

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Thompson v. PIA Free Staffs Jorge, Moses, Luna, Rodriguez, et al.

Case No. 25cv1224-LL-VET (S.D. Cal. Dec. 12, 2025) · No. 25cv1224-LL-VET · Decided December 12, 2025

SUMMARY

The United States District Court for the Southern District of California screens David Thompson’s First Amended Complaint under 28 U.S.C. §§ 1915(e)(2) and 1915A(b). The Court dismisses the Eighth Amendment deliberate-indifference claim and most First and Fourteenth Amendment claims for failure to state a claim, but finds that the allegations plausibly state a First Amendment retaliation claim against PIA staff member Rodriguez. The Court allows Thompson the option to amend the dismissed claims or proceed only on the surviving claim.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Linda Lopez
JURISDICTION	United States District Court for the Southern District of California
DECIDED	December 12, 2025
DOCKET	25cv1224-LL-VET
DISPOSITION	other
PROCEDURAL POSTURE	Screening of a prisoner's first amended civil-rights complaint under 28 U.S.C. §§ 1915(e)(2) and 1915A(b).
STANDARD OF REVIEW	Sua sponte screening under 28 U.S.C. §§ 1915(e)(2) and 1915A(b); the failure-to-state-a-claim standard is the same as the Federal Rule of Civil Procedure 12(b)(6) standard. The court accepted well-pleaded factual allegations as true for plausibility purposes but did not accept legal conclusions or conclusory assertions.
PRECEDENTIAL VALUE	unpublished and nonprecedential district-court order
PARTIES	David Thompson v. PIA Free Staffs Jorge, Moses, Luna, Rodriguez, et al.

TOPICS

- section 1983
- prisoners rights
- first amendment
- civil procedure
- pleadings

PRACTICE AREAS

prisoner civil rights

constitutional law

federal civil procedure

First Amendment retaliation

Eighth Amendment conditions of confinement

QUESTIONS PRESENTED

1. Whether Thompson plausibly stated an Eighth Amendment deliberate-indifference claim based on being ordered to ride on a moving forklift.
2. Whether Thompson plausibly stated a First Amendment retaliation claim based on alleged threats and adverse actions following his grievances.
3. Whether Thompson plausibly stated Fourteenth Amendment due-process or equal-protection claims based on unsafe labor, retaliation, grievance processing, or failure to extend a pay raise to PIA workers.
4. Whether Thompson plausibly stated a supervisory-liability claim against the warden under 42 U.S.C. § 1983.
5. Whether the surviving retaliation claim should proceed against PIA Rodriguez while the remaining claims and defendants were dismissed with leave to amend.

HOLDINGS

1. The first amended complaint failed to state an Eighth Amendment claim because, although the allegations plausibly suggested that several defendants knew of the danger of ordering Thompson to ride on the forklift, Thompson did not allege an actual physical injury or sufficiently serious deprivation.
2. The first amended complaint plausibly stated a First Amendment retaliation claim against PIA Rodriguez based on allegations that Rodriguez posted Thompson's grievance and encouraged other inmates to threaten him, but it failed to state a retaliation claim against the other defendants.
3. The first amended complaint failed to state Fourteenth Amendment due-process or equal-protection claims based on the unsafe labor, alleged retaliation, grievance processing, or failure to extend pay raises to PIA workers.
4. The first amended complaint failed to state a supervisory-liability claim against Warden Acevedo.
5. The court granted Thompson leave to either proceed solely on the surviving First Amendment retaliation claim against PIA Rodriguez or file a second amended complaint correcting the identified deficiencies.

KEY QUOTATIONS

“The standard for determining whether a plaintiff has failed to state a claim upon which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a claim.” (at 4)

“the mere threat of harm can be an adverse action, regardless of whether it is carried out because the threat itself can have a chilling effect.” (at 9)

“inmates lack a separate constitutional entitlement to a specific prison grievance procedure.” (at 11)

“A supervisory official may be held liable under § 1983 only if ‘there exists either (1) his or her personal involvement in the constitutional violation, or (2) a sufficient causal connection between the supervisor’s wrongful conduct and the constitutional violation,’” (at 14)

FACTUAL BACKGROUND

While incarcerated at Richard J. Donovan Correctional Facility, Thompson alleged that prison and California Prison Industry Authority personnel ordered him to ride on the rear of a moving forklift as a counterweight without a harness, guardrail, or platform. He alleged that after filing prison and CALPIA grievances concerning the forklift incident and related workplace conditions, PIA Rodriguez posted a grievance, encouraged other inmates to threaten him, and caused or contributed to threats against his life. Thompson also alleged that prison officials mishandled or rejected his grievances, that he was denied a pay increase, and that supervisory officials failed to act.

PROCEDURAL HISTORY

Thompson filed a pro se 42 U.S.C. § 1983 complaint and a motion to proceed in forma pauperis. The court granted in forma pauperis status and dismissed the original complaint for failure to state claims and because certain defendants were immune, while granting leave to amend. After an extension of time, Thompson filed a first amended complaint. The court dismissed all claims and defendants except the First Amendment retaliation claim against PIA Rodriguez, and granted Thompson the option either to proceed on that claim or file a second amended complaint within forty-five days.

DISPOSITION

other

CASES CITED

- Lopez v. Smith, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc)
- Rhodes v. Robinson, 621 F.3d 1002, 1004 (9th Cir. 2010)
- Nordstrom v. Ryan, 762 F.3d 903, 907 n.1 (9th Cir. 2014)
- Wheeler v. Wexford Health Sources, Inc., 689 F.3d 680, 681 (7th Cir. 2012)
- Watison v. Carter, 668 F.3d 1108, 1112, 1114 (9th Cir. 2012)
- Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012)
- Ashcroft v. Iqbal, 556 U.S. 662, 678–79 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)
- Devereaux v. Abbey, 263 F.3d 1070, 1074 (9th Cir. 2001)
- Tsao v. Desert Palace, Inc., 698 F.3d 1128, 1138 (9th Cir. 2012)
- Farmer v. Brennan, 511 U.S. 825, 834, 837 (1994)
- Wilson v. Seiter, 501 U.S. 294, 298, 302–03 (1991)
- Oliver v. Keller, 289 F.3d 623, 627–28 (9th Cir. 2002)

- Goode v. Canedo, S.D. Cal. Case No. 21-cv-2054-GPC-KSC, 2022 WL 16753312, at *6 (S.D. Cal. Nov. 7, 2022)
- Canell v. Lightner, 143 F.3d 1210, 1213 (4th Cir. 1998)
- Nealy v. Shinn, 2024 WL 3842094
- Thomas v. Illinois, 697 F.3d 612, 614–16 (9th Cir. 2012)
- Rosati v. Igbinoso, 791 F.3d 1037, 1039 (9th Cir. 2015)
- Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th Cir. 2012)
- Rhodes v. Robinson, 408 F.3d 559, 567–68 (9th Cir. 2005)
- Oltarzewski v. Ruggiero, 830 F.2d 136, 139 (9th Cir. 1987)
- Collins v. Cundy, 603 F.2d 825, 827 (10th Cir. 1979)
- Brodheim v. Cry, 584 F.3d 1262, 1269–70 (9th Cir. 2009)
- Gomez v. Vernon, 255 F.3d 1118, 1127 (9th Cir. 2001)
- Burgess v. Moore, 39 F.3d 216, 218 (8th Cir. 1994)
- Sandin v. Conner, 515 U.S. 472, 480, 484 (1995)
- Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003)
- Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988)
- Eldridge v. Block, 832 F.2d 1132, 1137 (9th Cir. 1987)
- Boag v. MacDougall, 454 U.S. 364, 365 (1982) (per curiam)
- City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 439 (1985)
- Plyler v. Doe, 457 U.S. 202, 216 (1982)
- Serrano v. Francis, 345 F.3d 1071, 1082 (9th Cir. 2003)
- Webber v. Crabtree, 158 F.3d 460, 461 (9th Cir. 1998)
- Shallowhorn v. Medina, 572 F. App'x 545, 547 (9th Cir. 2014)
- Keates v. Koile, 883 F.3d 1228, 1242–43 (9th Cir. 2018)
- Starr v. Baca, 652 F.3d 1202, 1207 (9th Cir. 2011)
- Corales v. Bennett, 567 F.3d 554, 570 (9th Cir. 2009)
- Hal Roach Studios, Inc. v. Richard Feiner and Co. Inc., 896 F.2d 1542, 1546 (9th Cir. 1990)
- Lacey v. Maricopa County, 693 F.3d 896, 928 (9th Cir. 2012)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
 CALIFORNIA 10 11 DAVID THOMPSON, Case No.: 25cv1224-LL-VET CDCR# AU-9252, 12
 ORDER SCREENING FIRST Plaintiff, 13 AMENDED COMPLAINT UNDER v. 28 U.S.C. §
 1915(e)(2) AND 28 U.S.C. 14 § 1915A(b) 15 PIA FREE STAFFS JORGE, MOSES, 16 LUNA,
 RODRIGUEZ, et al., 17 Defendants. 18 19 On May 12, 2025, Plaintiff David Thompson,
 currently incarcerated at the Substance 20 Abuse Treatment Facility and State Prison in Corcoran,
 California, and acting pro se, filed 21 a civil rights complaint under 42 U.S.C. § 1983 arising from

events that occurred during 22 his previous confinement at the Richard J. Donovan Correctional Facility in San Diego, 23 California, along with a motion for leave to proceed in forma pauperis.

ECF Nos. 1, 2. In 24 the complaint, Plaintiff alleged an Eighth Amendment violation arising from being forced 25 to ride on the back of a forklift, a Fourteenth Amendment violation for failure to properly 26 process his complaints and grievances and a First Amendment violation for retaliation or 27 interference with his grievances. ECF No. 1, at 1–4.

On July 10, 2025, the Court granted 28 Plaintiff leave to proceed IFP and dismissed the complaint under 28 U.S.C. §§ 1915(e)(2) 1 & 1915A(b), which require sua sponte dismissal of a prisoner’s IFP complaint, or any 2 portion of it, which fails to state a claim or seeks damages from defendants who are 3 immune. ECF No. 4.

The Court found the complaint sought to proceed against the 4 California Department of Corrections and Rehabilitation and California Prison Industry 5 Authority, who were not subject to suit under § 1983, and against numerous defendants in 6 their official capacities, which was barred under the Eleventh Amendment, and further 7 found the complaint failed to state a claim for relief against any of the individually named 8 defendants as to any of Plaintiff’s three enumerated claims.

See *id.* Plaintiff was notified 9 of the deficiencies of his pleading and was granted 45 days leave from the date of the 10 Court’s Order to file a First Amended Complaint. *Id.* at 11. After granting Plaintiff’s 11 subsequent request for a 60-day extension of time in which to amend, see ECF Nos. 5–6, 12 on October 9, 2025, Plaintiff filed a FAC. ECF No. 7. 13 I. SUA SPONTE SCREENING UNDER 28 U.S.C. §§ 1915(E) & 1915A(B) 14 A. Standard of Review 15 Because Plaintiff is a prisoner proceeding IFP, his FAC again requires pre-answer 16 screening pursuant to 28 U.S.C. §§ 1915(e)(2) & 1915A(b).

The Court must sua sponte 17 dismiss a prisoner’s IFP complaint, or any portion of it, which is frivolous, malicious, fails 18 to state a claim, or seeks damages from defendants who are immune. *Lopez v. Smith*, 203 19 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc) (discussing 28 U.S.C. § 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing 28 U.S.C. § 1915A(b)). “The 21 purpose of § 1915A is ‘to ensure that the targets of frivolous or malicious suits need not 22 bear the expense of responding.’” *Nordstrom v. Ryan*, 762 F.3d 903, 907 n.1 (9th Cir.

2014) 23 (quoting *Wheeler v. Wexford Health Sources, Inc.*, 689 F.3d 680, 681 (7th Cir. 2012)). 24 “The standard for determining whether a plaintiff has failed to state a claim upon 25 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of 26 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watson v. Carter*, 668 F.3d 27 1108, 1112 (9th Cir.

2012); see also *Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir. 28 2012) (“Failure to state a claim under § 1915A incorporates the familiar standard applied 1 in the context of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).”) 2 Rule 12(b)(6) requires a complaint to “contain sufficient factual matter, accepted as true, 3 to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 4 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “Determining 5 whether a complaint states a plausible claim for relief [is]... a context-specific task that 6 requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 7 679.

8 Title 42 U.S.C. § 1983 “creates a private right of action against individuals who, 9 acting under color of state law, violate federal constitutional or statutory rights.” 10 *Devereaux v. Abbey*, 263 F.3d 1070, 1074 (9th Cir. 2001). “To establish § 1983 liability, a 11 plaintiff must show both (1) deprivation of a right secured by the Constitution and laws of 12 the United States, and (2) that the deprivation was committed by a person acting under 13 color of state law.” *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1138 (9th Cir.

2012). 14 B. Allegations in the FAC 15 Plaintiff names sixteen enumerated defendants or groups of defendants, several of 16 whom he does not specifically make factual allegations of federal constitutional 17 deprivations against in his FAC.

The named defendants are: PIA Free Staffs Jorge, Moses, 18 Luna, and Rodriguez, Correctional Officer Rodriguez, 19 Maintenance Man Free Staff John Doe, RJD-CF Office of Grievances (“OOG”) John/Jane Doe, PIA Grievance Coordinator 20 John/Jane Doe, RJD-CF PIA Head Supervisor John/Jane Doe, PIA Human Resource 21 Supervisor John/Jane Doe, PIA Legal Unit General Counsel Julis Harlan, CDCR Office of 22 Appeals (“OOA”) John/Jane Does 1-10, RJD-CF OOG John/Jane Does 1-10, RJD-CF 23 Warden Rafael Acevedo, Internal Affairs Special Agent in Charge Charles Contreras, and 24 CDCR Secretary Jeffrey Macomber.

25 26 27 1 Because Plaintiff names two separate defendants with the surname Rodriguez, see ECF No. 7, at 2, correctional officer Rodriguez and PIA Free Staff Rodriguez, the Court will 28 1 Plaintiff alleges that on July 30, 2024, while he was working for the CALPIA 2 Laundry at RJD, he “was ordered by both Prison and PIA staff to ride on the rear of a 3 moving forklift as a counter[-]weight.” ECF No. 7, at 4.

Plaintiff weighed about 250 lbs. 4 at the time and Defendants John Doe Maintenance Man forklift driver and correctional 5 officer Rodriguez both ordered him to “climb onto the back” of the forklift and “to sit as a 6 counter[-]weight” in order to get some new and heavy machinery into the building. *Id.* 7 When Plaintiff, an OSHA certified forklift driver, objected based on the danger and 8 violation of safety standards, the forklift driver stated he was a certified forklift driver and 9 said: “Just don’t fall off – You can die.” *Id.* at 5.

Plaintiff indicates Defendants Jorge, 10 Moses, Luna, CO Rodriguez and the forklift driver all also told him: “Be careful Don’t fall 11 off the Forklift You will die.” Id. at 9. Plaintiff complied and rode on the forklift, as he 12 feared being written up for refusing an order as he had been in the past, and notes “[n]o 13 harness, guard rail, or platform was provided.” Id. at 5.

14 Plaintiff also alleges he was directed by Defendant PIA Free Staff Rodriguez, his 15 supervisor, to work on the “dirty” side of the laundry with soiled bedding, despite the fact 16 he had not been properly trained to work with hazardous materials. Id. at 6. When PIA 17 Rodriguez told Plaintiff he could go home if he did not work on the “dirty side,” Plaintiff 18 replied that he was not going to work with “shit” and was not paid to do it.

Id. at 6. 19 Plaintiff alleges Defendant Jorge’s job was to hire and fill job assignments within 14 20 days of a job opening and while there were approximately 25 workers in 70 available 21 positions, when he requested a job assignment change to Defendant Moses’ area, both 22 Jorge and Moses refused to move him away from PIA Rodriguez. Id. at 5–6, 8.

On August 23 1, 2024, Plaintiff sent a message to his brother to forward to PIA Human Resources in 24 which he raised PIA Rodriguez’s direction to work on the “dirty side,” as well as PIA 25 Rodriguez’s “inappropriate sexual deviant behavior” and Plaintiff’s request for a job 26 change. Id. at 6. Plaintiff indicates that “[d]ue to the toxic behavior, [he] felt the only 27 recourse was to quit his job.” Id. at 8.

28 /// 1 On August 2, 2024, Plaintiff filed a CDCR 602-1 complaint (Log #603874) with the 2 OOG outlining the same issues as in his message to PIA Human Resources, adding that 3 PIA laundry had “black mold” on the walls and numerous OSHA violations, and relating 4 the forklift incident. Id. at 8–9. Plaintiff also called his brother, who contacted OSHA to 5 file a complaint about the lack of a wash station and that Luna told Plaintiff he had filed a 6 safety report every month for over a year without PIA fixing it.

Id. 7 On August 7, 2024, Defendant PIA general counsel Harlan responded to Plaintiff’s 8 email and enclosed a CALPIA 602-1 complaint form for Plaintiff to file with the local 9 CALPIA Coordinator, which Plaintiff filed on August 10, 2024 (Log #626360). Id. at 9. 10 Just prior to that, on August 9, 2024, Defendant RJD-CF OOG Doe gave him a decision of 11 “no jurisdiction” concerning his CDCR 602-1 complaint (Log #603874).

Id. On August 12 25, 2024, Plaintiff filed a CDCR 602-2 with the OOA appealing the outcome of his CDCR 13 602-1 complaint (Log #603874), which was denied by Defendant CDCR OOA Doe 14 “claiming no jurisdiction.” Id. at 9–10; see also ECF No. 7-1, at 20–21, ECF No. 7-2, at 15 2–3.

On September 6, 2024, Plaintiff indicates he again contacted PIA Human Resources 16 through his brother. ECF No. 7, at 10. 17 Prior to receiving a response to or log number concerning his

CALPIA 602-1 18 complaint, Plaintiff was told by other inmates that Defendant PIA Rodriguez posted a copy 19 of his CALPIA 602-1 complaint on the wall behind his desk, was “promoting other inmates 20 to threaten the Plaintiff,” and told the inmates that “he was not going to allow the 602 to 21 be investigated.” Id. Plaintiff asserts multiple PIA workers threatened his life, stating: “If 22 PIA shuts down we’re going to stab you,” and Plaintiff was also told that PIA Rodriguez 23 fired him in retaliation for his CALPIA complaint.

Id. 24 On September 10, 2024, Defendant Harlan responded and stated Plaintiff had not 25 followed the correct process for his CALPIA 602-1 complaint, and on September 24, 2024, 26 Defendants Does OOG denied Plaintiff’s CALPIA 602-1 complaint (Log #626360), stating 27 “no jurisdiction.” Id. at 11. When Plaintiff asked Defendants Jorge, Moses, Luna and 28 correctional officer Rodriguez who the CALPIA 602-1 should be filed with and who the 1 CALPIA grievance coordinator was, they each told him it was the RJD-CF OOG.

Id. 2 Plaintiff claims when other inmates asked Luna about the procedure to file a CALPIA 602- 3 1, Luna “either didn’t know or refused to tell them.” Id. at 12. On October 7, 2024, Plaintiff 4 filed a second CALPIA 602-1 complaint (Log #635758) to attempt to find out how to 5 obtain the correct forms and procedure. Id. at 11; see also ECF No. 7-2, at 16. 6 Plaintiff claims PIA “retaliated” by taking his gate pass and refusing to unassign 7 him, which would have allowed him to get a new job, and that PIA Rodriguez lied and put 8 on Plaintiff’s timecards that he was refusing to work.

ECF No. 7, at 12. On October 11, 9 2024, Defendant Doe OOG again screened out Plaintiff’s second CALPIA 602-1 complaint 10 (Log #635758), stating “no jurisdiction.” Id.; see also ECF No. 7-2, at 19. On October 18, 11 2024, Plaintiff filed a CDCR 602-2 appeal form with the OOA and asserted it was a 12 CALPIA 602-2 appeal since PIA “refused” to provide him with the proper form.

ECF No. 13 7 at 12; see also ECF No. 7-2, at 22–23. In that same 602-2 appeal filing, Plaintiff also 14 asked why his earlier CALPIA 602-1 (Log #626360) had not been screened out, but that 15 602-2 was never answered. Id. Plaintiff alleges Defendant OOA Delgado “just denied” his 16 second CALPIA 602-1 (Log #635758) instead of informing Plaintiff how to process it.

17 ECF No. 7, at 13; see also ECF No. 7-2, at 25–26. Plaintiff again tried to exhaust 18 administrative remedies on December 10, 2024, filing another CDCR 602-1 with the Office 19 of Internal Affairs, Southern Region and attaching copies of his prior CDCR and CALPIA 20 602-1’s and 602-2’s, which Defendant Charles Contreras “refused to investigate” and 21 returned to Defendant Warden Acevedo on January 27, 2025.

ECF No. 7, at 13; see also 22 ECF No. 7-3, at 2–44, ECF No. 7-4, at 2–3. Defendant RJD-CF OOG Doe gave Plaintiff’s 23 separate “grievance or request for reasonable accommodation” on an

unspecified matter a 24 CDCR Log #710622 with a due date of May 13, 2025, and Plaintiff asserts RJD-CF OOG 25 Doe has refused to answer “all” his inquiries. ECF No. 7, at 14; see ECF No. 7-4, at 5.

26 Plaintiff separately asserts that on October 6, 2023, Defendant CDCR Secretary 27 Macomber put out a memorandum that inmates’ wages would increase statewide on April 28 1, 2024, but Plaintiff’s PIA “pay rates were never changed.” ECF No. 7, at 14. Plaintiff 1 inquired with Defendants PIA Supervisors Jorge, Luna, Moses and PIA Rodriguez about 2 the lack of pay raise and filed a CDCR 602-1 (Log # 600741) on the matter which was 3 denied by Doe OOG for “no jurisdiction.” Id. at 14–15; see also ECF No. 7-4, at 7–10.

4 Plaintiff’s subsequent August 26, 2024, CDCR 602-2 appeal (Log # 600741) was denied 5 on October 18, 2024, by Defendant OOA Delgado. ECF No. 7, at 15; see ECF No. 7-4, at 6 11–17. 7 Plaintiff presently alleges (1) an Eighth Amendment violation for deliberate 8 indifference to his safety in forcing Plaintiff to ride on the back of the forklift without 9 regard for the risk of harm, (2) a First Amendment violation for retaliation against him for 10 filing grievances arising from the forklift incident, (3) a Fourteenth Amendment due 11 process violation for an “atypical and significant hardship” arising from the “forced unsafe 12 labor and subsequent retaliation” and (4) a claim of “supervisory liability” arising from the 13 Warden’s inaction, failure to train, and deliberate indifference with respect to the unsafe 14 labor practices.

ECF No. 7, at 15–19. 15 Plaintiff sues all named Defendants in their individual capacities, see id. at 2–3, and 16 seeks (1) a declaratory judgment that the Defendants’ actions violated Plaintiff’s 17 Constitutional rights, (2) injunctive relief barring RJD-CF staff from ordering prisoners to 18 ride forklifts, (3) compensatory, nominal, and punitive damages, the latter with interest due 19 to the failure to institute pay raises ordered by CDCR, (4) costs, fees, any other relief the 20 Court finds appropriate and (5) a jury trial.

