

**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

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**OPINION**

(PC) Calderon v. Covello

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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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 9570. “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]henver 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 maliciously and sadistically to cause harm.” *Hudson v. McMillian*, 503 U.S. 1, 6–7 (1992). When determining whether the force was excessive, the Court looks to the “extent of injury suffered by an inmate ..., the need for application of force, the relationship between that need and the amount of force used, the threat ‘reasonably perceived by the responsible officials,’ and ‘any efforts made to temper the severity of a forceful response.’” *Hudson*, 503 U.S. at 7 (quoting *Whitley v. Albers*, 475 U.S. 312, 321 (1986)). While de minimis uses of physical force generally do not implicate the Eighth Amendment, significant injury need not be evident in the context of an excessive force claim, because “[w]hen prison officials maliciously and sadistically use force to cause harm, contemporary standards of decency always are violated.” *Hudson*, 503 U.S. at 9.

#### 4 2. Medical Care

5 Under 42 U.S.C. § 1983, to maintain an Eighth Amendment claim based on prison medical treatment, an inmate must show “deliberate indifference to serious medical needs.” *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). In the Ninth Circuit, the test for deliberate indifference consists of two parts. See *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (internal citations omitted). First, the plaintiff must show a serious medical need by demonstrating that failure to treat a prisoner’s condition could result in further significant injury or the unnecessary and wanton infliction of pain. See *id.* (internal citations and quotations omitted). Second the plaintiff must show that the defendant’s response to the need was deliberately indifferent. See *id.* The second prong is satisfied by showing “(a) a purposeful act or failure to respond to a prisoner’s pain or possible medical need and (b) harm caused by the indifference.” *Id.* Indifference “may appear when prison officials deny, delay or intentionally interfere with medical treatment, or it may be shown by the way in which prison physicians provide medical care.” *Id.* (internal citations omitted). However, an inadvertent or negligent 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 opposition that the motion to dismiss should be granted because plaintiff failed to address the merits of the motion to dismiss. This Court below also addresses plaintiff’s request for injunctive 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 pursuant to 28 U.S.C. § 1915(g). (ECF No. 46.) On August 16, 2024, the Court denied defendant’s motion to revoke plaintiff’s in forma pauperis status. (ECF No. 55.) On September 6, 2024, defendant filed the pending motion to dismiss. (ECF No. 57.) On September 18, 2024, plaintiff filed a pleading docketed as an opposition to defendant’s motion to revoke plaintiff’s in forma pauperis status. (ECF No. 59.) In this pleading, plaintiff appears to address the previously denied motion to revoke plaintiff’s in forma pauperis status. (*Id.*) On September 30, 2024, 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- 20 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 Edwards<sup>1</sup> 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 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. Ylst, 951 F.2d 1153 (9th Cir. 1991). 15 16 || Dated: February 28, 2025 A aA Aan Spe |

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18 UNITED STATES MAGISTRATE JUDGE

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