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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICKEY W. MOORE,
Plaintiff,

v.

CORIZON HEALTH SERVICES, et al.,
Defendants.

Case No. [16-cv-04195-DMR](#)

ORDER DISMISSING CASE

Plaintiff Rickey W. Moore filed suit in this court along with an application to proceed *in forma pauperis* (“IFP”). [Docket Nos. 1, 2.] The court granted Plaintiff’s IFP application and dismissed the complaint with leave to amend to remedy the deficiencies noted in the order. [Docket No. 5.] Plaintiff timely filed a first amended complaint. [Docket No. 6 (“FAC”).] For the following reasons, the court dismisses the first amended complaint.

I. DISCUSSION

Plaintiff alleges the following facts in the FAC. Plaintiff was detained at Santa Rita Correctional Facility from April 14, 2015 through October 11, 2015. FAC 1. He alleges that while he was incarcerated, he received “improper medical treatment”; specifically, he alleges that he was given “wrong medications and dosages” for his diabetes and hypertension. *Id.* Plaintiff alleges that he nearly died, and that he suffered side effects including swelling of his lower extremities during his incarceration and after he was released. *Id.* Plaintiff sues Defendants Corizon Health Services and Santa Rita Jail/Alameda County.

Liberally construing the FAC, Plaintiff alleges four new claims for relief: 1) 42 U.S.C. § 1983 claim for violation of the Eighth Amendment’s proscription against cruel and unusual punishment, based on deliberate indifference to Plaintiff’s serious medical need; 2) violation of unspecified provisions of the Health Insurance Portability and Accountability Act (“HIPAA”); 3)

1 42 U.S.C. § 1983 claim for violation of the Fourteenth Amendment; and 4) violation of
2 California’s Unruh Civil Rights Act, California Civil Code section 51.¹ The court will examine
3 each claim in turn.

4 **A. Section 1983 Claim for Violation of the Eighth Amendment**

5 In its order dismissing the complaint with leave to amend, the court noted that “Plaintiff
6 may be able to allege a violation for deliberate indifference to a serious medical need,” and
7 described the requirements for alleging such a claim. [Docket No. 5 at 4-5.] The court also noted
8 that the complaint did not clearly indicate whether Plaintiff was incarcerated as a pretrial detainee
9 or was serving time as a convicted inmate, explaining that “[p]retrial detainees and convicted
10 prisoners look to different constitutional provisions for their respective rights to basic needs such
11 as medical care.” *Id.* at 4 n.2 (explaining that the Eighth Amendment governs such claims brought
12 by convicted persons while the Fourteenth Amendment applies to claims brought by pretrial
13 detainees). Plaintiff has not remedied this deficiency in the FAC; accordingly, the court will
14 analyze Plaintiff’s constitutional claims based on his medical needs under both applicable
15 constitutional provisions.

16 As discussed in the court’s previous order, to prove that the response of prison officials to
17 an inmate’s medical needs was constitutionally deficient under the Eighth Amendment, the inmate
18 must establish (1) a serious medical need and (2) deliberate indifference to that need by jail
19 officials. *See McGuckin v. Smith*, 974 F.2d 1050, 1059-60 (9th Cir. 1992), *overruled on other*
20 *grounds, WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc). “A
21

22 ¹ Plaintiff pleads four separate claims for violation of 42 U.S.C. § 1983, “Eighth Amendment
23 (Cruel and Unusual Punishment),” “429 U.S. 97 (Deliberate Indifference Standard),” and
24 “Fourteenth Amendment (Equal Protections of the Laws).” Am. Compl. 3-5. However, Plaintiff
25 “has no cause of action directly under the United States Constitution.” *Azul-Pacifico, Inc. v. City*
26 *of Los Angeles*, 973 F.2d 704, 705 (9th Cir. 1992). Instead, “a litigant complaining of a violation
27 of a constitutional right must utilize 42 U.S.C. § 1983.” *Id.* Therefore, the court construes
28 Plaintiff’s Eighth Amendment and Fourteenth Amendment claims as two separate claims under 42
U.S.C. § 1983 for violations of the Eighth and Fourteenth Amendment. As to Plaintiff’s “429
U.S. 97 (Deliberate Indifference Standard)” claim, it appears that Plaintiff refers to *Estelle v.*
Gamble, 429 U.S. 97, 104 (1976), in which the Supreme Court held that deliberate indifference to
serious medical needs violates the Eighth Amendment’s proscription against cruel and unusual
punishment. This claim is duplicative of Plaintiff’s Section 1983 claim for violation of the Eighth
Amendment.

1 'serious' medical need exists if the failure to treat a prisoner's condition could result in further
2 significant injury or the 'unnecessary and wanton infliction of pain.'" *Id.* (citing *Estelle v.*
3 *Gamble*, 429 U.S. 97, 104 (1976)). A prison official is deliberately indifferent if he knows that a
4 prisoner faces a substantial risk of serious harm and disregards that risk by failing to take
5 reasonable measures to abate it. *See Farmer v. Brennan*, 511 U.S. 825, 837, 844 (1994).

6 As with the original complaint, Plaintiff's first amended complaint fails to sufficiently state
7 a claim for deliberate indifference to a serious medical need. Plaintiff has not alleged any new
8 facts from which an inference could be drawn regarding a substantial risk of harm or that officers
9 at the jail were aware of the fact that they were providing the wrong medications and wrong
10 dosages for Plaintiff's diabetes and hypertension. At most, Plaintiff's claim—that Defendants
11 gave him improper medications and dosages—amounts to negligence. It is well-established
12 federal law that a claim of inadvertent failure to provide adequate medical care or mere negligence
13 is insufficient to constitute an Eighth Amendment violation. *Estelle*, 429 U.S. at 105–07; *Toguchi*
14 *v. Chung*, 391 F.3d 1051, 1060–61 (9th Cir. 2004) (a claim of negligence or medical malpractice
15 insufficient to make out Eighth Amendment violation); *see, e.g., Frost v. Agnos*, 152 F.3d 1124,
16 1130 (9th Cir. 1998) (finding no merit in claims stemming from alleged delays in administering
17 pain medication, treating broken nose, and providing replacement crutch, because claims did not
18 amount to more than negligence).

19 Plaintiff was previously granted leave to allege an Eighth Amendment deliberate
20 indifference claim, and the court described in detail the requirements for alleging such a claim.
21 However, the FAC contains no new facts to support a deliberate indifference claim; Plaintiff
22 simply repeated the facts that were in the original complaint. Accordingly, since it appears that
23 Plaintiff is unable to allege facts to adequately plead a deliberate indifference claim, the claim is
24 dismissed without leave to amend.

25 **B. HIPAA Claim**

26 Plaintiff's second claim for relief is violation of unspecified HIPAA provisions. HIPAA
27 does not create a private right of action for a patient to sue a health care provider. *Webb v. Smart*
28 *Document Solutions, LLC*, 499 F.3d 1078, 1081 (9th Cir. 2007). Accordingly, Plaintiff's claim

1 against Defendants for a purported HIPAA violation also fails and is dismissed without leave to
2 amend.

3 **C. Section 1983 Claim for Violation of the Fourteenth Amendment**

4 Plaintiff's third claim for relief is a Section 1983 claim for violation of the Fourteenth
5 Amendment. Claims for failure to provide care for serious medical needs, when brought by a
6 detainee who has been neither charged nor convicted of a crime, are analyzed under the
7 substantive due process clause of the Fourteenth Amendment rather than the Eighth Amendment.
8 *Lolli v. Cty. of Orange*, 351 F.3d 410, 418-19 (9th Cir. 2003). The Fourteenth Amendment
9 "imposes, at a minimum, the same duty the Eighth Amendment imposes: persons in custody
10 ha[ve] the established right to not have officials remain deliberately indifferent to their serious
11 medical needs." *Gibson v. Cty. of Washoe*, 290 F.3d 1175, 1187 (9th Cir. 2002) (quotation
12 omitted). Thus, Eighth Amendment standards are utilized in evaluating the claims of pretrial
13 detainees. *See Lolli*, 351 F.3d at 419.