Id. at 19–20. 21 C. Discussion 22 1. Eighth Amendment (Claim 1) 23 Plaintiff alleges “Defendants forced Plaintiff to engage in conduct that violated 24 known workplace safety standards” and further alleges Defendants “were subjectively 25 aware of the danger” evidenced by their admonition to him: “Don’t fall off – You can die.” 26 Id. at 16. Plaintiff generally asserts “[t]he deprivation was objectively serious” and 27 “expos[ed] [him] to a substantial risk of harm” and Defendants “acted with deliberate 28 indifference to [his] health and safety.” Id. 1 As Plaintiff was instructed in the prior dismissal Order, see ECF No. 4, at 6–7, “a 2 prison official violates the Eighth Amendment when two requirements are met.

First, the 3 deprivation alleged must be, objectively, ‘sufficiently serious,’” *Farmer v. Brennan*, 511 4 U.S. 825, 834 (1994) (quoting *Wilson v. Seiter*, 501 U.S. 294, 298 (1991)), and the Plaintiff 5 must also allege the prison official had a “sufficiently culpable state of mind,” that is, “one 6 of ‘deliberate indifference’ to inmate health or safety.” Id. (quoting *Wilson*, 501 U.S. at 7 302–03).

Again, “[a] prison official must “know[] of and disregard[] an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” *Id.* at 837. Plaintiff’s allegations in the FAC as to Claim 1 are again insufficient to state a federal constitutional violation under the Eighth Amendment.

Upon review, Plaintiff now asserts facts plausibly alleging that Defendants John Doe Maintenance Man forklift driver and correctional officer Rodriguez, who he alleges ordered him to “climb onto the back” of the forklift to act as a counterweight to the machinery being moved, and Jorge, Moses, and Luna, who, along with the forklift driver and CO Rodriguez, each told him “don’t fall off” the forklift or he could “die,” ECF No. 1, at 4–5, had a “sufficiently culpable state of mind” in directing Plaintiff to ride on the forklift.

Farmer, 511 U.S. at 834. However, Plaintiff still fails to plausibly allege the alleged deprivation was “objectively, ‘sufficiently serious.’” *Id.* (quoting *Wilson*, 501 U.S. at 298). As the Court previously and similarly found when dismissing Plaintiff’s original Complaint, see ECF 22 No. 4, at 7, the FAC again fails to set forth facts demonstrating that Plaintiff suffered a sufficiently grave physical injury due to a Defendant’s deliberate indifference to the substantial or excessive risk of serious harm.

See *Oliver v. Keller*, 289 F.3d 623, 627 (9th Cir. 2002) (holding that the PLRA “requires a prior showing of physical injury that need not be significant but must be more than de minimis.”); see also *Goode v. Canedo*, S.D. Cal. Case No. 21-cv-2054-GPC-KSC, 2022 WL 16753312, at *6 (S.D. Cal. Nov. 7, 2022) (“The threshold of physical injury necessary is not specified in the PLRA, but courts have interpreted this to require physical injury more than de minimis.”) (citing *Oliver*, 289 F.3d 2 at 628 (9th Cir.

2002)). Here, Plaintiff has failed to cure the defect of pleading with respect to any injury suffered, see ECF No. 4, at 7, as the FAC fails to allege any actual physical injury resulting from Plaintiff’s directed ride on the forklift. See generally ECF No. 7. Instead, Plaintiff appears to contend the lack of physical injury does not preclude recovery, as he asserts that “[t]he Prison Litigation Reform Act (PLRA) limits recovery for mental/emotional damages without a physical injury.” *Id.* at 16 (citing “*Canell v. Lightner*, 143 F.3d 1259, 1263 (4th Cir.

1994) (en banc) (recognizing psychological harm from near death experience may warrant relief); see also *Thomas v. Illinois*, 697 F.3d 612 (9th Cir. 2012).” Yet, *Cannell* is distinguishable from Plaintiff’s situation because *Cannell*’s claims arose before the passage of the PLRA and because *Cannell*’s action involved an alleged violation of First Amendment rights, to which the physical injury provision did not apply.

See Cannell, 143 F.3d at 1213 (“The deprivation of First Amendment rights entitles a plaintiff to judicial relief wholly aside from any physical injury he can show, or any mental or emotional injury he may have incurred.”) Nor does Thomas assist Plaintiff’s argument, as that case is factually distinguishable and involved a pest infestation in a prisoner’s cell which presented not only the possibility of psychological harm, but physical harm as well.

See Thomas, 697 F.3d at 614-16. In contrast, Plaintiff only generally alleges that he was exposed “to a substantial risk of harm” and fails to allege any actual harm or injury resulting from any Defendant’s actions. Plaintiff’s lack of contentions about any actual harm suffered do not state a claim for relief. See Oliver, 289 F.3d at 627; see also Iqbal, 556 U.S. at 678 (“[T]he tenet that a court must accept as true all of the allegations contained in a complaint is 2 The Court notes that Cannell, 143 F.3d 1210 (9th Cir.

1998), abrogation on other grounds recognized by Nealy v. Shinn, 2024 WL 3842094 (9th Cir. 2024), which appears at 1210 rather than 1259, is also neither a Fourth Circuit case nor an en banc decision. 1 inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, 2 supported by mere conclusory statements, do not suffice.”).

3 Accordingly, Plaintiff’s Eighth Amendment deliberate indifference claim against all 4 Defendants is again dismissed sua sponte pursuant to 28 U.S.C. §§ 1915(e)(2) & 1915A(b) 5 for failure to state a claim. As set forth below, Plaintiff will once more be given the option 6 to amend his Complaint to cure the pleading deficiencies of his dismissed claims or proceed 7 only with the claim which survives screening.

See Rosati v. Igbinoso, 791 F.3d 1037, 1039 8 (9th Cir. 2015) (“A district court should not dismiss a pro se complaint without leave to 9 amend unless ‘it is absolutely clear that the deficiencies of the complaint could not be cured 10 by amendment.’”), quoting Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th Cir. 2012). 11 2.

First Amendment (Claim 2) 12 Plaintiff asserts he engaged in “protected conduct” when he filed a grievance about 13 the forklift incident, after which Defendants “took adverse action, including verbal 14 harassment, loss of job, and threats of disciplinary action” which was “linked” to the 15 grievance and resulted in Plaintiff losing a “level 3 override due to not being able to work.” 16 ECF No. 7, at 17.

Plaintiff contends the retaliation “chilled” his exercise of his First 17 Amendment rights and “served no legitimate correctional purpose.” Id. 18 As Plaintiff was instructed in the prior dismissal Order, see ECF No. 4, at 8, 19 “[p]risoners have a First Amendment right to file grievances against prison officials and to 20 be free from retaliation for doing so,” Watison, 668 F.3d at 1114, and “[w]ithin the prison 21 context, a viable claim of First Amendment retaliation entails five basic elements: (1) An 22 assertion that a state actor took some adverse action against

an inmate (2) because of (3) 23 that prisoner's protected conduct, and that such action (4) chilled the inmate's exercise of 24 his First Amendment rights, and (5) the action did not reasonably advance a legitimate 25 correctional goal." *Rhodes v. Robinson*, 408 F.3d 559, 567–68 (2005).

26 Plaintiff was previously informed that he failed to allege any Defendant took an 27 "adverse action" because of his protected conduct in filing grievances, see ECF No. 4, at 28 9, and Plaintiff now alleges that Defendants took actions "linked" to the grievance, 1 including "verbal harassment, loss of job, and threats of disciplinary action." ECF No. 7, 2 at 17.

First, Plaintiff's allegations of verbal harassment do not suffice to state a claim 3 cognizable under 42 U.S.C. § 1983. See *Oltarzewski v. Ruggiero*, 830 F.2d 136, 139 (9th 4 Cir. 1987) ("Verbal harassment or abuse... is not sufficient to state a constitutional 5 deprivation under 42 U.S.C. § 1983.") (quoting *Collins v. Cundy*, 603 F.2d 825, 827 (10th 6 Cir.

1979)). 7 Second, Plaintiff fails to state facts which plausibly allege the Defendants' retaliation 8 against him for filing grievances included losing his job. Plaintiff asserts "he was also told 9 that [PIA] Rodriguez fired him in retaliation to the complaint," ECF No. 7, at 10, but 10 Plaintiff also states he refused to work on the "dirty" side as directed, was denied a request 11 for a job assignment change to move away from PIA Rodriguez, and "[d]ue to the toxic 12 behavior Plaintiff felt the only recourse was to quit his job." *Id.* at 6–8.

While not entirely 13 clear, it appears Plaintiff's refusal to work on the "dirty" side, request for a job change and 14 decision to quit occurred sometime in August 2024, contemporaneous with the filing of his 15 initial grievances, see *id.* at 7–9, while PIA Rodriguez posted Plaintiff's CALPIA 602-1 16 grievance on the wall and Plaintiff learned of PIA Rodriguez's apparent involvement in his 17 termination in September 2024, which would have been approximately a month after 18 Plaintiff indicates he resolved to quit of his own accord.

Moreover, while the timeline is 19 again not entirely clear, it also appears that at some point after the above events, Plaintiff 20 learned PIA Rodriguez "lied that Plaintiff was just refusing to work on his time[]cards." 21 *Id.* at 12. Given Plaintiff contends PIA Rodriguez "lied" and was indicating on Plaintiff's 22 timecards that he was "just refusing to work," Plaintiff fails to plausibly allege that he in 23 fact lost his job in retaliation for filing the grievance and did not either quit or simply refuse 24 to work in his assigned area.

25 Finally, while Plaintiff does not set forth specific facts which plausibly allege any 26 Defendants threatened disciplinary action in connection with the grievances he filed and 27 instead only generally alleges he was faced with such threats, Plaintiff does set forth facts 28 which plausibly allege he was threatened with physical harm due to Defendant PIA 1 Rodriguez's actions.

Specifically, Plaintiff alleges PIA Rodriguez posted Plaintiff's 2 CALPIA 602-1 grievance on the wall behind his desk, "was promoting other inmates to 3 threaten the Plaintiff," and that "[m]ultiple PIA workers threatened the Plaintiff's life 4 stating that 'If PIA shuts down we're going to stab you.'" ECF No. 7, at 10. 5 The Court finds Plaintiff's allegations that he was subjected to threats of harm due 6 to PIA Rodriguez both posting his grievance and encouraging other inmates to threaten 7 him are sufficient to state a cognizable claim, given "the mere threat of harm can be an 8 adverse action, regardless of whether it is carried out because the threat itself can have a 9 chilling effect." *Brodheim v. Cry*, 584 F.3d 1262, 1270 (9th Cir.

2009). As Plaintiff also 10 alleges the retaliation had a chilling effect and served no legitimate correctional purpose, 11 see *id.* at 17, the Court finds Plaintiff plausibly states a First Amendment claim for 12 retaliation sufficient to survive screening against Defendant PIA Rodriguez alone. See 13 *Brodheim*, 584 F.3d at 1269–70 ("As we have stated multiple times, 'a retaliation claim 14 may assert an injury no more tangible than a chilling effect on First Amendment rights.'") 15 (quoting *Gomez v. Vernon*, 255 F.3d 1118, 1127 (9th Cir.

2001) and citing *Burgess v. 16 Moore*, 39 F.3d 216, 218 (8th Cir. 1994) ("(A) threat of retaliation is sufficient injury if 17 made in retaliation for an inmate's use of prison grievance procedures.")). 18 Accordingly, the Court sua sponte dismisses the First Amendment retaliation claim 19 against all Defendants other than PIA Rodriguez. See 20 U.S.C. §§ 1915(e)(2)(B)(iii) and 1915A(b)(2).

As set forth below, Plaintiff will be given the option to amend his Complaint 21 to cure the pleading deficiencies of his dismissed claims or proceed only with the claim 22 which survives screening. See *Rosati*, 791 F.3d at 1039. 23 3. Fourteenth Amendment (Claim 3) 24 Plaintiff contends "[t]he forced unsafe labor and subsequent retaliation imposed 25 atypical and significant hardship beyond the normal incidents of prison life" and he "was 26 compelled to perform a dangerous task not expected of other inmates, under threat of 27 punishment" in violation of due process.

ECF No. 7, at 18. While Plaintiff does not 28 reference his allegations about the lack of pay raises in any of his enumerated claims, see 1 *id.* at 15–19, he seeks damages arising from the failure to pay the pay raises, see *id.* at 20, 2 and the Court liberally construes Claim 2 as also alleging a Fourteenth Amendment due 3 process or equal protection violation arising from the failure to extend pay raises to PIA 4 workers such as himself.

See *Eldridge v. Block*, 832 F.2d 1132, 1137 (9th Cir. 1987) ("The 5 Supreme Court has instructed the federal courts to liberally construe the 'inartful pleading' 6 of pro se litigants.") (quoting *Boag v. MacDougall*, 454 U.S. 364, 365 (1982) (per curiam)). 7 As the Court previously noted in the prior Order dismissing the prior iteration of this 8 claim, see ECF No. 4, at 8, liberty interests protected by the Due Process Clause for 9 incarcerated persons "will be generally limited to freedom from restraint which, while not 10 exceeding the sentence in such an unexpected manner

as to give rise to protection by the 11 Due Process Clause of its own force, nonetheless imposes atypical and significant hardship 12 on the inmate in relation to the ordinary incidents of prison life.” *Sandin v. Conner*, 515 13 U.S. 472, 484 (1995).

Plaintiff fails to plausibly allege a due process claim based on either 14 the allegedly unsafe labor or subsequent retaliation. See *id.* at 480 (“The Due Process 15 Clause standing alone confers no liberty interest in freedom from state action taken ‘within 16 the sentence imposed.’”) (additional citations and quote marks omitted). Instead, Plaintiff’s 17 allegations about the forklift task and being compelled to perform it are addressed above 18 with respect to his Eighth Amendment claim and his allegation of subsequent retaliation 19 and threats are addressed above with respect to his First Amendment claim.

20 Next, Plaintiff’s FAC names as Defendants numerous personnel who handled his 21 grievances, including several individuals from OOG, OOA, and other divisions, and 22 generally asserts Defendants “deliberately obstructed Plaintiff’s right to a grievance 23 process, leaving him without legal recourse” and “repeatedly stonewalled Plaintiff 24 preventing him from exhausting administrative remedies,” ECF No. 7, at 13, but Plaintiff 25 does not make any factual allegations as to how any of these Defendants violated his federal 26 Constitutional rights.

Again, in the prior Order, see ECF No. 4 at 8, the Court instructed 27 Plaintiff that any asserted failure to properly process his grievances or complaints does not 28 state a due process claim given “inmates lack a separate constitutional entitlement to a 1 specific prison grievance procedure.” *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2 2003); see also *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir.

1988) (“There is no legitimate 3 claim of entitlement to a grievance procedure.”) In the FAC, Plaintiff did not specifically 4 re-raise a claim of due process based on the denial or processing of his grievances, appears 5 to acknowledge the substance of the Court’s prior Order and instead appears to recite his 6 filed grievances in support of his retaliation claim.

See ECF No. 7, at 18 (in which Plaintiff 7 argues that while “the underlying grievance system may be legally irrelevant – but 8 retaliation for using it is not.”) That said, even to the extent Plaintiff seeks to re-raise a 9 Fourteenth Amendment claim based on Defendants’ failure to properly process his 10 complaints or grievances, he again does not state a due process claim for the reasons stated 11 in the prior Order.

See ECF No. 4 at 8, citing *Ramirez*, 334 F.3d at 860; *Mann*, 855 F.2d at 12 640. 13 Finally, to the extent Plaintiff seeks to raise a claim concerning the failure to extend 14 raises to PIA workers such as himself, he fails to state a Fourteenth Amendment due 15 process violation. See *Sandin*, 515 U.S. at 480 (“The Due Process Clause standing alone 16 confers no liberty interest in freedom

from state action taken ‘within the sentence 17 imposed.’”) (additional citations and quote marks omitted).

Nor do Plaintiff’s allegations 18 plausibly state an equal protection claim under the Fourteenth Amendment. “The Equal 19 Protection Clause of the Fourteenth Amendment commands that no State shall ‘deny to 20 any person within its jurisdiction the equal protection of the laws,’ which is essentially a 21 direction that all persons similarly situated should be treated alike.” *City of Cleburne, Tex. 22 v. Cleburne Living Center*, 473 U.S. 432, 439 (1985) (quoting *Plyler v. Doe*, 457 U.S. 202, 23 216 (1982)). “To state a claim for violation of the Equal Protection Clause, a plaintiff must 24 show that the defendant acted with an intent or purpose to discriminate against him based 25 upon his membership in a protected class.” *Serrano v. Francis*, 345 F.3d 1071, 1082 (9th 26 Cir.

2003) (citation omitted). But the Ninth Circuit has repeatedly held that inmates or 27 prisoners are not themselves a protected class. See e.g. *Webber v. Crabtree*, 158 F.3d 460, 28 461 (9th Cir. 1998) (Federal Prison Camp inmates were “not members of a suspect class” 1 for equal protection purposes); see also *Shallowhorn v. Medina*, 572 Fed. Appx. 545, 547 2 (9th Cir.

2014) (district court properly dismissed equal protection clause claims in relevant 3 part because inmates convicted of certain crimes “do[] not constitute a protected class”). 4 Plaintiff’s Fourteenth Amendment due process and equal protection claims against 5 all Defendants are dismissed sua sponte under 28 U.S.C. §§ 1915(e)(2) & 1915A(b) for 6 failure to state a claim.

