

1 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because Plaintiff must allege
2 with at least some degree of particularity overt acts by specific defendants which support the
3 claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is
4 impossible for the Court to conduct the screening required by law when the allegations are vague
5 and conclusory.

6 7 I. PLAINTIFF'S ALLEGATIONS

8 As with the original complaint, Plaintiff names the following Defendants in the
9 first amended complaint: (1) S. Gates, the Chief Medical Officer at California State Prison –
10 Sacramento (CSP-Sac.); and (2) P. Smini, a registered nurse at CSP-Sac. See ECF No. 1, pgs. 1,
11 2. Plaintiff states that he has “a lot of abnormalities in his body” and contends that a number of
12 joints and other parts of his body are “false.” Id. at 3. According to Plaintiff, he has never
13 received any medical attention for these problems. See id. Plaintiff contends Defendant Gates is
14 responsible “[b]ecause he is the Chief. . . .” who addressed Plaintiff’s health care grievance. Id.
15 Plaintiff next alleges that Defendant Smini hid and/or falsified evidence of his medical
16 conditions. See id. at 4. He further alleges that Defendant Smini “denied to give appointment
17 with the Doctor more than one time.” Id.

18 19 II. DISCUSSION

20 The gravamen of Plaintiff’s first amended complaint is his assertion that
21 Defendants denied him adequate medical care, in violation of the Eighth Amendment. The
22 treatment a prisoner receives in prison and the conditions under which the prisoner is confined are
23 subject to scrutiny under the Eighth Amendment, which prohibits cruel and unusual punishment.
24 See Helling v. McKinney, 509 U.S. 25, 31 (1993); Farmer v. Brennan, 511 U.S. 825, 832 (1994).
25 The Eighth Amendment “. . . embodies broad and idealistic concepts of dignity, civilized
26 standards, humanity, and decency.” Estelle v. Gamble, 429 U.S. 97, 102 (1976). Conditions of
27 confinement may, however, be harsh and restrictive. See Rhodes v. Chapman, 452 U.S. 337, 347
28 (1981). Nonetheless, prison officials must provide prisoners with “food, clothing, shelter,

1 sanitation, medical care, and personal safety.” Toussaint v. McCarthy, 801 F.2d 1080, 1107 (9th
2 Cir. 1986). A prison official violates the Eighth Amendment only when two requirements are
3 met: (1) objectively, the official’s act or omission must be so serious such that it results in the
4 denial of the minimal civilized measure of life’s necessities; and (2) subjectively, the prison
5 official must have acted unnecessarily and wantonly for the purpose of inflicting harm. See
6 Farmer, 511 U.S. at 834. Thus, to violate the Eighth Amendment, a prison official must have a
7 “sufficiently culpable mind.” See id.

8 Deliberate indifference to a prisoner’s serious illness or injury, or risks of serious
9 injury or illness, gives rise to a claim under the Eighth Amendment. See Estelle, 429 U.S. at 105;
10 see also Farmer, 511 U.S. at 837. This applies to physical as well as dental and mental health
11 needs. See Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982). An injury or illness is
12 sufficiently serious if the failure to treat a prisoner’s condition could result in further significant
13 injury or the “. . . unnecessary and wanton infliction of pain.” McGuckin v. Smith, 974 F.2d
14 1050, 1059 (9th Cir. 1992); see also Doty v. County of Lassen, 37 F.3d 540, 546 (9th Cir. 1994).
15 Factors indicating seriousness are: (1) whether a reasonable doctor would think that the condition
16 is worthy of comment; (2) whether the condition significantly impacts the prisoner’s daily
17 activities; and (3) whether the condition is chronic and accompanied by substantial pain. See
18 Lopez v. Smith, 203 F.3d 1122, 1131-32 (9th Cir. 2000) (en banc).

19 The requirement of deliberate indifference is less stringent in medical needs cases
20 than in other Eighth Amendment contexts because the responsibility to provide inmates with
21 medical care does not generally conflict with competing penological concerns. See McGuckin,
22 974 F.2d at 1060. Thus, deference need not be given to the judgment of prison officials as to
23 decisions concerning medical needs. See Hunt v. Dental Dep’t, 865 F.2d 198, 200 (9th Cir.
24 1989). The complete denial of medical attention may constitute deliberate indifference. See
25 Toussaint v. McCarthy, 801 F.2d 1080, 1111 (9th Cir. 1986). Delay in providing medical
26 treatment, or interference with medical treatment, may also constitute deliberate indifference. See
27 Lopez, 203 F.3d at 1131. Where delay is alleged, however, the prisoner must also demonstrate
28 that the delay led to further injury. See McGuckin, 974 F.2d at 1060.

1 Negligence in diagnosing or treating a medical condition does not, however, give
2 rise to a claim under the Eighth Amendment. See Estelle, 429 U.S. at 106. Moreover, a
3 difference of opinion between the prisoner and medical providers concerning the appropriate
4 course of treatment does not give rise to an Eighth Amendment claim. See Jackson v. McIntosh,
5 90 F.3d 330, 332 (9th Cir. 1996).

6 As with the original complaint, the Court finds that the first amended complaint
7 states a cognizable claim as against Defendant Smini but not as against Defendant Gates. See
8 ECF No. 11 (screening order addressing original complaint).

9 **A. Defendant Smini**

10 Plaintiff's allegation that Defendant Smini hid evidence of Plaintiff's serious
11 medical conditions supports a claim of deliberate indifference. Specifically, to deliberately hide
12 evidence deprives Plaintiff needed treatment. By separate order, the Court will direct service of
13 the first amended complaint on Defendant Smini.

14 **B. Defendant Gates**

15 A Headquarters Level Response to Plaintiff's health care grievance, dated
16 November 17, 2020, and signed by Defendant Gates, which Plaintiff attached to the first amended
17 complaint, sheds some light on the nature of Plaintiff's claim. Specifically, this document, which
18 appears to be the basis of Plaintiff's assertion that Gate is liable, reflects that Gates' decisions
19 were based on medical examinations showing that there was no medical necessity supporting
20 Plaintiff's grievance. See ECF No. 15, pgs. 7-9. Given this additional documentation, the Court
21 finds that Plaintiff's claim against Defendant Gates amounts to a difference of medical opinion,
22 which is not cognizable under § 1983. See Jackson, 90 F.3d at 332.

23 The Court observes that this defect persists from the original complaint. Given
24 that Plaintiff is either unable or unwilling to allege further facts to state a claim against Defendant
25 Gates, the Court now recommends Defendant Gates be dismissed.

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III. CONCLUSION

Based on the foregoing, the undersigned recommends that Gates be dismissed as a defendant to this action, with prejudice, for failure to state a claim.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served with these findings and recommendations, any party may file written objections with the Court. Responses to objections shall be filed within 14 days after service of objections. Failure to file objections within the specified time may waive the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: August 5, 2021



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE