

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Juan Carlos Calderon v. J. Campos

Calderon v. Campos · No. 2:23-cv-2049 WBS CSK P · Decided March 3, 2025

SUMMARY

The document contains findings and recommendations in a prisoner civil-rights action under 42 U.S.C. § 1983 in the Eastern District of California. The magistrate judge recommends denying the defendant's Rule 12(b)(6) motion because the allegations adequately support Eighth Amendment excessive-force and inadequate-medical-care claims. The recommendation also denies a motion for injunctive relief concerning unrelated prison conditions and requests for transfer.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Chi Soo Kim
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 3, 2025
DOCKET	2:23-cv-2049 WBS CSK P
DISPOSITION	other
PROCEDURAL POSTURE	Findings and recommendations on defendant's Rule 12(b)(6) motion to dismiss and plaintiff's motion for injunctive relief in a prisoner civil-rights action under 42 U.S.C. § 1983.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded allegations as true, construes the pleading in the plaintiff's favor, and determines whether the complaint states a facially plausible claim. The court may consider documents attached to or incorporated by reference into the complaint and matters subject to judicial notice without converting the motion into one for summary judgment.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Juan Carlos Calderon v. J. Campos

TOPICS

- section 1983
- prisoners rights
- cruel and unusual punishment
- motions to dismiss
- injunctions

PRACTICE AREAS

civil rights

prisoner litigation

constitutional law

civil procedure

QUESTIONS PRESENTED

1. Whether Calderon's amended complaint plausibly alleged that Campos used excessive force in violation of the Eighth Amendment.
2. Whether Calderon's amended complaint plausibly alleged deliberate indifference to serious medical needs based on the alleged failure to provide medical care or decontamination after the chemical grenade incident.
3. Whether Calderon's failure, as a pro se litigant, to address the merits of the motion to dismiss constituted abandonment or waiver of the entire action.
4. Whether Calderon's request for transfer or other injunctive relief, raised in an opposition and concerning conduct unrelated to the claims against Campos, was properly before the court.

HOLDINGS

1. The amended complaint plausibly alleged that Campos used force maliciously and sadistically rather than in a good-faith effort to maintain or restore discipline, and therefore the excessive-force claim should not be dismissed under Rule 12(b)(6).
2. The amended complaint plausibly alleged an Eighth Amendment claim for deliberate indifference to serious medical needs, and the claim should not be dismissed.
3. The court declined to treat Calderon's failure to address the motion to dismiss as abandonment or waiver of the entire action, particularly because he was proceeding pro se and the cited authorities involved abandonment of particular claims or preservation of an issue on appeal.
4. The request for transfer and other relief raised in Calderon's opposition was disregarded and should be denied because it was not made by motion and concerned alleged conduct unrelated to the claims proceeding against Campos.

KEY QUOTATIONS

"Although plaintiff's oppositions do not address the merits of the pending motion to dismiss, for the reasons discussed below, this Court recommends that defendant's motion to dismiss be denied because defendant failed to meet his burden of showing that plaintiff's amended complaint fails to state a claim upon which relief may be granted." (at 7)

"Based on these allegations, this Court finds that plaintiff pled sufficient facts supporting his claim that defendant Campos did not act to restore security when he rolled the grenade bomb under plaintiff's cell door." (at 8)

"Taking into consideration plaintiff's allegations and the statement by inmate Azpera that both he and plaintiff suffered burning torture all over their bodies for several days after defendant Campos allegedly failed to provide medical care, this Court finds that plaintiff's amended complaint adequately pleads harm in support of the Eighth Amendment inadequate medical care claim." (at 10)

FACTUAL BACKGROUND

Calderon alleged that on June 7, 2023, Campos placed or exploded a chemical grenade under Calderon's cell door after allegedly staging or responding to an altercation between inmates. Calderon alleged that the cell was contaminated, the door was not opened for approximately twenty minutes, and no decontamination or medical care was provided. Declarations from fellow inmates stated that the cell was away from the altercation, that no immediate decontamination occurred, and that Calderon and his cellmate suffered burning and related effects for several days.

PROCEDURAL HISTORY

Calderon, a state prisoner proceeding pro se, filed an amended complaint alleging that correctional officer Campos used a chemical grenade under his cell door and failed to provide medical care afterward. The court ordered service of Eighth Amendment excessive-force and inadequate-medical-care claims. Campos moved to dismiss under Rule 12(b)(6); Calderon did not meaningfully address the motion in his oppositions. The magistrate judge recommended denying the motion to dismiss and denying Calderon's separate motion for injunctive relief, with an answer due within thirty days after adoption of the recommendations.

DISPOSITION

other

CASES CITED

- Erickson v. Pardus, 551 U.S. 89 (2007)
- Jenkins v. McKeithen, 395 U.S. 411, 421 (1969)
- Meek v. County of Riverside, 183 F.3d 962, 965 (9th Cir. 1999)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57, 570 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Hishon v. King & Spaulding, 467 U.S. 69, 73 (1984)
- Van Buskirk v. Cable News Network, Inc., 284 F.3d 977, 980 (9th Cir. 2002)
- United States v. Ritchie, 342 F.3d 903, 907-908 (9th Cir. 2003)
- Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 322 (2007)
- Farmer v. Brennan, 511 U.S. 825, 832 (1994)
- Hudson v. McMillian, 503 U.S. 1, 6-9 (1992)
- Whitley v. Albers, 475 U.S. 312, 321 (1986)
- Estelle v. Gamble, 429 U.S. 97, 104 (1976)
- Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006)
- Shull v. Ocwen Loan Serv., LLC, 2014 WL 1404877, at *2-5 (S.D. Cal. Apr. 10, 2014)
- Silva v. U.S. Bancorp, 2011 WL 7096576, at *2-6 (C.D. Cal. Oct. 6, 2011)
- Qureshi v. Countrywide Home Loans, Inc., 2010 WL 841669, at *5-11 (N.D. Cal. Mar. 10, 2010)
- In re TFT-LCD (Flat Panel) Antitrust Litig., 586 F. Supp. 2d 1109, 1115-1132 (N.D. Cal. 2008)

- Walsh v. Nev. Dep't of Human Res., 471 F.3d 1033, 1037 (9th Cir. 2006)
- Avalanche Funding, LLC v. Five Dot Cattle Company, 2017 WL 6040293, at *3 (E.D. Cal. Dec. 6, 2017)
- Pac. Radiation Oncology, LLC v. Queen's Medical Center, 810 F.3d 631, 636 (9th Cir. 2015)
- Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
 CALIFORNIA 10 11 JUAN CARLOS CALDERON, No. 2:23-cv-2049 WBS CSK P 12 Plaintiff,
 13 v. FINDINGS AND RECOMMENDATIONS 14 J. CAMPOS, 15 Defendant. 16 17 I.
 INTRODUCTION 18 Plaintiff is a state prisoner, proceeding without counsel, with a civil rights
 action pursuant 19 to 42 U.S.C. § 1983.

Pending before the Court is defendant Campos's motion to dismiss pursuant 20 to Federal Rule of
 Civil Procedure 12(b)(6). (ECF No. 57.) Also pending is plaintiff's motion 21 for
 "documentational legal matters of new facts, evidence and events." (ECF No. 64.)

For the 22 following reasons, this Court recommends that both pending motions be denied. 23 II.
 MOTION TO DISMISS 24 A. Legal Standard for Motion to Dismiss 25 Rule 12(b)(6) of the
 Federal Rules of Civil Procedures provides for motions to dismiss for 26 "failure to state a claim
 upon which relief can be granted." Fed. R. Civ. P. 12(b)(6).

In 27 considering a motion to dismiss pursuant to Rule 12(b)(6), the court must accept as true the
 28 allegations of the complaint in question, *Erickson v. Pardus*, 551 U.S. 89 (2007), and construe
 the 1 pleading in the light most favorable to the plaintiff. See *Jenkins v. McKeithen*, 395 U.S. 411,
 421 2 (1969); *Meek v. County of Riverside*, 183 F.3d 962, 965 (9th Cir.

1999). Still, to survive 3 dismissal for failure to state a claim, a pro se complaint must contain
 more than "naked 4 assertions," "labels and conclusions" or "a formulaic recitation of the elements
 of a cause of 5 action." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007).

In other words, 6 "[t]hreadbare recitals of the elements of a cause of action, supported by mere
 conclusory 7 statements do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Furthermore,
 a claim 8 upon which the court can grant relief must have facial plausibility. See *Twombly*, 550
 U.S. at 9 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows
 the 10 court to draw the reasonable inference that the defendant is liable for the misconduct
 alleged." 11 *Iqbal*, 556 U.S. at 678.

A motion to dismiss for failure to state a claim should not be granted 12 unless it appears beyond
 doubt that the plaintiff can prove no set of facts in support of his claims 13 which would entitle
 him to relief. See *Hishon v. King & Spaulding*, 467 U.S. 69, 73 (1984). 14 "Ordinarily, a court

may look only at the face of the complaint to decide a motion to 15 dismiss.” *Van Buskirk v. Cable News Network, Inc.*, 284 F.3d 977, 980 (9th Cir.

2002). “[I]f a 16 district court considers evidence outside the pleadings, it must normally convert the 12(b)(6) 17 motion into a Rule 56 motion for summary judgment, and it must give the nonmoving party an 18 opportunity to respond.” *United States v. Ritchie*, 342 F.3d 903, 907 (9th Cir. 2003). “A court 19 may, however, consider certain materials—documents attached to the complaint, documents 20 incorporated by reference in the complaint, or matters of judicial notice—without converting the 21 motion to dismiss into a motion for summary judgment.” *Id.* at 908; see also *Tellabs, Inc. v. 22 Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007) (“[C]ourts must consider the complaint in 23 its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) 24 motions to dismiss, in particular, documents incorporated by reference, and matters of which a 25 court may take judicial notice.”).

Under the incorporation by reference doctrine, “[e]ven if a 26 document is not attached to a complaint, it may be incorporated by reference into a complaint if 27 the plaintiff refers extensively to the document or the document forms the basis of the plaintiff’s 28 claim.” *Ritchie*, 342 F.3d at 908. 1 B. Plaintiff’s Claims 2 This action proceeds on plaintiff’s amended complaint filed November 3, 2023 as to 3 plaintiff’s claims against defendant Mule Creek State Prison (“MCSP”) Correctional Officer 4 Campos.

(ECF No. 10.) Plaintiff alleges that on June 7, 2023, defendant Campos exploded a 5 grenade/bomb under plaintiff’s cell door after faking an altercation between inmates. (*Id.* at 5-6.) 6 Plaintiff alleges that plaintiff’s cell was contaminated with chemicals “with intentional mind to 7 cause deadly harm, irreparable harm and general suffering by not opening cell’s door until 20 8 minutes later and offering no [de]contamination ... no medical care at all.” (*Id.* at 5.)

9 The Court ordered service of claims alleging that defendant Campos used excessive force 10 in violation of the Eighth Amendment when he exploded a grenade/bomb under plaintiff’s cell 11 door without cause and failed to open the cell door for 20 minutes. (ECF No. 16. at 1.)

The 12 Court also ordered service of plaintiff’s claim alleging that defendant Campos violated plaintiff’s 13 Eighth Amendment right to adequate medical care by failing to provide plaintiff with medical 14 care following the explosion of the grenade/bomb in plaintiff’s cell. (*Id.*) 15 C. Relevant Legal Standards 16 1. Excessive Force 17 “In its prohibition of ‘cruel and unusual punishments,’ the Eighth Amendment places 18 restraints on prison officials, who may not... use excessive physical force against prisoners.” 19 *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). “[W]henever prison officials stand accused of 20 using excessive physical force in violation of the [Eighth Amendment], the core judicial inquiry is 21... whether force was applied in a good-faith effort to maintain or restore discipline, or 22 maliciously and sadistically to cause harm.” *Hudson v. McMillian*, 503 U.S. 1, 6–7 (1992).

23 When determining whether the force was excessive, the Court looks to the “extent of 24 injury suffered by an inmate..., the need for application of force, the relationship between that 25 need and the amount of force used, the threat ‘reasonably perceived by the responsible officials,’ 26 and ‘any efforts made to temper the severity of a forceful response.’” Hudson, 503 U.S. at 7 27 (quoting *Whitley v. Albers*, 475 U.S. 312, 321 (1986)).

While de minimis uses of physical force 28 generally do not implicate the Eighth Amendment, significant injury need not be evident in the 1 context of an excessive force claim, because “[w]hen prison officials maliciously and sadistically 2 use force to cause harm, contemporary standards of decency always are violated.” Hudson, 503 3 U.S. at 9. 4 2. Medical Care 5 Under 42 U.S.C. § 1983, to maintain an Eighth Amendment claim based on prison 6 medical treatment, an inmate must show “deliberate indifference to serious medical needs.” 7 *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

In the Ninth Circuit, the test for deliberate 8 indifference consists of two parts. See *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) 9 (internal citations omitted). First, the plaintiff must show a serious medical need by 10 demonstrating that failure to treat a prisoner’s condition could result in further significant injury 11 or the unnecessary and wanton infliction of pain.

See *id.* (internal citations and quotations 12 omitted). Second the plaintiff must show that the defendant’s response to the need was 13 deliberately indifferent. See *id.* The second prong is satisfied by showing “(a) a purposeful act or 14 failure to respond to a prisoner’s pain or possible medical need and (b) harm caused by the 15 indifference.” *Id.* Indifference “may appear when prison officials deny, delay or intentionally 16 interfere with medical treatment, or it may be shown by the way in which prison physicians 17 provide medical care.” *Id.* (internal citations omitted).

However, an inadvertent or negligent 18 failure to provide adequate medical care alone does not state a claim under Section 1983. See *id.* 19 D. Plaintiff’s Opposition 20 At the outset, this Court addresses defendant’s argument in his reply to plaintiff’s 21 opposition that the motion to dismiss should be granted because plaintiff failed to address the 22 merits of the motion to dismiss.

This Court below also addresses plaintiff’s request for injunctive 23 relief made in plaintiff’s opposition to defendant’s motion to dismiss. 24 1. Background 25 On May 13, 2024, defendant filed a motion to revoke plaintiff’s in forma pauperis status 26 pursuant to 28 U.S.C. § 1915(g). (ECF No. 46.)

On August 16, 2024, the Court denied 27 defendant’s motion to revoke plaintiff’s in forma pauperis status. (ECF No. 55.) On September 28 6, 2024, defendant filed the pending motion to dismiss. (ECF No. 57.) On September 18, 2024, 1 plaintiff filed a pleading docketed as an opposition to defendant’s motion to revoke plaintiff’s in 2 forma pauperis status. (ECF No. 59.)

In this pleading, plaintiff appears to address the previously 3 denied motion to revoke plaintiff's in forma pauperis status. (Id.) On September 30, 2024, 4 defendant filed a reply to plaintiff's opposition filed September 18, 2024. (ECF No. 60.) 5 Defendant correctly observes that plaintiff's opposition fails to address defendant's arguments 6 made in the pending motion to dismiss.

(Id.) Defendant also observes that plaintiff's opposition 7 contains a request for the Court to order plaintiff's transfer to Mexico. (Id.) 8 On October 28, 2024, plaintiff filed a pleading docketed as, "Opposition by Juan Carlos 9 Calderon to Motion to Dismiss." (ECF No. 61.) This pleading does not directly address the 10 pending motion to dismiss.

