factual circumstances as to what the alleged act or omission by Smith caused Plaintiff's constitutional deprivation. (Id. at 6:12-7:3.) Smith further argues that "[n]othing in Plaintiff's sparse allegations can be interpreted to show that Dr. Smith provided (or failed to provide) treatment which resulted in deliberate indifference to Plaintiff's rights." (Id. at 8:14-15.) The Court disagrees.

In reviewing the sufficiency of the complaint under Rule 12(b)(6), the Court must assume that "general allegations embrace those specific facts that are necessary to support a claim." Smith, 358 F.3d at 1106. Also, in deciding whether a complaint survives a Rule 12(b)(6) motion to dismiss, the Court takes into consideration not only specific factual allegations, but also "reasonable inferences" from the complaint's "factual content."

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Moss v. United States Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009). The Court finds that, based on the general and specific factual allegations in the SAC and reasonable inferences, it is plausible that Dr. Smith knew of and was deliberately indifferent to Plaintiff's serious medical condition. Plaintiff allegedly had serious medical symptoms at the time of his treatment by Smith on May 20, including vision loss, inability to control his legs, persistent headaches, inability to urinate and constipation. Smith's alleged failure to do anything to alleviate Plaintiff's serious medical symptoms, coupled with Dr. Horowitz's determination that Plaintiff was indeed suffering from serious impairments and required an emergency medical assistance, permit the Court to reasonably infer that Smith plausibly denied, delayed, or intentionally interfered with Plaintiff's medical treatment. See Hallett, 296 F.3d at 744. Plaintiff's allegations of his medical symptoms and the fact that Plaintiff informed the treating medical staff about those symptoms plausibly demonstrate that "the course of treatment [Smith] chose was medically unacceptable under the circumstances ... and ... that [he] chose this course in conscious disregard of an excessive risk to plaintiff's health." See Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1986).

In sum, the Court concludes that, at this point in the litigation, without substantial discovery, and where the Court must draw all inferences in favor of Plaintiff, the SAC contains sufficient allegations for the Court to infer that Defendant Smith's deliberate indifference to Plaintiff's serious medical needs resulted in Plaintiff's constitutional deprivation.

(5) Defendant Carl

Plaintiff alleges that Carl was employed as a nurse at the Jail, and that he was Plaintiff's medical provider during the relevant time period. (SAC ¶ 13.) Carl allegedly saw Plaintiff on three occasions. On May 13, 2007, Carl saw Plaintiff when Plaintiff complained about persistent headaches. Carl consulted with Dr. Smith, who ordered Plaintiff's stitches to be removed and pain medication to be administered. (Id. ¶¶ 26,27.) On May 17, 2007, after Plaintiff collapsed in the shower, Plaintiff again saw Carl and complained that his legs did not work. (Id. ¶ 29.) Plaintiff alleges that Carl "failed to conduct an adequate medical assessment of a patient presenting with an apparent spinal chord [sic] injury and/or neurological disorder." (Id. ¶ 30.) Plaintiff further alleges that Carl ordered Plaintiff to be returned to his cell, without arranging for any medical follow-up. (Id.) On May 20, 2007, after Plaintiff started complaining about vision loss, urinary retention and constipation, in addition to inability to move his lower extremities and persistent headaches, Carl again saw Plaintiff and referred Plaintiff to see Dr. Smith. (Id. ¶ 32.)

Plaintiff's allegations against Carl do not rise to the level of deliberate indifference. On the contrary, Plaintiff's allegations demonstrate that each time Carl saw Plaintiff, he evaluated Plaintiff's complaints and twice referred Plaintiff to a doctor.

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While Plaintiff's allegations concerning the incident on May 17 permit the Court to infer that Carl might have been negligent in sending Plaintiff back to the cell, nothing in the SAC suggests that Carl knew "of a substantial risk of serious harm," but chose to disregard it. See Gibson, 290 F.3d at 1187-88. Plaintiff's own allegation that, on May 17, Carl "failed to conduct an adequate medical assessment" supports the inference of negligence, not deliberate indifference. Because one isolated incident of neglect does not demonstrate "deliberate indifference," see Jett, 439 F.3d at 1096, the Court dismisses Defendant Carl from the SAC's first claim with leave to amend.

(6) Defendant Gaddis

Plaintiff alleges that Officer Gaddis at all relevant times was employed as custodial staff at the jail. (SAC ¶ 14.) Plaintiff specifically alleges that Gaddis responded when Plaintiff fell in the shower on May 17, 2007, but "failed to use the radio properly to alert medical staff od [sic] the emergebncy [sic], and failed to file an incident or casualty report following the incident, violating jail policies, acting with deliberate indifference to [Plaintiff's] medical needs and delaying [Plaintiff's] access to necessary medical care." (Id. ¶ 29.) Plaintiff further alleges that he was "eventually wheeled in a wheelchair to the nurse for evaluation." (Id.) The Court finds these allegations insufficient to state a claim of deliberate indifference against Officer Gaddis.

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The only plausible allegation that can lead to the inference of deliberate indifference on the part of Officer Gaddis is that he delayed alerting the medical staff of Plaintiff's medical needs. However, the SAC fails to allege how significant the delay was and how the delay harmed Plaintiff. See Hertig v. Cambra, No. 1:04-cv-5633, 2009 WL 62126, at *4(E.D. Cal. Jan. 8, 2009) (citing Shapley v. Nevada Bd. of State Prison Comm'rs, 766 F.2d 404, 407 (9th Cir. 1985)) ("[A] delay in receiving medical care, without more, is insufficient to state a claim against a jailor for deliberate indifference unless the plaintiff can show that the delay in treatment harmed him.").

Moreover, "[t]o have acted with deliberate indifference, . . . the officers also must have inferred . . . that [the plaintiff] was at serious risk of harm" if he did not receive immediate medical attention. Lolli, 351 F.3d at 420. The SAC fails to provide any evidence that Gaddis knew that Plaintiff was at serious risk of harm if he did not receive immediate medical attention. Finally, Gaddis' failure "to use the radio properly" and to file the incident report at best amounts to negligence, and does not rise to the level of deliberate indifference to Plaintiff's serious medical needs. Accordingly, Plaintiff's first claim against Defendant Gaddis is dismissed with leave to amend.

