

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Hankins v. Sacramento County

Hankins · No. 2:24-cv-0150 TLN SCR P · Decided April 17, 2025

SUMMARY

The United States District Court for the Eastern District of California screened Jeremiah Hankins’s first amended 42 U.S.C. § 1983 complaint concerning psychiatric medication, medical care, and legal mail. The court found potentially cognizable Fourteenth Amendment medical-care claims against Dr. Williams, Dr. Sokolov, and a primary-care Dr. John Doe, but found no other cognizable claims as pleaded. The court denied motions for appointment of counsel without prejudice and gave plaintiff the option to proceed on the cognizable claim or file an amended complaint.

OPINION

(PC) Hankins v. Sacramento County

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 JEREMIAH HANKINS, No. 2:24-cv-0150 TLN SCR P

12 Plaintiff, 13 v. ORDER 14 SACRAMENTO COUNTY, et al., 15 Defendants. 16 17 Plaintiff is
a civil detainee proceeding pro se with a civil rights action under 42 U.S.C. § 18 1983. Before the
court are plaintiff’s motions to appoint counsel (ECF Nos. 14 and 15) and first 19 amended
complaint (“FAC”) for screening. (ECF No. 16.) For the reasons described below, the 20
undersigned denies plaintiff’s motions to appoint counsel and finds plaintiff’s FAC states a 21
potentially cognizable Fourteenth Amendment medical care claim against defendants Dr. 22
Williams, Dr. Sokolov, and Dr. John Doe, but no other cognizable claims. Plaintiff will be given
23 the option of proceeding immediately on his cognizable claim or filing an amended complaint.

24 STATUTORY SCREENING OF PRISONER COMPLAINTS

25 The court is required to screen complaints brought by prisoners seeking relief against “a 26
governmental entity or officer or employee of a governmental entity.” 28 U.S.C. § 1915A(a). In
27 performing this screening function, the court must dismiss any claim that “(1) is frivolous, 28
malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief
1 from a defendant who is immune from such relief.” Id. § 1915A(b). A claim is legally frivolous
2 when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 3

(1989). The court may dismiss a claim as frivolous if it is based on an indisputably meritless 4 legal theory or factual contentions that are baseless. *Neitzke*, 490 U.S. at 327. The critical 5 inquiry is whether a constitutional claim, however inartfully pleaded, has an arguable legal and 6 factual basis. See *Jackson v. Arizona*, 885 F.2d 639, 640 (9th Cir. 1989). 7 In order to avoid dismissal for failure to state a claim a complaint must contain more than 8 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause 9 of action.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-557 (2007). In other words, 10 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory 11 statements do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A claim upon which the 12 court can grant relief has facial plausibility. *Twombly*, 550 U.S. at 570. “A claim has facial 13 plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable 14 inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. When 15 considering whether a complaint states a claim, the court must accept the allegations as true, 16 *Erickson v. Pardus*, 551 U.S. 89, 93-94 (2007), and construe the complaint in the light most 17 favorable to the plaintiff, *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

18 FACTUAL ALLEGATIONS OF THE FAC

19 Plaintiff was at all relevant times a civil detainee in Sacramento County Jail. (ECF No. 16 20 at 2.) His FAC names as defendants (1) Sacramento County; (2) Dr. Williams, Jail Psych 21 Services (“JPS”) psychiatrist; (3) Dr. Sokolov, JPS psychiatrist; (3) John Doe, JPS supervisor; (4) 22 Dr. John Doe, primary care physician; (5) John Doe, mailroom supervisor; and (6) mailroom 23 deputies, John Does 1-10. (Id. at 2-3.) The FAC’s allegations cover plaintiff’s prescription for 24 the anti-psychotic Zyprexa and interference with his legal mail. 25 I. Allegations Concerning Zyprexa Prescription 26 Dr. Williams prescribed plaintiff the anti-psychotic Zyprexa around 2015. (ECF No. 16 at 27 4.) Zyprexa has an F.D.A. “black box” warning because it causes diabetes, prolactin-induced 28 gynecomastia/breast enlargement in both men and women, and other side effects. (Id.) Plaintiff 1 told Dr. Williams that he did not want to take any anti-psychotics that cause gynecomastia. (Id.) 2 Dr. Williams told plaintiff that the only side effect was “dry mouth.” (Id. at 5.) Defendant Dr. 3 Sokolov also met with plaintiff in 2015 before Dr. Williams did. (ECF 16 at 5.) Dr. Sokolov 4 volunteered to place plaintiff on Zyprexa without giving him a choice of safer drugs, and would 5 not answer plaintiff’s question of “what [are] the side effects to Zyprexa?” (Id. at 5.) Defendant 6 Dr. Sokolov ignored the question, walked away, and never said the side effects to Zyprexa. (Id.) 7 Because Zyprexa causes diabetes and elevated prolactin levels, the standard practice for 8 psychiatrists is to order blood lab work quarterly. (ECF No. 16 at 5.) Over the next 4 ½ to 5 9 years, neither defendant Dr. Williams nor defendant Dr. Sokolov ordered any blood draw for 10 plaintiff to monitor his prolactin or blood sugar levels. (Id. at 6.) Instead, defendants Williams 11 and Sokolov regularly increased plaintiff’s dosage over that time. (Id.) 12 On or about 2017, plaintiff wrote to “medical” complaining about bilateral swelling and 13 pain in his nipples and breasts due to Zyprexa. (ECF No. 16 at 6.) Dr. John Doe, primary care 14