14 As discussed above, Plaintiff has failed to allege facts to support an Eighth Amendment
15 deliberate indifference claim. Since "the 'deliberate indifference' standard applies to claims that
16 correction facility officials failed to address the medical needs of pretrial detainees," *Clouthier v.*
17 *Cty. of Contra Costa*, 591 F.3d 1232, 1242 (9th Cir. 2010), Plaintiff's Fourteenth Amendment
18 claim is also insufficiently pleaded. As with the Eighth Amendment claim, Plaintiff has already
19 been given the opportunity to amend his complaint to sufficiently allege a deliberate indifference
20 claim. Accordingly, his Fourteenth Amendment claim is also dismissed without leave to amend.

21 **D. Unruh Act**

22 Plaintiff's fourth claim is for violation of the Unruh Act. California Civil Code section 51
23 provides, in part, that

24 [a]ll persons within the jurisdiction of this state are free and equal,
25 and no matter what their sex, race, color, religion, ancestry, national
26 origin, disability, medical condition, marital status, or sexual
27 orientation, are entitled to the full and equal accommodations,
28 advantages, facilities, privileges, or services in all business
establishments of every kind whatsoever.

Cal. Civ. Code § 51(b). "To prevail on [a] disability discrimination claim under the Unruh Civil

1 Rights Act, [a] plaintiff must establish that (1) he was denied the full and equal accommodations,
2 advantages, facilities, privileges, or services in a business establishment; (2) his disability was a
3 motivating factor for this denial; (3) defendants denied plaintiff the full and equal
4 accommodations, advantages, facilities, privileges, or services; and (4) defendants' wrongful
5 conduct caused plaintiff to suffer injury, damage, loss or harm." *Johnson v. Beahm*, No. 2:11-cv-
6 0294-MCE-JFM, 2011 WL 5508893, at *4 (E.D. Cal. Nov. 8, 2011) (citing California Civil Jury
7 Instructions (BAJI), No. 7.92 (Spring 2009)).

8 Plaintiff has failed to state a claim for violation of the Unruh Act as to either Defendant
9 Santa Rita Jail/Alameda County or Corizon Health Services. The court notes that it is not clear
10 whether Santa Rita Jail/Alameda County, a governmental entity, may be held liable under the
11 statute as a "business establishment." *See, e.g., Anderson v. Cty. of Siskiyou*, C 10-01428 SBA,
12 2010 WL 3619821, at *6 (N.D. Cal. Sept. 13, 2010) (holding county jail is not a "business
13 establishment" subject to the Unruh Act).² However, even assuming the County can be sued
14 under the statute, Plaintiff fails to state a claim for Unruh Act liability against either defendant,
15 since the FAC does not allege that Plaintiff was administered improper medications *because* of a
16 disability.

17 It is possible that Plaintiff could allege an Unruh Act claim against one or both defendants.
18 However, Plaintiff does not have any remaining federal claims in this action. Since all the federal
19 claims that served as a basis for jurisdiction have been dismissed, the court declines to exercise
20 supplemental jurisdiction over the remaining state law claim. 28 U.S.C. § 1367(c)(3). Plaintiff's
21 state law Unruh Act claim is dismissed without prejudice; Plaintiff may proceed with his Unruh
22 Act claim in state court if he so elects. *See Reynolds v. Cty. of San Diego*, 84 F.3d 1162, 1171 (9th
23 Cir. 1996) (dismissal of pendent state claims following dismissal of related federal claims must be
24 without prejudice), *overruled on other grounds by Aciri v. Varian Assocs., Inc.*, 114 F.3d 999, 1000
25

26 ² It appears that Plaintiff may be able to maintain an Unruh Act claim against Defendant Corizon
27 Health Services. In *Wilkins-Jones v. Cty. of Alameda*, 859 F. Supp. 2d 1039, 1050 (N.D. Cal.
28 2012), the court held that the defendant, Corizon, which is a private, for-profit entity that functions
as a business within jails, is a "business establishment" within the meaning of the Act.

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(9th Cir. 1997) (en banc).

II. CONCLUSION

For the foregoing reasons, the FAC is dismissed. The clerk shall close the file in this matter.

IT IS SO ORDERED.

Dated: January 30, 2017