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(7) Defendant Keillor

Plaintiff alleges that Sergeant Keillor was employed at all relevant times as supervisory custodial staff at the Jail, and that Sergeant Keillor was responsible for supervising custodial staff at the Jail. (SAC ¶ 15.) The SAC's only other specific allegation against Keillor is that he was the supervising officer on duty on May 17, 2007, when Plaintiff fell in the shower, and that he "failed to ensure the unit was properly staffed and failed to ensure custody staff was properly trained in responding to medical emergencies." (Id. ¶ 29.)

As Keillor's alleged liability is based on his supervisory status, Plaintiff must demonstrate Keillor's "'own culpable action or inaction in the training, supervision, or control of his subordinates,' 'his acquiescence in the constitutional deprivations of which the complaint is made,' or 'conduct that showed a reckless or callous indifference of others.'" Starr, 652 F.3d at 1205-06 (quoting Larez, 946 F.2d at 646). A conclusory allegation that Keillor "failed to ensure the unit was properly staffed and failed to ensure custody staff was properly trained in responding to medical emergencies," without any specific factual allegations, does not plausibly suggest an entitlement to relief and is not entitled to the presumption of truth. See Iqbal, 556 U.S. at 1949-50. Plaintiff fails to allege any facts suggesting that Keillor knew of the alleged constitutional violations and failed to act to prevent them.

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Thus, the SAC does not plead sufficient facts to support the inference that Defendant Keillor was deliberately indifferent to Plaintiff's medical needs.

Additionally, there can be no showing that supervisory defendants should be held liable under § 1983 without a showing that their subordinates violated Plaintiff's constitutional rights. Jackson v. City of Bremerton, 268 F.3d 646, 653 (9th Cir. 2001). Thus, Plaintiff cannot demonstrate that Keillor, as a supervisor, was deliberately indifferent to Plaintiff's serious medical needs without first demonstrating that Keillor's subordinate, Defendant Gaddis, committed a constitutional violation. Accordingly, the Court dismisses Defendant Keillor from Plaintiff's first claim with leave to amend.

II. Sixth Claim for Relief: Violation of the Equal Protection Clause of the Fourteenth Amendment Against Defendants McGinness, Boylan, Hambly, Smith, Carl, Keillor and Gaddis in Their Individual Capacities

Plaintiff alleges in Count 6 that Defendants' acts alleged in the SAC "were motivated by racial animus and that Plaintiff . . . was treated differently from similarly situated non-Indian inmates," and that Plaintiff suffered and continues to suffer damages for the deprivation of his constitutional rights. (SAC ¶¶ 77-78.)

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Plaintiff's factual allegations relevant to his racial discrimination claim are: (1) Plaintiff was housed with the African-American inmates at the Jail because of his very dark skin color (Id. ¶ 23); (2) On April 27, 2007, Plaintiff suffered a head injury as a result of a racial alteration between African American inmates and non-black inmates (Id.); and (3) The Jail "has a history of repeated acts of discrimination against inmates based on their race or national origin" (Id. ¶ 41).

Defendants argue that Plaintiff's racial discrimination claim against individual Defendants should be dismissed because Plaintiff failed to establish how each Defendant violated Plaintiff's constitutional rights by acting with an intent or purpose to discriminate based on race. (CDMTD at 8:14-19; SMTD at 9:16-18.) Defendants further argue that Plaintiff failed to identify another similarly situated group which was treated differently and the actual differing treatment itself. (CDMTD at 8:19-21; SMTD at 9:14-16.) Defendants also contend that, to the extent that Plaintiff bases his allegations on the supervisory liability of some Defendants, Plaintiff failed to allege that those Defendants personally participated in the wrongful conduct, or directed such a conduct, or were aware of such a conduct and failed to act. (CDMTD at 10:8-12.) The Court finds Defendants' contentions persuasive.

To state a claim under § 1983 for a violation of the Equal Protection Clause of the Fourteenth Amendment, a plaintiff must demonstrate that each defendant acted with an "intent or purpose to discriminate against the plaintiff based upon membership in a protected class."

Lee v. City of L.A., 250 F.3d 668, 689 (9th Cir. 2001); see also Monteiro v. Temple Union High School Dist., 158 F.3d 1022, 1026 (9th Cir. 1998) ("[Section] 1983 claims based on Equal Protection violations must plead intentional unlawful discrimination or allege facts that are at least susceptible of an inference of discriminatory intent."). Plaintiff does not plead any facts demonstrating that any of the named Defendants had an "intent or purpose to discriminate." Instead of pleading facts to support his claim of racial discrimination, Plaintiff pleads a legal conclusion: "Plaintiff is informed and believes . . . that Defendants' aforementioned acts were motivated by racial animus." (SAC ¶ 77.) Such a legal conclusion is not entitled to be accepted as true and does not plausibly suggest an entitlement to relief. See Iqbal, 556 U.S. at 1949-50.

Plaintiff's allegation that the Jail has a history of discrimination is similarly insufficient to demonstrate that any of the individual Defendants acted with a discriminatory intent. The allegation that Plaintiff's housing assignment was discriminatory also does not bear on the individual Defendants' intent as Plaintiff does not allege that any of the individual Defendants took any role in determining Plaintiff's housing arrangements. As to the supervisory Defendants, the SAC fails to allege that these Defendants knew of and "acquiesced" in the alleged racial discrimination by their subordinates. See Starr, 652 F.3d at 1207. Further, Plaintiff fails to allege any facts demonstrating that he was treated differently from a similarly situated group of inmates. Accordingly, the Court dismisses Plaintiff's sixth claim for relief with leave to amend.

III. Eighth Claim for Relief: Violation of the First Amendment Against Defendants McGinness, Boylan, Hambly, Smith, Carl, Keillor and Gaddis in Their Individual Capacities

Plaintiff alleges that Defendants' acts "were in retaliation for Plaintiff's . . . protest of the deplorable conditions under which he and similarly situated inmates were being held" at the Jail, and that he suffered damages as a result of this constitutional deprivation. (SAC ¶¶ 85-86.) The SAC also alleges that the Jail has "a history of retaliation against inmates for their requests for medical attention, basic hygiene needs, or even food." (Id. ¶ 41.) Defendants contend that Plaintiff (1) failed to address all the elements of the retaliation claim, (2) failed to allege what adverse action was taken, (3) failed to allege that the adverse action chilled his First Amendment rights, and (4) failed to allege that the adverse action did not serve a legitimate penological purpose. (CDMTD at 13:25-14:2.) Defendants further argue that Plaintiff failed to allege any personal involvement as to any of the individual Defendants in the alleged retaliatory actions. (Id. at 14:9-11; SMTD at 10:11-18.)

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In his opposition, Plaintiff contends that the SAC's factual allegations that the custodial staff at the Jail warned him to "stop using the call button" and "stop complaining," and that Defendants took his wheelchair away, making it impossible for Plaintiff to get to the intercom to request care constitute sufficient circumstantial evidence allowing to infer Defendants' intent to chill Plaintiff's First Amendment rights. (Pl's Opp. at 25:27-26:5.) Plaintiff further argues that "[t]he repeated warnings from the guards would chill an inmate of ordinary resilience, and when coupled with the brutality of being dumped onto the cell floor and denied a wheelchair to get up, and the use of the intercom to call for help . . . would silence an inmate in ordinary circumstances." (Id. at 26:5-9.) The Court finds Plaintiff's arguments unpersuasive.

A bare allegation of retaliation is insufficient to support a plausible claim for relief. See Iqbal, 129 S. Ct. at 1949-50. In order to state a claim for retaliation, Plaintiff must demonstrate that: (1) the Jail officials took an adverse action against him; (2) the adverse action was taken because Plaintiff engaged in the protected conduct; (3) the adverse action chilled Plaintiff's First Amendment rights; and (4) the adverse action did not serve a legitimate penological purpose, such as preserving institutional order and discipline. Rhodes v. Robinson, 408 F.3d 559, 568 (9th Cir. 2005); Barnett v. Centoni, 31 F.3d 813, 815-16 (9th Cir. 1994). "Speech can be chilled even when not completely silenced." Rhodes, 408 F.3d at 568.

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"[T]he proper First Amendment inquiry asks 'whether an official's acts would chill *or* silence a person of ordinary firmness from future First Amendment activities.'" Id. at 568-69 (quoting Mendocino Envtl. Ctr. v. Mendocino County, 192 F.3d 1283, 1300 (9th Cir.)) (emphasis in the original).

The Court finds that Plaintiff failed to state a viable claim of retaliation against the named Defendants. Even assuming as true Plaintiff's allegations that some members of the custodial staff ordered him "to stop using the call button," "to stop complaining," and took Plaintiff's wheelchair away, the SAC is silent as to the identities of those wrongdoers. Plaintiff does not plead that any of the named defendants personally participated in the alleged retaliatory actions. As to the supervisory defendants, Plaintiff again fails to demonstrate that those Defendants knew of and "acquiesced" in the alleged retaliatory conduct of their subordinates. See Starr, 652 F.3d at 1207. The general allegation that the Jail has a history of retaliation against inmates is not sufficient to state a claim as to individually named Defendants without some further showing that those Defendants personally, or as supervisors, participated in the wrongful conduct.

Furthermore, even with respect to the unnamed Doe Defendants, the SAC does not contain any allegations demonstrating that the allegedly adverse action of Jail personnel chilled Plaintiff's First Amendment rights, or that the alleged adverse action did not serve a legitimate penological purpose. See Rhodes, 408 F.3d at 568. Accordingly, the Court dismisses Plaintiff's eighth claim with leave to amend.

IV. Second, Third, Fourth, Fifth, Seventh and Ninth Claims for Relief: Monell Liability Against Sacramento County

Plaintiff claims that, at all relevant times, the County (1) "maintained a policy or a de facto unconstitutional informal custom or practice of permitting, ignoring and condoning [Jail personnel] to delay in providing adequate medical assistance for the protection of the health of inmates, failing to properly observe and treat inmates" (SAC ¶ 55) (Count 2); (2) "maintained the policy, custom of practice of under-staffing the Main Jail with custody and medical personnel" (Id. ¶ 59) (Count 3); (3) "maintained a policy, custom or practice of staffing the Main Jail with personnel who were not sufficiently trained" (Id. ¶ 65) (Count 4); (4) "maintained a policy, custom, or practice of understaffing the Main Jail with supervisory personnel and failing to properly supervise the custodial and medical staff at the Main Jail" (Id. ¶ 71) (Count 5); (5) "maintained a policy, custom or practices of treating and retaliating against inmates of color differently than similarly situated non-Indian inmates at the Main Jail" (Id. ¶ 80) (Count 7); and (6) "maintained a policy, custom or practice of retaliating against inmates who complained about deplorable and unlawful conditions of confinement at the Main Jail" (Id. ¶ 88) (Count 9). Plaintiff also alleges that the County was, at all relevant times, responsible for the policies, customs and procedures at the Jail. (Id. ¶ 7.)

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County Defendants contend that Plaintiff failed to state a Monell claim because he did not demonstrate how each policy, custom or practice was deficient; how each policy, custom or practice caused Plaintiff's harm; and how the deficiency involved was obvious and the constitutional injury was likely to occur. (CDMTD at 10:8-11, 14:3-6.)