physician, sent plaintiff to an outpatient hospital for a mammogram. (Id.) The test confirmed that plaintiff had developed bilateral gynecomastia consistent with the side effects of Zyprexa that neither defendant Dr. Williams nor defendant Dr. Sokolov provided when plaintiff asked. (Id.) Despite the positive mammogram and plaintiff submitting multiple medical notes complaining of constant pain in his breasts, Dr. Doe never provided any follow-up treatment. (Id.) On or about August 2019, plaintiff began to experience swelling in his legs, which is indicia of diabetes. (ECF No. 16 at 7.) Sacramento County Jail medical staff drew plaintiff's blood, and the test indicated that plaintiff did have Type 2 Diabetes. (Id.)

II. Allegations Concerning Legal Mail

Plaintiff alleges that in 2021, Sacramento County Jail deputies were alerted that plaintiff was going to sue the jail by plaintiff stating more than seven times in grievances that he was going to file a lawsuit. (ECF No. 16 at 7.) Plaintiff also stated that he was in contact with an attorney regarding filing a lawsuit against Sacramento County Jail. Around November – December 2021, plaintiff was waiting on a response from an attorney and shocked to see his prior

legal mail opened and read by Sacramento County Jail deputies. (Id.)

Per Sacramento County Jail protocol, when any detainee gives a deputy an envelope marked with "legal mail" tag on the front, that deputy verifies that no contraband is inside and then gives it back to the detainee to seal. (ECF No. 16 at 7.) Then the deputy signs his initials on the lip of the envelope so that mailroom deputies don't have to inspect it. (Id. at 7-8.) Also under Sacramento County Jail policy, no deputy or jail staff is authorized to open a detainee's incoming "legal mail" outside of the detainee's presence. That includes "return to sender" legal mail that is unopened and already been inspected when it went in the outgoing mail before with a deputy's signature on the back lip of the envelope. (Id. at 8.)

III. Claims for Relief

Plaintiff's FAC states four causes of action: (1) violation of plaintiff's right to adequate medical care under the Fourteenth Amendment; (2) violation of plaintiff's right to access the courts under the First Amendment; (3) state law medical negligence; and (4) state law "serious emotional distress due to negligence." (ECF No. 16 at 8-20.) The FAC is captioned as a "Complaint for Money Damages and Injunction" (see id. at 1) but does not contain a specific prayer for relief.¹

LEGAL STANDARDS

I. 42 U.S.C. § 1983

A plaintiff may bring an action under 42 U.S.C. § 1983 to redress violations of "rights, privileges, or immunities secured by the Constitution and [federal] laws" by a person or entity, including a municipality, acting under the color of state law. 42 U.S.C. § 1983. To state a claim under 42 U.S.C. § 1983, a plaintiff must show that (1) a defendant acting under color of state law (2) deprived plaintiff of rights secured by the Constitution or federal statutes. *Benavidez v. 23 County of San Diego*, 993 F.3d 1134, 1144 (9th Cir. 2021). Municipalities cannot be held vicariously liable under § 1983 for the actions of their 1 Librarian construing the FAC, the court infers from its caption and clearly identified individual 26 capacity claims (see ECF No. 16