On November 7, 2024, plaintiff filed a pleading docketed as, 11 "Opposition and Objections by Juan Carlos Calderon to Motion to Dismiss." (ECF No. 62.) This 12 pleading also does not directly address the pending motion to dismiss. 13 2. Plaintiff's Failure to File An Opposition Addressing Motion to Dismiss 14 In the reply, defendant argues that the Court should construe plaintiff's failure to address 15 the issues raised by defendant in the motion to dismiss as a waiver or abandonment of plaintiff's 16 claims.

(ECF No. 60 at 2.) In support of this argument, defendant cites *Shull v. Ocwen Loan 17 Serv., LLC*, 2014 WL 1404877 (S.D. Cal. Apr. 10, 2014). (Id.) In *Shull*, the court found that by 18 failing to respond to arguments raised in a motion to dismiss regarding claims two, three, four and 19 six, plaintiff abandoned those claims and dismissal of those claims was appropriate.

2014 WL 20 1404877 at *2. In *Shull*, the court cited four cases in support of this finding: *Silva v. U.S. 21 Bancorp*, 2011 WL 7096576, at *3 (C.D. Cal. Oct. 6, 2011); *Qureshi v. Countrywide Home 22 Loans, Inc.*, 2010 WL 841669, at *9 & n. 2 (N.D. Cal. Mar. 10, 2010); *In re TFT-LCD (Flat 23 Panel) Antitrust Litig.*, 586 F.Supp.2d 1109, 1131 (N.D. Cal. 2008); and *Walsh v. Nev. Dep't. of 24 Human Res.*, 471 F.3d 1033, 1037 (9th Cir.

2006). In *Shull*, the court went on to address the 25 merits of the motion to dismiss as to the claims addressed by plaintiff in the opposition. 2014 26 WL 1404877 at *3-5. 27 This Court now discusses the four cases cited by the court in *Shull* in support of the 28 finding that the plaintiff abandoned claims not addressed in the opposition to the motion to 1 dismiss.

In *Silva*, the court found that the record keeping and stand-alone seating claims raised in 2 claim II should be dismissed because plaintiff failed to address defendant's arguments regarding 3 these claims in his opposition to defendant's motion to dismiss. See 2011 WL 7096576 at *2-4. 4 In *Silva*, the court went on to address the merits of the remaining claims addressed in the motion 5 to dismiss.

See *id.* at *4-6. 6 In *Qureshi*, the court found that the plaintiff abandoned part of his Truth in Lending Act 7 ("TILA") claim as well as his antitrust claim by failing to address these claims in his opposition 8 to defendant's motion to dismiss. See 2010 WL 841669 at *6 n. 2, *9.

In Qureshi, the court 9 addressed the merits of the remaining claims addressed in the motion to dismiss. See *id.* at *5-11. 10 In *In re TFT-LCD*, the court found that plaintiff abandoned its antitrust claim by failing to 11 address the antitrust claim in the opposition to the motion to dismiss. See 586 F.Supp.2d at 1131. 12 In *In re TFT-LCD*, the court addressed the merits of the remaining claims addressed in the motion 13 to dismiss.

See *id.* at 1115-1132. 14 Finally, in *Walsh*, the Ninth Circuit found that the plaintiff failed to preserve her claim for 15 injunctive relief on appeal because she did not present the issue to the district court: “A plaintiff 16 who makes a claim for injunctive relief in his complaint, but fails to raise the issue in response to 17 a defendant’s motion to dismiss on the grounds of immunity from money damages, has 18 effectively abandoned his claim, and cannot raise it on appeal.” 471 F.3d at 1037.

19 An important difference between the instant action and *Shull, Silva, Qureshi, In re TFT-LCD* and *Walsh* is that plaintiff in the instant action is a pro se litigant, unlike the plaintiffs in 21 *Shull, Silva, Qureshi, In re TFT-LCD* and *Walsh*.