In order to be subject to suit under § 1983, the alleged offender must be a "person" acting under color of state law. Will v. Mich. Dep't of State Police, 491 U.S. 58, 60 (1989). Local governments, including counties, qualify as "persons" within the meaning of § 1983. Monell v. Dep't of Social Servs., 436 U.S. 658, 690 (1978); Long v. County of L.A., 442 F.3d 1178, 1185 (9th Cir. 2006). However, municipalities and local governments cannot be vicariously liable for the conduct of their employees under § 1983, but rather are only "responsible for their own illegal acts." Connick v. Thompson, 131 S. Ct. 1350, 1359 (2011) (quoting Pembaur v. Cincinnati, 475 U.S. 469, 479 (1986)) (emphasis in the original). In other words, a municipality may only be liable where it individually caused a constitutional violation via "execution of a government's policy or custom, whether by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy." Monell, 436 U.S. at 694; Ulrich v. City & County of S.F., 308 F.3d 968, 984 (9th Cir. 2002). A recent decision from this district summarized the Ninth Circuit standard of municipal liability under § 1983 in the following way:

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> Municipal liability may be premised on: (1) conduct pursuant to an expressly adopted official policy; (2) a longstanding practice or custom which constitutes the "standard operating procedure" of the local government entity; (3) a decision of a decision-making official who was, as a matter of state law, a final policymaking authority whose edicts or acts may fairly be said to represent official policy in the area of decision; or (4) an official with final policymaking authority either delegating that authority to, or ratifying the decision of, a subordinate.

Young v. City of Visalia, 687 F. Supp. 2d 1141, 1147 (E.D. Cal. 2009) (citing Price v. Sery, 513 F.3d 962, 966 (9th Cir. 2008); Lytle v. Carl, 382 F.3d 978, 982 (9th Cir. 2004); Ulrich, 308 F.3d at 984-85, Trevino v. Gates, 99 F.3d 911, 918 (9th Cir. 1996)).

A "policy," for purposes of municipal liability under § 1983, is a "deliberate choice to follow a course of action . . . made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question." Fogel v. Collins, 531 F.3d 824, 834 (9th Cir. 2008). A "custom" is a "widespread practice that, although not authorized by written law or express municipal policy, is so permanent and well-established as to constitute a custom or usage with the force of law." City of St. Louis v. Praprotnik, 485 U.S. 112, 127 (1988); L.A. Police Protective League v. Gates, 907 F.2d 879, 890 (9th Cir. 1990) (internal quotation marks omitted).

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A negligent policy does not violate the Constitution; rather, in order to amount to "deliberate indifference," the need for more or different action is "obvious, and the inadequacy [of the current procedure] so likely to result in the violation of constitutional rights, that the policymakers . . . can reasonably be said to have been deliberately indifferent to the need." City of Canton v. Harris, 489 U.S. 378, 390 (1989); Mortimer v. Baca, 594 F.3d 714, 722 (9th Cir. 2010). Because Monell held that a local government is not liable under § 1983 on the basis of the doctrine of respondeat superior, "a plaintiff must show the municipality's deliberate indifference led to its omission and that the omission caused the employee to commit the constitutional violation." Gibson, 290 F.3d at 1186. Moreover, "[t]o prove deliberate indifference, the plaintiff must show that the municipality was on actual or constructive notice that its omission would likely result in a constitutional violation." Id. (citing Farmer, 511 U.S. at 841).

Generally, "[l]iability for improper custom may not be predicated on isolated or sporadic incidents; it must be founded upon practices of sufficient duration, frequency and consistency that the conduct has become a traditional method of carrying out policy." Trevino, 99 F.3d at 918. However, in rare circumstances, a court can find a municipality liable under § 1983 based on the so-called "single-incident" theory. Connick, 131 S. Ct. at 1361. Specifically, a particular "showing of 'obviousness' can substitute for the pattern of violations ordinarily necessary to establish municipal liability."

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Id. However, the Supreme Court emphasized that it is only "'in a narrow range of circumstances' [that] a pattern of similar violations might not be necessary to show deliberate indifference." Id. (quoting Bd. of County Comm'rs of Bryan County v. Brown, 520 U.S. 397, 409 (1997)).

Besides demonstrating that one of the methods of establishing municipal liability applies, a plaintiff must also show that the challenged municipal conduct was both the cause in fact and the proximate cause of the constitutional deprivation. Trevino, 99 F.3d at 918. In other words, Plaintiff bears the burden of demonstrating that the County's policy or custom was a "moving force" of the constitutional deprivation and that Plaintiff's injury would have been avoided had the County had a constitutionally proper policy. Gibson, 290 F.3d at 1196.

A pre-Iqbal Ninth Circuit decision held that "a claim of municipal liability under section 1983 is sufficient to withstand a motion to dismiss even if the claim is based on nothing more than a bare allegation that the individual officers' conduct conformed to official policy, custom, or practice." Whitaker v. Garcetti, 486 F.3d 572, 581 (9th Cir. 2007). However, the Supreme Court in Iqbal made it clear that conclusory, "threadbare" allegations merely reciting the elements of a cause of action cannot defeat the Rule 12(b)(6) motion to dismiss. Iqbal, 129 S. Ct. at 1949-50. "In light of Iqbal, it would seem that the prior Ninth Circuit pleading standard for Monell claims (i.e. 'bare allegations') is no longer viable." Young, 687 F. Supp. 2d at 1149.

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Thus, a Monell claim against the County requires more than "labels and conclusions" or "a formulaic recitation of the elements of a cause of action.'" See Iqbal, 129 S. Ct. at 1949 (quoting Twombly, 550 U.S. at 555).

(1) Plaintiff's Second Claim for Relief: Policy of Delaying Medical Assistance to Inmates and Failure to Properly Observe and Treat Inmates

Plaintiff alleges that the acts of individual Defendants in being deliberately indifferent to Plaintiff's serious medical needs and safety were the direct and proximate cause of customs, practices and policies of the County. (SAC ¶ 54). Plaintiff claims that the Defendants, including the County, "failed to promulgate appropriate policies, guidelines and procedures and have failed to rectify improper practices/customs with regard to the medical treatment and/or health and safety" of the Jail inmates. (Id. ¶ 46.)