at 2-3) that plaintiff seeks monetary damages. Thus, for screening purposes, the court will not dismiss the FAC for plaintiff's failure to request specific relief. See *Massey v. Banning Unified Sch. Dist.*, 256 F. Supp. 2d 1090, 1092 (C.D. Cal. 2003) (stating that an improper request for relief is not grounds for dismissal under Rule 12(b)(6) "as long as the court can ascertain from the face of the complaint that some relief can be granted") 1 employees. *Monell v. Dep't of Social Services*, 436 U.S. 585 at 691, 694 (1978). "Instead, it is 2 when execution of a government's policy or custom, whether made by its lawmakers or by those 3 whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the 4 government as an entity is responsible under § 1983." *Id.* at 694. Municipalities are considered 5 "persons" under 42 U.S.C. § 1983 and therefore may be liable for causing a constitutional 6 deprivation. *Monell*, 436 U.S. 658, 690 (1978); *Long v. County of Los Angeles*, 442 F.3d 1178, 7 1185 (9th Cir. 2006). 8 To properly plead a *Monell* claim based on an unconstitutional custom, practice, or policy, 9 plaintiff must show that the government "had a deliberate policy, custom, or practice that was the 10 moving force behind the constitutional violation [plaintiff] suffered." *AE ex rel. Hernandez v. County of Tulare*, 666 F.3d 631, 636 (9th Cir. 2012) (quotation marks and citation omitted). 12 Plaintiff must also show that the policy or custom of the government "reflects deliberate 13 indifference" to plaintiff's constitutional rights. *Castro v. County of Los Angeles*, 833 F.3d 1060, 14 1073 (9th Cir. 2016) (quotation marks and citation omitted). Unless the challenged policy is in 15 writing, the municipal policy at issue must be the result of a "longstanding practice or custom 16 which constitutes the standard operating procedure of the local government entity." *Price v. Sery*, 513 F.3d 962, 966 (9th Cir. 2008) (quoting *Ulrich v. City & Cnty. of San Francisco*, 308 18 F.3d 968, 984-85 (9th Cir. 2002) (quotation omitted). 19 II. Linkage

20 Section 1983 requires that there be an actual connection or link between the actions of the 21 defendants and the deprivation alleged to have been suffered by plaintiff. See *Monell*, 436 U.S. 22 at 694; *Rizzo v. Goode*, 423 U.S. 362, 370-71 (1976). Plaintiff may demonstrate that connection 23 by alleging facts showing: (1) a defendant's "personal involvement in the constitutional 24 deprivation," or (2) that a defendant set "in motion a series of acts by others" or "knowingly 25 refus[ed] to terminate a series of acts by others, which [the defendant] knew or reasonably should 26 have known would cause others to inflict a constitutional injury." *Starr v. Baca*, 652 F.3d 1202, 27 1207-08 (9th Cir. 2011) (quotation marks and citation omitted). 28 ////

1 DISCUSSION

2 I. Fourteenth Amendment Inadequate Medical Care 3 Plaintiff's Fourteenth Amendment inadequate medical care claim names defendants Dr. 4 Williams, Dr. Sokolov, JPS supervisor, Dr. John Doe, and Sacramento County. (ECF No. 16 at 5 8-12.) When filed by civil detainees, claims of violations of the right to adequate medical care 6 proceed under the Fourteenth amendment and "must be evaluated under an objective deliberate 7 indifference standard." *Gordon v. Cnty. of Orange*, 888 F.3d 1118, 1124-25 (9th Cir. 2018) 8 (quoting *Castro*, 833 F.3d at 1070.) The elements of a civil detainee's Fourteenth Amendment 9 medical care claim are: 10 (i) the

defendant made an intentional decision with respect to the conditions under which the plaintiff was confined; (ii) those conditions put the plaintiff at 11 substantial risk of suffering serious harm; (iii) the defendant did not take reasonable available measures to abate that risk, even though a reasonable official 12 in the circumstances would have appreciated the high degree of risk involved— making the consequences of the defendant’s conduct obvious; and (iv) by not 13 taking such measures, the defendant caused the plaintiff’s injuries.