In addition, in *Shull, Silva, Qureshi* and *In re 22 TFT-LCD*, the courts found that individual claims, rather than the entire action, were abandoned 23 based on the failure of plaintiffs’ counsel to address these claims in their oppositions to the 24 motions to dismiss.

In the instant action, plaintiff clearly did not intend to abandon this entire 25 action. *Walsh* is not entirely on point as it addressed waiver of claims on appeal. For these 26 reasons, this Court is not persuaded by defendant’s citation to *Shull*, and the cases cited in *Shull*, 27 as grounds to dismiss this entire action. 28 Although plaintiff’s oppositions do not address the merits of the pending motion to 1 dismiss, for the reasons discussed below, this Court recommends that defendant’s motion to 2 dismiss be denied because defendant failed to meet his burden of showing that plaintiff’s 3 amended complaint fails to state a claim upon which relief may be granted.

See *Avalanche 4 Funding, LLC v. Five Dot Cattle Company*, 2017 WL 6040293, at *3 (E.D. Cal. Dec. 6, 2017) 5 (citing *Anderson v. Fishback*, 2009 WL 2423327, at *2 (E.D. Cal. Aug. 6, 2009) (“In the context 6 of a motion to dismiss, the burden is on the defendant to prove that the plaintiff failed to state a 7 claim.”). 8 3. Plaintiff’s Request for Injunctive Relief Made in Opposition 9 In his reply to plaintiff’s opposition, defendant requests that the Court deny plaintiff’s 10 request for deportation to Mexico raised in plaintiff’s opposition filed September 18, 2024 on the 11 grounds that it is unrelated to the claims on which this action proceeds.

(See ECF No. 59 at 5, 12 12 (plaintiff’s opposition); ECF No. 60 at 3 (defendant’s reply).) Defendant observes that this Court 13 has previously given plaintiff detailed reasoning for why it dismissed his prior requests for 14 injunctive relief. (ECF No. 60 at 2.) Defendant requests that the Court consider sanctions against 15 plaintiff given his unwillingness to obey the Court’s orders.

(Id. at 3.) 16 Defendant is correct that the Court previously denied requests by plaintiff for injunctive 17 relief that were unrelated to the claims on which this action proceeds (see ECF Nos. 22, 36, 56). 18 See *Pac. Radiation Oncology, LLC v. Queen's Medical Center*, 810 F.3d 631, 636 (9th Cir. 2015) 19 (“[T]here must be a relationship between the injury claimed in the motion for injunctive relief and 20 the conduct asserted in the underlying complaint.”).

This Court warned plaintiff that the Court 21 would consider imposing sanctions if plaintiff continued to file motions in the instant action that 22 were unrelated to the claims proceeding against defendant Campos. (ECF No. 53 at 4.) 23 This Court finds that plaintiff's request for injunctive relief to be deported to Mexico 24 brought in his opposition filed September 18, 2024, is not properly raised.

Federal Rule of Civil 25 Procedure Rule 7(b)(1) requires that requests for court orders must be made by motion. 26 Therefore, a request for injunctive relief must be raised in a motion for injunctive relief. A 27 request for injunctive relief may not be made in a pleading addressing other matters, such as an 28 opposition to a motion to dismiss.

For this reason, plaintiff's request for injunctive relief made in 1 his opposition filed September 18, 2024 is disregarded. 2 E. Analysis: Excessive Force Claim 3 Defendant argues that plaintiff's claim alleging that defendant used excessive force by 4 “faking an altercation between inmates and exploding” a pepper spray grenade under plaintiff's 5 door is too vague and conclusory to support an excessive force claim.

(ECF No. 57 at 3.) 6 Defendant argues that, without more, these allegations fail to satisfy the malicious and sadistic 7 intent elements. (Id.) Defendant also argues that, assuming the altercation was near plaintiff's 8 cell, the fact that force was used in response to an altercation between prisoners confirms that 9 force was necessary to restore order. (Id.)

10 This Court observes that attached to plaintiff's original complaint are declarations by 11 inmates Gerardo Azpera, Anthony Gilbert and Edwards¹ regarding the June 7, 2023 incident. 12 (ECF No. 1 at 10-12.) Although plaintiff did not attach these declarations to the amended 13 complaint, this Court finds that these declarations are incorporated by reference to the amended 14 complaint because these declarations help form the basis of plaintiff's claims against defendant 15 Campos.

In his sworn declaration dated June 30, 2023, inmate Azpera states that he was 16 plaintiff's cellmate on June 7, 2023. (Id. at 10.) Inmate Azpera states that after a fight broke out 17 between two other inmates, a chemical bomb exploded under his cell door, which was far away 18 from the ongoing fight. (Id.) Inmate Azpera states that there was no decontamination and the 19 cell's door was not opened for 20 minutes during which time the chemical effects of the chemical 20 bomb prevented inmate Azpera and plaintiff from breathing.

(Id.) 21 In his sworn declaration dated July 1, 2023, inmate Gilbert states that on June 7, 2023, 22 defendant Campos used a chemical bomb not to control the fight between the two inmates but to 23 harass plaintiff. (Id. at 11.) Inmate Gilbert states that the bomb exploded under plaintiff's cell 24 door, far away from the ongoing altercation. (Id.) Inmate Gilbert states that no immediate 25 decontamination was done and the cell door was not opened until thirty minutes later.

(Id.) 26 In his sworn declaration dated June 22, 2023, inmate Edwards states that on June 7, 2023, 27 28 1 The declaration of inmate Edwards does not include a first name. 1 a chemical grenade exploded in plaintiff's cell, which was far away from the altercation. (Id. at 2 12.) Inmate Edwards states that no immediate decontamination was offered. (Id.) 3 The declarations of inmates Azpera, Gilbert and Edwards state that plaintiff's cell was far 4 away from the fight between the two inmates.

In the amended complaint, plaintiff alleges that 5 defendant Campos put the grenade bomb under his cell door after faking an altercation between 6 two inmates. Although the inmate declarations and plaintiff's amended complaint differ 7 regarding whether a fight between inmates actually occurred, the allegations in the amended 8 complaint and the declarations of inmates Azpera, Gilbert and Edwards suggest that defendant 9 Campos put the grenade bomb under plaintiff's cell door when there was no need for this use of 10 force.

Based on these allegations, this Court finds that plaintiff pled sufficient facts supporting 11 his claim that defendant Campos did not act to restore security when he rolled the grenade bomb 12 under plaintiff's cell door. Plaintiff's claim that defendant Campos acted maliciously and 13 sadistically is also supported by plaintiff's claim that defendant Campos waited twenty minutes 14 after the grenade bomb exploded in plaintiff's cell before opening plaintiff's cell door.

15 Accordingly, for the reasons discussed above, defendant's motion to dismiss plaintiff's 16 excessive force claim should be denied. 17 F. Analysis: Inadequate Medical Care Claim 18 Defendant argues that plaintiff's amended complaint fails to allege any facts showing 19 harm caused by defendant. (ECF No. 57 at 4.)

For this reason, defendant argues that plaintiff 20 fails to state a potentially colorable Eighth Amendment claim based on denial of adequate 21 medical care. (Id.) 22 In the amended complaint, plaintiff alleges that on June 7, 2023, he was subjected to 23 "general intentional torts/abuse and causation of health problems; irreparable harm; high risk of 24 deadly harm; denial of health care..." after defendant Campos allegedly rolled the grenade bomb 25 into plaintiff's cell.

(ECF No. 10 at 6.) Plaintiff alleges that the exploding grenade bomb 26 contaminated plaintiff, causing harm and general suffering. (Id.) This Court also observes that in 27 his declaration, inmate Azpera states that after the bomb exploded, there was no decontamination. 28 (ECF No. 1

at 10.) Inmate Azpera states that, “we did suffer from burning torture all over our 1 body for several days...” (Id.)

Taking into consideration plaintiff’s allegations and the statement 2 by inmate Azpera that both he and plaintiff suffered burning torture all over their bodies for 3 several days after defendant Campos allegedly failed to provide medical care, this Court finds that 4 plaintiff’s amended complaint adequately pleads harm in support of the Eighth Amendment 5 inadequate medical care claim.

Accordingly, defendant’s motion to dismiss plaintiff’s claim 6 alleging inadequate medical care should be denied. 7 III. PLAINTIFF’S MOTION FOR DOCUMENTATIONAL LEGAL MATTERS, ETC. 8 For the following reasons, this Court recommends that plaintiff’s motion for 9 documentational legal matters, etc., construed as a motion for injunctive relief, be denied.

In this 10 motion, plaintiff claims that on December 4, 2024, plaintiff was assaulted and moved from a 11 Level IV facility to a Level III facility. (ECF No. 64 at 1.) Plaintiff claims that at the Level III 12 facility, prison employees have “continued with illegal criminal wrongs complained of, as to 13 cause health problems, irreparable harm, deadly harm and more violence for the purpose of more 14 excessive confinement...” (Id. at 1-2.)

Plaintiff claims that prison employees conspired to deny 15 plaintiff the ability to communicate with the outside world, obstructed plaintiff’s mail and denied 16 plaintiff access to a tablet device. (Id. at 2.) Plaintiff claims that prison officials incited other 17 inmates to be hostile to plaintiff based on plaintiff’s criminal conviction. (Id. at 3.) Plaintiff 18 claims that prison health care officials organized and executed a plan to cause health care 19 problems to plaintiff.

(Id. at 4.) Plaintiff claims that prison officials at MCSP have obstructed, 20 delayed and interfered with plaintiff’s transfer to another prison, such as California State Prison- 21 Corcoran (“Corcoran”) and the California Men’s Colony (“CMC”). (Id. at 5.)

As relief, plaintiff 22 requests that plaintiff be transferred to a Protective Housing Unit (“PHU”), apparently at CMC, 23 and for the Court to order an investigation of plaintiff’s claims. (Id. at 7-8.) 24 The claims raised in plaintiff’s motion for documentational legal matters, etc. are not 25 directly related to the claims on which this action proceeds against defendant Campos.

For this 26 reason, the Court lacks authority to grant relief as to these claims. See Queen’s Medical Center, 27 810 F.3d at 636. Accordingly, plaintiff’s motion for documentational legal matters, etc., 28 construed as a request for injunctive relief, should be denied. 1 Accordingly, IT IS HEREBY RECOMMENDED that: 2 1. Defendant’s motion to dismiss (ECF No. 57) be denied and defendant be ordered to 3 || file an answer to the complaint within thirty days after the adoption of these findings and 4 || recommendations; and 5 2.

Plaintiffs motion for documentational legal matters, etc. (ECF No. 64), construed as a 6 || motion for injunctive relief, be denied. 7 These findings and recommendations are submitted to the United States District Judge 8 || assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(I). Within fourteen days 9 || after being served with these findings and recommendations, any party may file written 10 || objections with the court and serve a copy on all parties.

Such a document should be captioned 11 | “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the 12 || objections shall be filed and served within fourteen days after service of the objections.

The 13 || parties are advised that failure to file objections within the specified time may waive the right to 14 || appeal the District Court’s order. Martinez v. YIst, 951 F.2d 1153 (9th Cir. 1991). 15 16 || Dated: February 28, 2025 A aA Aan Spe | CHI SOO KIM 18 UNITED STATES MAGISTRATE JUDGE 19 20 21 22 23 24 25 26 Cald2049 mtd/2 27 28 1]