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Specifically, Plaintiff alleges that the County maintained the following policies, customs, or practices, which fell below any acceptable standard of care: (1) Failure to provide follow-up care and to monitor inmates with known medical needs; (2) Failure to provide medical care to inmates with serious medical needs; (3) Failure to have medical examinations conducted by qualified medical personnel; (4) Failure to hospitalize inmates with acute medical conditions; (5) Failure to maintain adequate medical records; (6) Failure to provide medical records and a complete medical history to outside hospitals rendering acute care for inmates; and (7) Failure of custody staff to conduct proper welfare checks and alert medical to serious medical needs of inmates. (Id. ¶ 56.) Plaintiff also alleges that the Jail "has a history of failing to respond to the urgent medical need of its inmates," and that the Jail "has operated for a number of years without sufficient staffing of properly trained and supervised custody and medical personnel." (Id. ¶ 40.) Defendants contend that Plaintiff's second claim consists of a laundry list of potential factual theories, and fails to specifically identify a policy, practice, or procedure, or lack thereof, that resulted in the alleged constitutional violation. (Defs.' Reply at 7:1-5.)

The SAC does not contain sufficient facts to allege that the County's policy regarding medical care for inmates at the Jail plausibly amounts to deliberate indifference.

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As the County cannot be vicariously liable under § 1983 for the conduct of Jail personnel, Plaintiff must demonstrate that the County itself caused a constitutional violation via "execution of a government's policy or custom, whether by its lawmakers or by those whose edicts or acts may fairly be said to represent the official policy." Monell, 436 U.S. at 694; Ulrich, 308 F.3d at 984. The SAC's factual allegations do not support the inference that the County itself or through its entity or an official with a final decision-making authority executed any of the seven policies or customs identified by Plaintiff. While some of Plaintiff's allegations might be sufficient to demonstrate "deliberate indifference" to his serious medical needs by certain Jail employees, nothing in the SAC suggests that those employees were acting pursuant to the County's policy of ignoring the inmates' medical needs. On the contrary, some of Plaintiff's own allegations suggest that the Jail employees were acting not in conformance with, but contrary to, the established Jail policies. (See, e.g., SAC ¶ 39 (alleging that Defendant Gaddis violated jail policies by failing to file an incident report).)

Plaintiff's allegation about the Jail's "history of failing to respond to the urgent medical need of its inmates" is an unsupported conclusory statement. In fact, the SAC does not contain references to any other incidents of the Jail's failure to respond to inmates' medical needs; instead, Plaintiff bases his allegation of the Jail's policies solely on Plaintiff's own experience of the alleged medical mistreatment. The County's § 1983 liability cannot be predicated on one isolated incident. See Trevino, 99 F.3d at 918.

To survive a motion to dismiss, Plaintiff has to demonstrate the County's "practices of sufficient duration, frequency and consistency." See id. While in narrow circumstances a court can predicate § 1983 municipal liability on a single incident of a constitutional violation, the SAC fails to demonstrate the requisite "obviousness" of Plaintiff's constitutional deprivation. See Connick, 131 S. Ct. at 1361.

Accordingly, as currently pled, Plaintiff's third claim fails to state a claim and thus is dismissed with leave to amend.

(2) Plaintiff's Fourth Claim for Relief: Failure to Adequately Train

Plaintiff alleges the County maintained a policy, custom, or practice of staffing the Jail with personnel who were not sufficiently trained, and that such a policy, custom or practice was the moving force behind the violation of his constitutional rights. (SAC ¶¶ 65-66.) It appears that Plaintiff's fourth claim is limited to the County's failure to train custody personnel, and does not implicate the medical personnel at the Jail. (See id. ¶¶ 66-67.)

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Specifically, Plaintiff alleges that the County "failed to properly train custody personnel, including but not limited to training and monitoring inmates, detecting the need for medical care, responding to requests for medical care, proper policies and procedures for transportation of acute inmates to appropriate medical facilities, maintaining constitutional[ly] adequate medical charts and histories, ensuring that inmates requiring acute medical care are accompanied to the treating facility with a complete medical history, and providing necessary medical care to inmates with serious medical needs." (Id. ¶ 67.)

A municipality's failure to train its employees may create a § 1983 liability where the "failure to train amounts to deliberate indifference to the rights of persons with whom the [employees] come into contact." City of Canton, 489 U.S. at 388; Lee, 250 F.3d at 681. "The issue is whether the training program is adequate and, if it is not, whether such inadequate training can justifiably be said to represent the municipal policy." Long, 442 F.3d at 1186. A plaintiff alleging a failure to train must show that "(1) he was deprived of a constitutional right, (2) the [municipality] had a training policy that 'amounts to deliberate indifference to the [constitutional] rights of the persons' with whom [its employees] are likely to come into contact'; and (3) his constitutional injury would have been avoided had the [municipality] properly trained those officers." Blankenhorn v. City of Orange, 485 F.3d 463, 484 (9th Cir. 2007).

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"Only where a municipality's failure to train its employees in a relevant respect evidences a 'deliberate indifference' to the rights of its inhabitants can such a shortcoming be properly thought as a . . . 'policy or custom' that is actionable under § 1983." City of Canton, 489 U.S. at 389; Long, 511 F.3d at 907. A municipality is "deliberately indifferent" when the need for more or different action "is so obvious, and the inadequacy [of the current procedure] so likely to result in the violation of constitutional rights, that the policymakers . . . can reasonably be said to have been deliberately indifferent to the need." City of Canton, 489 U.S. at 390; Lee, 250 F.3d at 682. "Unlike the deliberate indifference standard used to determine if a violation of a detainee's right to receive medical care took place, th[e] standard [for failure to train] does not contain a subjective component." Gibson, 290 F.3d at 1195 (citing Farmer, 511 U.S. at 841) (emphasis added). "As a result, there is no need for [the plaintiff] to prove that the County policymakers actually knew that their omissions would likely result in a constitutional violation." Id. For example,"[a] 'pattern of tortious conduct,' despite the existence of a training program, or 'highly predictable' constitutional violations due to a 'failure to equip law enforcement officers with specific tools to handle situations' are circumstances in which liability for failure to train may be imposed." Young, 687 F. Supp. 2d at 1148 (citing Board of County Comm'rs, 520 U.S. at 407-10; Long, 442 F.3d at 1186-87).