14 Id. at 1125. “With respect to the third element, the defendant’s conduct must be objectively 15 unreasonable, a test that will necessarily turn on the facts and circumstances of each particular 16 case.” Id. “The mere lack of due care by a state official does not deprive an individual of life, 17 liberty, or property under the Fourteenth Amendment.” Id. (internal quotation omitted). “Thus, 18 the plaintiff must prove more than negligence but less than subjective intent – something akin to 19 reckless disregard.” (Id. (internal quotation omitted).) 20 Further, the Ninth Circuit has held that “the Fourteenth Amendment substantively protects 21 a person’s rights to be free from unjustified intrusions to the body, to refuse unwanted medical 22 treatment and to receive sufficient information to exercise those rights intelligently.” *Benson v. 23 Terhune*, 304 F.3d 874, 884 (9th Cir. 2002) (citations omitted). In *White v. Napoleon*, which the 24 Ninth Circuit cited favorably in *Benson*, 304 F.3d at 884, the Third Circuit held that “[p]risoners 25 have a right to such information as is reasonably necessary to make an informed decision to 26 accept or reject proposed [medical] treatment, as well as a reasonable explanation of the viable 27 alternative treatments that can be made available in a prison setting.” 897 F.2d 103, 113 (3d Cir. 28 1990). 1 The undersigned finds that plaintiff has stated cognizable Fourteenth Amendment medical 2 care claims against defendants Dr. Williams, Dr. Sokolov, and Dr. John Doe. Liberally 3 construed, the FAC alleges that each defendant made intentional decisions regarding plaintiff’s 4 care that put him at risk of gynecomastia and/or diabetes. Plaintiff has also alleged sufficient 5 facts to support each defendant’s objective unreasonableness in not appreciating those risks. For 6 Dr. Williams and Dr. Sokolov, the FAC alleges that both failed inform plaintiff of the side effects 7 of Zyprexa despite his repeated requests and increased his Zyprexa dosage over the next 4 ½ to 5 8 years. Dr. John Doe failed to treat plaintiff’s gynecomastia despite alleged knowledge of his 9 positive mammogram. 10 Plaintiff, however, has not plead adequate facts to link defendant JPS Supervisor John 11 Doe to the deprivation of his rights. Plaintiff alleges only the vague contention that defendant has 12 an “omissive or deficient policy for ensuring that [his] subordinates are adhering to acceptable 13 standards of medical care when prescribing and monitoring the side effects of drugs[.]” (ECF No. 14 16 at 11.) Supervisory personnel are generally not liable under § 1983 for the actions of their 15 employees under a respondeat superior theory and therefore, when a named defendant holds a 16 supervisory position, the plaintiff must show a “sufficient causal connection between the 17 supervisor’s wrongful conduct and the constitutional violation.” *Starr*, 652 F.3d at 1207 (quoting 18 *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989)). Plaintiff’s vague and conclusory allegations 19 concerning the involvement of JPS Supervisor John Doe in the

violations of his civil rights are 20 not sufficient. 21 Finally, plaintiff's policy and custom allegations are too vague and conclusory to maintain 22 a Monell claim against defendant Sacramento County. Plaintiff alleges only that Sacramento 23 County violated his civil rights by "acquiescing, ratifying, or condoning a policy or custom of 24 [County Jail] primary care physicians [and psychiatrists] providing medical treatment that is 25 below an acceptable standard of medical care." (ECF No. 16 at 12.) The Supreme Court has 26 emphasized that it is not enough for a § 1983 plaintiff merely to identify conduct properly 27 attributable to the municipality. "The plaintiff must also demonstrate that, through its deliberate 28 conduct, the municipality was the 'moving force' behind the injury alleged." Board of Comm'rs 1 of Bryan Cty. v. Brown, 520 U.S. 397, 404 (1997). Plaintiff has not alleged any deliberate 2 conduct by the County or other facts that go beyond the respondeat superior theory of liability. 3 Accordingly, the undersigned finds that plaintiff has stated a cognizable Fourteenth 4 Amendment inadequate medical care claim against defendants Dr. Williams, Dr. Sokolov, and 5 Dr. John Doe only. 6

II. First Amendment Access to the Courts 7

Plaintiff's second cause of action alleges defendants John Doe mailroom supervisor and 8 mailroom deputies John Does 1-10 violated his First Amendment rights by "opening and/or 9 reading plaintiff's legal mail in retaliat[ion] against plaintiff for exercising plaintiff's first 10 amendment right to access the courts." (ECF No. 16 at 12.) 11 Under the First Amendment, prisoners have a right to send and receive mail. *Witherow v. 12 Paff*, 52 F.3d 264, 265 (9th Cir. 1995) (per curiam). Courts have afforded greater protection to 13 legal mail than non-legal mail. See *Thornburgh v. Abbott*, 490 U.S. 401, 413 (1989). In the 14 Ninth Circuit, prisoners have a "protected First Amendment interest in having properly marked, 15 confidential legal mail opened only in their presence." *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 16 1211 (9th Cir. 2017). However, only mail from plaintiff's lawyer or prospective lawyer is 17 protected. See *Nordstrom v. Ryan*, 762 F.3d 903, 909 (9th Cir. 2014) (describing the right at 18 issue as the right to be free from "prison officials reading mail between a prisoner and his 19 lawyer"); *Keenan v. Hall*, 83 F.3d 1083, 1094 (9th Cir. 1996) ("mail from the courts, as 20 contrasted with mail from a prisoner's lawyer, is not legal mail"). As to communication with 21 counsel, a plaintiff need not "show any actual injury beyond the free speech violation itself to 22 state a constitutional claim." *Hayes*, 849 F.3d at 1212 (quoting *Al-Amin v. Smith*, 511 F.3d 23 1317, 1333 (11th Cir. 2008)). 24 A prison's interference with legal mail may also violate an inmate's right of access to the 25 courts, which is protected by the First Amendment's right to petition the government and the due 26 process clause of the Fourteenth Amendment. See *Snyder v. Nolen*, 380 F.3d 279, 290-291 (7th 27 Cir. 2004) (discussing the development of cases concerning a prisoner's right of access to the 28 courts). Prison officials may not actively interfere with an inmate's right to litigate. *Silva v. 1 Vittorio*, 658 F.3d 1090, 1103 (9th Cir. 2011), overruled on other grounds by *Richey v. Dahne*, 2 807 F.3d 1202, 1209 n.6 (9th Cir. 2015). To state a claim for the denial of access to the courts, a 3 plaintiff must allege he suffered an actual injury, which is prejudice with respect to contemplated 4

or existing litigation, such as the inability to meet a filing deadline or present a non-frivolous 5 claim. *Lewis v. Casey*, 518 U.S. 343, 349 (1996). 6 Plaintiff's FAC lacks adequate linkage to state a cognizable First Amendment claim. 7 Plaintiff alleges that John Doe mailroom supervisor and John Does 1-10 are responsible for 8 "inspecting and distributing mail at [Sacramento County Jail]" (ECF No. 16 at 3) but states no 9 facts connecting them to the opening or reading of his own mail. "Whether a defendant is named 10 or has been designated as a 'John Doe,' Plaintiff must tie that defendant's actions to the specific 11 harms alleged to have been caused to Plaintiff." *Zepeda v. Sullivan*, No. 1:06-cv-1391 AWI GSA 12 PC, 2009 WL 1288235, at *3 (E.D. Cal. May 7, 2009). To the extent plaintiff's claim is premised 13 on a denial of access to the courts, plaintiff has not stated an actual injury with respect to any 14 planned or existing litigation (e.g., missing a filing deadline). 15 The court will give plaintiff the option of amending to explain the Doe defendants' 16 alleged involvement in the opening and reading of his legal mail. To adequately link the Doe 17 defendants to his mail access claim, "Plaintiff shall either name the defendants involved or list the 18 Doe defendants involved and describe what each did to violate his rights. If Plaintiff can only list 19 these defendants as John Doe, Plaintiff should allege specific acts that each Doe defendant did, 20 such as 'John Doe 1 did X' and 'John Doe 2 and 3 did Y.'" *Alexander v. Tilton*, 2009 WL 21 464486, *5 (E.D. Cal. Feb. 24, 2009). 22 III. State Law Claims 23 Plaintiff's FAC asserts state law claims for medical negligence and "serious emotional 24 distress due to negligence" against defendants Dr. Williams, Dr. Sokolov, and Dr. John Doe only. 25 (ECF No. 16 at 13-20.) Under the California Government Claims Act, the presentation of a tort 26 claim to the California Victim Compensation and Government Claims Board is a condition 27 precedent to suit against a public entity or its employees. *Mangold v. California Pub. Utilities Comm'n*, 67 F.3d 1470, 1477 (9th Cir. 1995). "The [Act] applies to state law claims wherever 1 those claims are brought, and the requirement that a plaintiff must affirmatively allege 2 compliance...applies in federal court." *Cardenas v. Cnty. of Tehama*, 476 F. Supp. 3d 1055, 3 1070 (E.D. Cal. 2020) (quoting *Butler v. Los Angeles Cty.*, 617 F. Supp. 2d 994, 1001 (C.D. Cal. 4 2008)). 5 Here, plaintiff does not allege his compliance with the California Government Claims Act 6 as to either state law claim. Accordingly, the undersigned finds that the FAC does not state any 7 cognizable state law claims. The court will grant plaintiff leave to amend to sufficiently plead his 8 compliance with the Government Claims Act. 9 III. Options From Which Plaintiff Must Choose 10 After conducting the screening required by 28 U.S.C. § 1915A(a), the court finds plaintiff 11 has stated a potentially cognizable Fourteenth Amendment medical care claim against defendants 12 Dr. Williams, Dr. Sokolov, and Dr. John Doe (primary care physician). However, plaintiff has 13 not pled sufficient facts to state a Fourteenth amendment claim against Sacramento County or JPS 14 supervisor John Doe. Further, plaintiff did not state a First Amendment claim because he did not 15 plead the Doe defendants' personal involvement in the opening and reading of his legal mail. 16 Finally, plaintiff did not state any state law claims for relief because he did not plead compliance 17 with the California Government Claims Act. 18 It appears to the court that plaintiff

may be able to allege facts to fix these problems. 19 Therefore, plaintiff has the option of proceeding on his cognizable claim or filing an amended 20 complaint that addresses the issue the court identified above. After selecting an option from the 21 two options listed below, plaintiff must return the attached Notice of Election form to the court 22 within 21 days from the date of this order. 23 Option No. 1: The first option available to plaintiff is to proceed immediately against 24 defendants Dr. Williams, Dr. Sokolov, and Dr. John Doe on the Fourteenth Amendment medical 25 care claim. By choosing this option, plaintiff will be agreeing to voluntarily dismiss defendants 26 Sacramento County; John Doe, JPS supervisor; John Doe, mailroom supervisor; and mailroom 27 deputies, John Does 1-10. The court will proceed to immediately serve the FAC and order a 28 response from defendants Dr. Williams and Dr. Sokolov. Plaintiff is advised that the court cannot 1 order service of Dr. John Doe until plaintiff identifies Dr. John Doe through discovery and files a 2 motion to amend the complaint to include his real name. See *Mosier v. Cal. Dep't of Corr. & 3 Rehab.*, 2012 WL 2577524, at *3 (E.D. Cal. July 2, 2012). 4 Option No. 2: The second option available to plaintiff is to file an amended complaint to 5 fix the problems described above. If plaintiff chooses this option, the court will set a deadline in 6 a subsequent order to give plaintiff time to file an amended complaint.

7 MOTIONS TO APPOINT COUNSEL

8 Before the court as plaintiff's two motions to appoint counsel. (ECF Nos. 14 and 15.) 9 Plaintiff filed the first motion on December 30, 2024, and cites his in forma pauperis status, the 10 substantial amount of investigation and discovery the case will require, and placement at Napa 11 State Hospital as grounds to grant the motion. (ECF No. 14 at 1-2.) Plaintiff also states that the 12 complex issues in the case "extend far beyond plaintiff's abilities to understand due to his severe 13 mental disability" and that his involuntary medications impair his cognitive abilities. (Id. at 2-3.) 14 In his second motion filed on January 6, 2025, plaintiff reiterates that he is not competent to 15 handle his case alone. (ECF No. 15.) Plaintiff subsequently submitted medical records in support 16 of his motions. (See ECF No. 18.) 17 District courts lack authority under 28 U.S.C. § 1915 to require counsel to represent 18 indigent prisoners in section 1983 cases. *Mallard v. United States Dist. Court*, 490 U.S. 296, 298 19 (1989). In exceptional circumstances, the court may request that an attorney voluntarily represent 20 such a plaintiff. See 28 U.S.C. § 1915(e)(1); *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 21 1991); *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990). The test for exceptional 22 circumstances requires the court to evaluate the plaintiff's likelihood of success on the merits and 23 the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal 24 issues involved. See *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986); *Weygandt v. 25 Look*, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances common to most prisoners, such as lack 26 of legal education and limited law library access, do not establish exceptional circumstances that 27 would warrant a request for voluntary assistance of counsel. *Wood*, 900 F.2d at 1335; *Riley v. 28 Franke*, 340 F. Supp. 3d 783, 787 (E.D. Wis. 2018). 1 Beyond § 1915(e)(1), other sources of law may implicate a request for

counsel. For 2 example, appointed counsel may be required in a civil proceeding as an accommodation for a 3 litigant who is disabled. See *Franco-Gonzalez v. Holder*, No. 10-cv-02211 DMG (DTBx), 2013 4 WL 3674492, at *3-*9 (C.D. Cal. Apr. 23, 2013) (granting summary judgment to class of 5 mentally disabled individuals in civil immigration proceedings on their request for appointed 6 representatives under the Rehabilitation Act). Due process may also require appointment of 7 counsel in certain proceedings. See *Turner v. Rogers*, 564 U.S. 431, 444-45 (2011) (analyzing 8 request for appointment of counsel in civil proceeding under the *Mathews v. Eldridge*, 424 U.S. 9 319 (1976), procedural due process framework). 10 The court will deny plaintiff's motions. Plaintiff's concerns regarding the amount of 11 investigation and discovery that the case will require are common to most prisoners and do not 12 constitute exceptional circumstances warranting the appointment of counsel. Further, these 13 concerns are premature considering the case is still in the screening stage and no defendants have 14 appeared. Plaintiff's argument that his mental disability and involuntary medications impair his 15 ability to litigate this case is well taken, but the court similarly finds them premature at this early 16 stage of the case. However, the undersigned will deny plaintiff's motions without prejudice, 17 meaning plaintiff can request the appointment of counsel later in the case. If plaintiff seeks 18 counsel as an accommodation for his mental disability, plaintiff shall carefully explain, to the best 19 of his ability, why the appointment of counsel is necessary for him to "meaningfully participate" 20 in his case. See *Franco-Gonzalez*, 2013 WL 3674492 at *7.

21 CONCLUSION

22 In accordance with the above, IT IS HEREBY ORDERED that: 23 1. Plaintiff's motions to appoint counsel (ECF Nos. 14 and 15) are denied without 24 prejudice. 25 2. Plaintiff has stated a cognizable Fourteenth Amendment medical care claim against 26 Dr. Williams, Dr. Sokolov, and Dr. John Doe but no other cognizable claims. 27 3. Plaintiff has the option to proceed immediately on his cognizable Fourteenth 28 Amendment medical care claim against defendants Dr. Williams, Dr. Sokolov, and Dr. John Doe 1 | as set forth above, or to file an amended complaint. 2 4. Within 21 days from the date of this order, plaintiff shall complete and return the 3 || attached Notice of Election form notifying the court whether he wants to proceed on the screened 4 || complaint or whether he wants to file an amended complaint. 5 5. If plaintiff does not return the form, the court will assume that he is choosing to 6 || proceed on the complaint as screened and will recommend dismissal without prejudice of his First 7 | Amendment mail access and state law claims, as well as defendants Sacramento County; John 8 || Doe, JPS supervisor; John Doe, mailroom supervisor; and mailroom deputies, John Does 1-10. 9 || DATED: April 17, 2025 10

"2 SEAN C. RIORDAN

13 UNITED STATES MAGISTRATE JUDGE

14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 13 1 2 3 4 5 6

7 UNITED STATES DISTRICT COURT

8 FOR THE EASTERN DISTRICT OF CALIFORNIA

9

10 JEREMIAH HANKINS, No. 2:24-cv-0150 TLN SCR P

11 Plaintiff,

12 v. NOTICE OF ELECTION

13 SACRAMENTO COUNTY,

14 Defendants. 15

16 Check One: 17 _____ Plaintiff elects to proceed immediately against Dr. Williams, Dr. Sokolov, and Dr. John 18 Doe on the Fourteenth Amendment medical care claim. By choosing this option, plaintiff 19 will be agreeing to voluntarily dismiss Sacramento County; John Doe, JPS supervisor; John 20 Doe, mailroom supervisor; and mailroom deputies, John Does 1-10. The court will proceed 21 to serve the FAC and order a response from defendants Dr. Williams and Dr. Sokolov. The 22 court cannot order service of Dr. John Doe until plaintiff identifies him through discovery 23 and files a motion to amend the complaint to include his real name. 24 25 _____ Plaintiff wants time to file an amended complaint. 26

27 DATED:_____

28 Jeremiah Hankins, Plaintiff pro se