As set forth below, Plaintiff will be given the option to amend his 7 Complaint to cure the pleading deficiencies of his dismissed claims or proceed only with 8 the claim which survives screening. See *Rosati*, 791 F.3d at 1039. 9 4. Supervisory Liability (Claim 4) 10 To the extent Plaintiff again seeks to hold the Warden of RJD liable for any asserted 11 constitutional deprivations, he also again fails to state a claim for relief.

As Plaintiff was 12 previously instructed, see ECF No. 4, at 9–10, “[a] supervisory official may be held liable 13 under § 1983 only if ‘there exists either (1) his or her personal involvement in the 14 constitutional violation, or (2) a sufficient causal connection between the supervisor’s 15 wrongful conduct and the constitutional violation,’” *Keates v. Koile*, 883 F.3d 1228, 1242– 16 43 (9th Cir.

2018) (quoting *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011)), and “[i]n 17 a section 1983 claim, a supervisor is liable for the acts of his subordinates if the supervisor 18 participated in or directed the violations, or knew of the violations of subordinates and 19 failed to act to prevent them.” *Corales v. Bennett*, 567 F.3d 554, 570 (9th Cir. 2009) 20 (internal quote marks omitted).

21 Here, Plaintiff only offers conclusory assertions that Warden Acevedo “had 22 knowledge or should have had knowledge of widespread unsafe labor practices within the 23 PIA program as he t[o]ured through PIA every week,” generally “alleges a causal 24 connection between the Warden’s failure to supervise/train and the constitutional 25 violations by staff under his

command” and alleges “[t]he Warden’s inaction and deliberate indifference support supervisory liability” under Ninth Circuit case law.

ECF No. 7, at 19 27 (citation omitted). However, Plaintiff fails to set forth any specific facts which plausibly 28 allege the Warden had actual knowledge of the specific labor practices Plaintiff complains 1 of here and instead only generally asserts the Warden either knew or should have known 2 of those practices due to his weekly tour through PIA. Nor does Plaintiff set forth specific 3 facts alleging a causal connection between the Warden’s purported conduct and the 4 asserted constitutional violation, and his conclusory contentions are insufficient to state a 5 claim for relief.

See *Iqbal*, 556 U.S. at 678 (“Threadbare recitals of the elements of a cause 6 of action, supported by mere conclusory statements, do not suffice.”) 7 To the extent Plaintiff seeks to proceed with a due process claim against the Warden 8 for any potential actions or inaction with respect to the returned grievances, see ECF No. 9 7, at 13, as Plaintiff was previously instructed, see ECF No. 4, at 8, as “inmates lack a 10 separate constitutional entitlement to a specific prison grievance procedure,” *Ramirez*, 334 11 F.3d at 860; see also *Mann*, 855 F.2d at 640, any asserted failure by the Warden to properly 12 process his grievances and complaints also does not state a claim under 42 U.S.C. § 1983.

13 Accordingly, the Warden must again be dismissed from this action. 14 5. Plaintiff’s Options 15 Because the Court has determined that Plaintiff’s First Amendment retaliation claim 16 against Defendant PIA Rodriguez survives the sua sponte screening process but Plaintiff’s 17 remaining claims against the remaining Defendants do not, the Court gives Plaintiff the 18 option to either (1) notify the Court of his intent to proceed only with the First Amendment 19 retaliation claim against Defendant PIA Rodriguez which survived screening or (2) file a 20 Second Amended Complaint that attempts to correct the deficiencies of pleading identified 21 in this Order.

Plaintiff must choose one of those two options within forty-five (45) days 22 from the date this Order is filed. If Plaintiff notifies the Court that he wishes to proceed 23 only with the claim which survived screening, the Court will issue an Order directing the 24 Clerk to issue the summons as to Defendant PIA Rodriguez and will direct the U.S. Marshal 25 to effect service of the summons and Complaint on that Defendant, and all remaining 26 claims and Defendants will remain dismissed from this action.

27 /// 28 /// 1 CONCLUSION 2 Good cause appearing, the Court: 3 (1) DISMISSES all claims against all Defendants in the FAC sua sponte pursuant 4 ||to 28 U.S.C. §§ 1915(e)(2) & 1915A(b) for failing to state a claim upon which relief may 5 || be granted with the exception of the First Amendment retaliation claim against Defendant 6 || PIA Rodriguez. 7 (2) GRANTS Plaintiff leave to either: (1) file a Notice of Intent to Proceed with his 8 ||First Amendment retaliation claim

against Defendant PIA Rodriguez only; or (2) file a 9 ||Second Amended Complaint correcting the deficiencies of pleading identified in this 10 Order.

By January 26, 2026, Plaintiff must effectuate one of these two options. 11 If Plaintiff chooses to proceed only with the claim which survived screening, the 12 || Court will issue an Order directing the Clerk to issue the summons as to Defendant PIA 13 || Rodriguez and will direct the U.S. Marshal to effect service of the summons and Complaint 14 /on that Defendant and all remaining claims against all remaining Defendants will remain 15 dismissed.

If Plaintiff chooses to file an amended pleading, his Second Amended 16 || Complaint must be complete by itself without reference to any prior version of his pleading, 17 any defendants not named and any claims not re-alleged will be considered waived. 18 S.D. Cal. CivLR 15.1; Hal Roach Studios, Inc. v. Richard Feiner and Co. Inc., 896 19 || F.2d 1542, 1546 (9th Cir.

1989) (“[A]n amended pleading supersedes the original.”); Lacey 20 || v. Maricopa Cnty., 693 F.3d 896, 928 (9th Cir. 2012) (noting that claims dismissed with 21 ||leave to amend which are not re-alleged in an amended pleading may be “considered 22 || waived if not replied”). 23 IT IS SO ORDERED. 24 ||Dated: December 12, 2025 NO 25 DE 26 Honorable Linda Lopez 57 United States District Judge 28 17 ee