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Generally, "[e]vidence of the failure to train a single officer is insufficient to establish a municipality's deliberate policy." Blankenhorn, 485 F.3d at 484. "That a particular officer may be unsatisfactorily trained will not alone suffice to fasten liability of the [municipality], for the officer's shortcomings may have resulted from factors other than a faulty training program." City of Canton, 489 U.S. at 390-91. Moreover, "adequately trained officers may occasionally make mistakes; the fact that they do says little about the training program or the legal basis for holding the [municipality] liable." Id. at 391. Accordingly, "absent evidence of a 'program-wide inadequacy in training,' any shortfall in a single officer's training 'can only be classified as negligence on the part of the municipal defendant – a much lower standard of fault than deliberate indifference.'" Blankenhorn, 485 F.3d at 484-85 (quoting Alexander v. City & County of S.F., 29 F.3d 1355, 1367 (9th Cir. 1994)). However, the Supreme Court recently affirmed the validity of the so-called "single-incident" theory in failure to train cases. Connick, 131 S. Ct. at 1360. As this Court discussed earlier, in "a narrow range of circumstances," a particular "showing of 'obviousness' can substitute for the pattern of violations ordinarily necessary to establish municipal liability." Id. at 1361.

In this case, the Court finds that, based on the allegations in the SAC, it is plausible that the County maintained a policy, custom, or practice of staffing the Jail with inadequately trained custody personnel.

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Plaintiff has made sufficient factual allegations to demonstrate that the County plausibly failed to train Jail custody personnel adequately. In particular, Plaintiff alleges: (1) Plaintiff's repeated requests for showers and items required for regular hygiene and to keep his wound clean were repeatedly ignored by the custodial officers for two weeks (SAC ¶ 25); (2) Jail personnel did not provide Plaintiff with any medical products for proper wound care for two weeks after the initial treatment by Dr. Gray (Id.); (3) Plaintiff's repeated complaints about the lack of clean running water in his cell were similarly ignored for two weeks (Id.); (4) After Plaintiff collapsed in the shower and was improperly evaluated by Defendant Carl, Defendant Doe officer dumped Plaintiff out of his wheelchair and left him on the floor of his cell (Id. ¶ 30); (5) After Plaintiff suffered sudden and acute vision loss in his left eye and noticed that he could not move his lower extremities on May 18, 2007, Plaintiff had been ringing the emergency bell repeatedly for two days to summon help, but was told by the custodial officers that "these things would not kill him and to stop using the call button" (Id. ¶ 31); and (6) When Plaintiff was transported to UCD, Plaintiff's medical history did not accompany him, which led to lengthy delays in diagnosis and treatment (Id. ¶¶ 34,35).

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These factual allegations are sufficient to plausibly demonstrate that the County failed to train its custodial personnel in "monitoring inmates," "detecting the need for medical care" "responding to requests for medical care," and "ensuring that inmates requiring acute medical care are accompanied to the treating facility with a complete medical history." (See id. ¶ 67.)

Accordingly, the Court finds that Plaintiff sufficiently alleged what County's training practices were inadequate and how those practices caused Plaintiff's harm. See Young, 687 F. Supp. 2d at 1149. The Court declines to dismiss Plaintiff's fourth claim for relief against the County for failure to adequately train.

(3) Plaintiff's Third Claim for Relief: Failure to Adequately Staff, and Fifth Claim for Relief: Failure to Supervise

The Court considers the Third and Fifth claims for relief together because Plaintiff's allegations to support these claims substantially overlap. Plaintiff claims that the County maintained the policy, custom or practice of understaffing the Jail with custody and medical personnel (SAC ¶ 59), understaffing the Jail with supervisory personnel and failing to properly supervise the custodial and medical staff at the Jail (Id. ¶ 71). Plaintiff also alleges that the Jail "has operated for a number of years without sufficient staffing of properly trained and supervised custody and medical personnel." (Id. ¶ 40.)

"In order to comply with their duty not to engage in acts evidencing deliberate indifference to inmates' medical . . . needs, jails must provide medical staff who are 'competent to deal with prisoners' problems.'" Gibson, 290 F.3d at 1187 (citing Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982)). However, to demonstrate that the County had a policy or custom of understaffing and failure to supervise, Plaintiff must provide "more than labels and conclusions." See Twombly, 550 U.S. at 555. Yet, Plaintiff's allegations about the County's policy of understaffing and failure to adequately supervise amount to just that -- legal conclusion which are not entitled to be taken as true and are not sufficient to support Plaintiff's claims for relief. The allegation regarding the Jail's history of understaffing is a conclusory statement not supported by any evidence in the SAC. The SAC does not contain any factual allegations that the Jail did not have enough medical, custody or supervisory personnel to provide adequate medical care to Plaintiff. The gravamen of Plaintiff's allegations is the inadequacy of medical care that he received while detained at the Jail, not the understaffing of the Jail.

Nor does the SAC contain any factual allegations allowing the Court to infer that either the County's lawmakers or "those whose edicts or acts may fairly be said to represent" the County's official policy created or endorsed the policy of understaffing of the Jail with medical, custody or supervisory personnel. See Monell, 436 U.S. at 694; Ulrich v. City & County of S.F., 308 F.3d 968, 984 (9th Cir. 2002).

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Accordingly, Plaintiff's Third and Fifth claims for relief against the County are dismissed with leave to amend.

(4) Plaintiff's Seventh Claim for Relief: Policy of Discrimination against Inmates of Color

Plaintiff alleges that the County maintained a policy, custom or practice of treating and retaliating against inmates of color differently than similarly situated non-Indian inmates at the Jail. (SAC ¶ 80.) Plaintiff also alleges that the Jail "has a history of repeated acts of discrimination against inmates based on their race and national origin." (Id. ¶ 41.)

Labeling an action "discriminatory," without more, is a legal conclusion, which is not sufficient to state a cognizable claim. Iqbal, 129 S. Ct. at 1949. The SAC is devoid of any evidence of the alleged "repeated acts of discrimination." The only factual allegation relevant to Plaintiff's allegation of the history of discrimination" is that Plaintiff was housed with the African-American inmates at the Jail as a result on his dark skin color. (SAC ¶ 23.) This allegation alone is hardly sufficient to demonstrate the Jail's "history" of discrimination against Indian inmates. Moreover, the SAC lacks any factual allegations demonstrating that the County, by its own actions or by the actions of its officials, maintained an official or de facto policy of racial discrimination. Accordingly, Plaintiff's seventh claim for relief against the County is dismissed with leave to amend.

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(5) Plaintiff's Ninth Claim for Relief: Policy of Retaliating Against Inmates for Protesting Unconstitutional and Unlawful Jail Conditions

Plaintiff alleges that the County maintained a policy, custom or practice of retaliating against inmates who complained about deplorable and unlawful conditions of confinement at the Jail. (SAC ¶ 88.) Plaintiff also alleges that the Jail has "a history of retaliation against inmates for their requests for medical attention, basic hygiene needs, or even food." (Id. ¶ 41.) The Court's analysis of Plaintiff's seventh claim for relief against the County is equally applicable to Plaintiff's ninth claim for relief in that Plaintiff's allegations lack any factual support for the Jail's "history of retaliation" or the County's retaliatory policies or customs. Accordingly, Plaintiff's ninth claim for relief against the County is dismissed with leave to amend.

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V. Tenth Claim for Relief: Violation of the Americans with Disabilities Act and Rehabilitation Act Against the County

Plaintiff alleges that he was a qualified individual under the Americans with Disabilities Act ("ADA") and the Rehabilitation Act ("RA"). (SAC ¶ 93.) Plaintiff further alleges that the County violated the ADA by (1) creating and maintaining a jail without sufficient staffing levels to provide responsible care to disabled persons in need; and (2) failing to provide wheelchairs or other types of accommodations to those people suffering from the inability to ambulate, thereby providing a lesser quality of care and service that is different, separate, and worse than the service provided to other individuals. (Id. ¶ 100.) Plaintiff claims that, because of his disability, he was denied the benefits of the services, programs and activities of the County, mental care, treatment, follow-up and supervision. (Id. ¶ 102.) County Defendants contend that (1) Plaintiff was not a "qualified individual" during his incarceration; and (2) Plaintiff's allegations of inadequate medical care are insufficient to state a claim under either the ADA or RA. (CDMTD at 15:14-16:8.)

"When a plaintiff brings a direct suit under either the [RA] or Title II of the ADA against a municipality (including a county), the public entity is liable for the vicarious acts of its employees." Duvall v. County of Kitsap, 260 F.3d 1124, 1141 (9th Cir. 2001).

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To establish a violation of § 504 of the RA, Plaintiff must show that (1) he is handicapped within the meaning of the RA; (2) he is otherwise qualified for the benefit or services sought; (3) he was denied the benefit or services solely by reason of his handicap; and (4) the program providing the benefit or services receives federal financial assistance. Lovell v. Chandler, 303 F.3d 1039, 1052 (9th Cir. 2002).

To establish a violation of Title II of the ADA, Plaintiff must show that (1) he is a qualified individual with a disability; (2) he is otherwise qualified to participate in or receive the benefit of some public entity's services, programs, or activities; (3) he was excluded from participation in or otherwise discriminated against with regard to a public entity's services, programs or activities; and (4) such exclusion or discrimination was by reason of his disability. O'Guinn v. Lovelock Correctional Center, 502 F.3d 1056, 1060 (9th Cir. 2007). "The ADA's broad language brings within its scope 'anything a public entity does,'" including "programs or services provided at jails, prisons, and any other 'custodial and correctional institution.'" Lee, 250 F.3d at 691(quoting Yeskey v. Pennsylvania Dep't of Corr., 118 F.3d 168, 171 & n.5 (3d Cir. 1997)).

To demonstrate that he is a "qualified individual with a disability," Plaintiff has to show that, at the time of the alleged events, he had a physical or mental impairment that substantially limited Plaintiff's one or more major life activities, or a record of such an impairment, or being regarded as having such an impairment. 42 U.S.C.A. § 12102(1).

Plaintiff bases his allegations of being a "qualified individual" on his medical impairments associated with his "paraparesis and a neurological condition, which prevented him from walking and standing, and therefore resulted in his limited and/or substantially limited ability to care for himself and control his mental, medical or physical health conditions." (SAC ¶ 93.) Although the ADA includes walking, standing, and caring for oneself as examples of "major life activities," 42 U.S.C.A. § 12102(2), the existence of disabilities under the ADA and RA is an individualized inquiry and should be determined on a case-by-case basis. Albertson's, Inc. v. Kirkingburg, 527 U.S. 555, 566 (1999); Thornton v. McClatchy Newspapers, Inc., 261 F.3d 789, 794 (9th Cir. 2001). In addition to alleging that some of his major life activities were limited, Plaintiff has to demonstrate that the limitation was substantial. 42 U.S.C.A. § 12102(1).

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The SAC's factual allegations relevant to Plaintiff's claim of inability to walk and stand are as follows: (1) on May 17, 2007, Plaintiff collapsed while taking a shower when he lost control of his legs, but he managed to drag himself to summon help (SAC ¶ 29); (2) On May 18, 2007, Plaintiff "started noticing" his inability to move his lower extremities (Id. ¶ 31); (3) On May 18, 2007, Plaintiff had to pull himself up the wall to ring the emergency bell in the cell to summon help because he was unable to leave the cell; he told the officers that his legs did not work (Id. ¶ 31); (4) On May 20, 2007, Defendant Carl reported that Plaintiff "was 'again man down' in his cell saying 'my legs don't work'" (Id. ¶ 32); (5) On May 20, 2007, Dr. Horowitz determined that Plaintiff had been on the floor of his cell for three days, and that Plaintiff was suffering from an inability to control his extremities (Id.). Thus, the SAC contains sufficient factual allegations to demonstrate that Plaintiff's walking and standing abilities had been seriously impaired for four days before Plaintiff was transported to UCD for diagnosis and treatment. Considering the legislative directive to construe the definition of "disability" in favor of broad coverage of individuals and to the maximum extent permitted by the terms of the ADA, 42 U.S.C.A. § 12102(4)(a), the Court concludes that Plaintiff has made s plausible showing that he was a "qualified individual with a disability" at the time of the alleged events.

Defendants contend that, even if Plaintiff is a "qualified individual," Plaintiff's allegations amount merely to an inadequate treatment for disability and not to a discriminatory treatment because of the disability.

(CDMTD at 15:21-22.) Defendants are correct in that the inadequate treatment or lack of medical treatment for Plaintiff's medical conditions does not provide a basis for a liability under the ADA or RA. See, e.g., Bryant v. Madigan, 84 F.3d 246, 249 (7th Cir. 1996)("The ADA does not create a remedy for medical malpractice."); Burger v. Bloomberg, 418 F.3d 882, 883 (8th Cir. 2005) (medical treatment decisions are not a basis for ADA or RA claims); Fitzgerald v. Corr. Corp. of Am., 403 F.3d 1134, 1144 (10th Cir. 2005) (concluding that medical decisions are not ordinarily within the scope of the ADA); Luna v. Cal. Health Care Servs., No. 1:10-CV-02076, 2011 WL 6936399, at *5 (E.D. Cal. 2011) ("Plaintiff's allegations of inadequate medical care do not state a claim under the ADA."). The Ninth Circuit has also explained, in an unpublished opinion, that "[i]nadequate medical care does not provide a basis for an ADA claim unless medical services are withheld *by a reason of* a disability." Marlor v. Madison County, Idaho, 50 Fed. Appx. 872, 873 (9th Cir. 2002) (emphasis in the original).

Aside from Plaintiff's claims of inadequacy of and delays in his medical treatment, Plaintiff alleges no facts to show that he was denied any of the Jail's "benefits of the services, programs, or activities." The County does not violate the ADA and RA by "simply failing to attend to the medical needs of its disabled prisoners." See Bryant, 84 F.3d at 249. Plaintiff's assertions of the Jail's understaffing with competent caretakers and the Jail's failure to provide non-ambulatory inmates with wheelchairs are merely camouflaged claims of inadequate medical care provided to Plaintiff at the Jail.

Although Plaintiff alleges that the County failed to provide wheelchairs to "people suffering from the inability to ambulate," the SAC does not contain any facts demonstrating that the County failed to provide a wheelchair to any other inmate. Accordingly, Plaintiff's allegations are not sufficient to state a claim of "discrimination" under the ADA and RA.

Even if the Court were to conclude that Plaintiff's claims of the Jail understaffing with "responsible" caretakers and the Jail's failure to provide non-ambulatory inmates with wheelchairs rise to the level of "discrimination" for the ADA and RA purposes, Plaintiff fails to make any factual allegations as to what benefits or services he would have been entitled to absent his disability. Moreover, Plaintiff "offered no comparison with other inmates' medical care to demonstrate that he was denied access to medical supplies or treated differently *by reason* of his disability." See Marlor, 50 Fed. Appx. at 873.

Accordingly, the Court dismisses Plaintiff's tenth claim for relief with leave to amend.

CONCLUSION

For the reasons stated above, Defendants' motions are granted in part and denied in part, consistent with the foregoing, as follows:

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1. County Defendants' motion to dismiss Plaintiff's First Claim under § 1983 for failure to provide adequate medical care is GRANTED with leave to amend as to the County, McGinness, Boylan, Hambly, Carl, Keillor and Gaddis, in their official and individual capacities.

2. Defendant Smith's motion to dismiss Plaintiff's First Claim under § 1983 for failure to provide adequate medical care is DENIED as to Smith in his individual capacity, and GRANTED as to Smith in his official capacity with leave to amend.

3. Defendants' motions to dismiss Plaintiff's Second, Third, Fifth, Seventh, and Ninth Claims under § 1983 are GRANTED with leave to amend as to the County, McGinness, Boylan, Hambly, Keillor and Gaddis in their official capacities.

4. Defendants' motions to dismiss Plaintiff's Fourth Claim under § 1983 for failure to train are DENIED as to the County, but GRANTED with leave to amend as to McGinness, Boylan, Hambly, Keillor and Gaddis in their official capacities.

5. Defendants' motions to dismiss Plaintiff's Sixth Claim under § 1983 for violation of the Equal Protection Clause of the Fourteenth Amendment are GRANTED with leave to amend as to the County, McGinness, Boylan, Hambly, Smith, Carl, Keillor and Gaddis, in their official and individual capacities.

6. Defendants' motions to dismiss Plaintiff's Eighth Claim under § 1983 for violation of the First Amendment are GRANTED with leave to amend as to the County, McGinness, Boylan, Hambly, Smith, Carl, Keillor and Gaddis, in their official and individual capacities.

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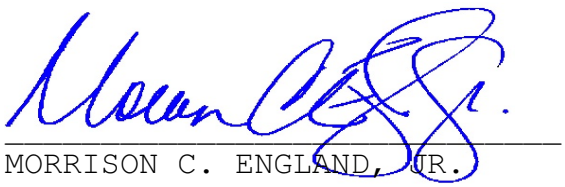
7. County Defendants' motion to dismiss Plaintiff's Tenth Claim under the ADA and RA is GRANTED with leave to amend.

8. Defendants' motions to dismiss Plaintiff's Eleventh, Twelfth and Thirteenth Claims are GRANTED with leave to amend.

Any amended pleading consistent with the terms of this Memorandum and Order must be filed not later than twenty (20) days following the date the Memorandum and Order is signed.

IT IS SO ORDERED.

Dated: February 17, 2012



MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE