

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Raul Uvalles v. Kevin Rueter, et al.

Uvalles v. Rueter · No. 2:23-cv-0160 DJC AC P · Decided March 17, 2025

SUMMARY

The United States District Court for the Eastern District of California screened Raul Uvalles’s first amended prisoner civil-rights complaint against medical and corrections personnel. The court concluded that the complaint failed to state claims under § 1983, the First and Fourteenth Amendments, the Eighth Amendment, the ADA, the Rehabilitation Act, and state law, and denied the motion for appointment of counsel. Plaintiff was granted thirty days to file a second amended complaint addressing the identified deficiencies.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Allison Claire
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 17, 2025
DOCKET	2:23-cv-0160 DJC AC P
DISPOSITION	other
PROCEDURAL POSTURE	A state prisoner proceeding pro se filed a first amended complaint under 42 U.S.C. § 1983, the Americans with Disabilities Act, the Rehabilitation Act, and state tort law. The court screened the amended complaint under 28 U.S.C. § 1915A, denied plaintiff’s motion for appointment of counsel, found that the complaint failed to state a claim, declined to order service, and granted leave to amend.
STANDARD OF REVIEW	Under 28 U.S.C. § 1915A, the court screened the prisoner complaint and assessed whether it stated a legally cognizable claim. In evaluating the pleading, the court accepted factual allegations as true and construed them in the light most favorable to plaintiff, while requiring more than conclusory allegations and sufficient factual matter to make each claim facially plausible.
PRECEDENTIAL VALUE	unknown

PARTIES

Raul Uvalles v. Kevin Rueter, Patel, Gates, Awatani, Ahmad, Onyeje, Felder, Doe defendants 1-7

TOPICS

prisoners rights

section 1983

ada / disability

pleadings

civil procedure

PRACTICE AREAS

prisoner civil rights

constitutional law

disability discrimination

civil procedure

government claims

QUESTIONS PRESENTED

1. Whether the first amended complaint stated a cognizable claim under 42 U.S.C. § 1983 for deliberate indifference to serious medical needs.
2. Whether the complaint stated a First Amendment claim based on prison grievance handling.
3. Whether the complaint stated a Fourteenth Amendment equal-protection claim.
4. Whether the complaint stated claims under Title II of the ADA and the Rehabilitation Act.
5. Whether the complaint stated state-law claims without alleging compliance with California's Government Claims Act.
6. Whether plaintiff demonstrated exceptional circumstances warranting appointment of counsel.

HOLDINGS

1. The complaint failed to state a deliberate-indifference claim because it did not sufficiently allege a serious medical need, deliberate indifference by each defendant, or resulting harm; allegations showing only a difference of opinion regarding treatment were insufficient.
2. The complaint failed to state a First Amendment claim because plaintiff alleged no prevention of grievance filing and had no constitutional right to receive a particular response to a grievance.
3. The complaint failed to state a Fourteenth Amendment equal-protection claim because it alleged neither discrimination based on membership in a protected class nor intentional disparate treatment of similarly situated prisoners without a rational relationship to a legitimate governmental purpose.
4. The complaint failed to state ADA and Rehabilitation Act claims because it did not adequately allege that plaintiff had a disability or that he was excluded from, denied the benefits of, or discriminated against in a public program or service because of that disability.
5. The state-law claims were inadequately pleaded because plaintiff did not allege compliance with California's Government Claims Act.
6. The motion for appointment of counsel was denied because plaintiff did not demonstrate exceptional circumstances, including a likelihood of success on the merits and inability to articulate his claims in light of their complexity.

KEY QUOTATIONS

“Plaintiff has a right under the First Amendment to file grievance, not to receive a specific response to those grievances.” (at 14-15)

“The ADA prohibits discrimination because of disability, not inadequate treatment for disability.”
(Attachment A at E)

“Plaintiff’s complaint fails to state a claim upon which relief may be granted, see 28 U.S.C. § 1915A, and will not be served.” (Conclusion at 21-28)

FACTUAL BACKGROUND

Plaintiff, a state inmate, alleged that prison medical personnel failed to follow outside consultation orders concerning foot surgery, pain management, and treatment for neck and spine conditions, and allowed or caused transfers that disrupted his care. He also alleged interference with grievances, unequal treatment, disability-based exclusion from programs, improper mental-health placement, and state-law tort violations. The court found the allegations insufficiently clear to establish a serious medical need, deliberate indifference, disability discrimination, equal-protection violation, or compliance with California's Government Claims Act.

PROCEDURAL HISTORY

The original complaint was screened and found not to state a claim, after which plaintiff was granted an opportunity to amend. Plaintiff filed a first amended complaint and moved for appointment of counsel. The court denied counsel, determined that the amended complaint did not state cognizable claims, and allowed plaintiff thirty days to file a second amended complaint, warning that failure to do so would result in a recommendation of dismissal under Federal Rule of Civil Procedure 41(b).

DISPOSITION

other

CASES CITED

- *Neitzke v. Williams*, 490 U.S. 319, 325, 327 (1989)
- *Jackson v. Arizona*, 885 F.2d 639, 640 (9th Cir. 1989)
- *Lopez v. Smith*, 203 F.3d 1122, 1130-32 (9th Cir. 2000)
- *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 557, 570 (2007)
- *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009)
- *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam)
- *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969)
- *Rizzo v. Goode*, 423 U.S. 362, 370-71 (1976)
- *Arnold v. International Business Machines Corp.*, 637 F.2d 1350, 1355 (9th Cir. 1981)
- *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978)
- *Ivey v. Board of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)
- *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967)

- *Mallard v. United States District Court*, 490 U.S. 296, 298 (1989)
- *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990)
- *Estelle v. Gamble*, 429 U.S. 97, 104-06 (1976)
- *Hallett v. Morgan*, 296 F.3d 732, 744-46 (9th Cir. 2002)
- *McGuckin v. Smith*, 974 F.2d 1050, 1059-60 (9th Cir. 1992)
- *WMX Technologies, Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997) (en banc)
- *Farmer v. Brennan*, 511 U.S. 825, 837, 839 (1994)
- *Frost v. Agnos*, 152 F.3d 1124, 1130 (9th Cir. 1998)
- *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989)
- *Shapley v. Nevada Board of State Prison Commissioners*, 766 F.2d 404, 407 (9th Cir. 1985)
- *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985)
- *Serrano v. Francis*, 345 F.3d 1071, 1082 (9th Cir. 2003)
- *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998)
- *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000)
- *Pennsylvania Department of Corrections v. Yeskey*, 524 U.S. 206 (1998)
- *O'Guinn v. Lovelock Correctional Center*, 502 F.3d 1056, 1060 (9th Cir. 2007)
- *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002)
- *Duvall v. County of Kitsap*, 260 F.3d 1124 (9th Cir. 2001)
- *Zukle v. Regents of the University of California*, 166 F.3d 1041, 1045 n.11 (9th Cir. 1999)
- *Lovell v. Chandler*, 303 F.3d 1039, 1052 (9th Cir. 2002)
- *Gable v. Washington Correctional Center for Women*, 857 F. App'x 918, 919 (9th Cir. 2021)
- *Garcia v. S.U.N.Y. Health Sciences Center of Brooklyn*, 280 F.3d 98, 107 (2d Cir. 2002)
- *A.W. v. Jersey City Public Schools*, 486 F.3d 791, 804 (3d Cir. 2007)
- *State v. Superior Court (Bodde)*, 32 Cal. 4th 1234, 1240 (2004)
- *Mosier v. California Department of Corrections & Rehabilitation*, 2012 WL 2577524, at *3, 2012 U.S. Dist. LEXIS 92286, at *8-9 (E.D. Cal. July 2, 2012)
- *Robinett v. Correctional Training Facility*, 2010 WL 2867696, at *4, 2010 U.S. Dist. LEXIS 76327, at *12-13 (N.D. Cal. July 20, 2010)
- *Will v. Michigan Department of State Police*, 491 U.S. 58, 71 & n.10 (1989)

OPINION

(PC) Uvalles v. Rueter

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 RAUL UVALLES, No. 2:23-cv-0160 DJC AC P

12 Plaintiff, 13 v. ORDER 14 KEVIN RUETER, et al., 15 Defendants. 16 17 Plaintiff is a state inmate, proceeding without a lawyer, who filed this civil rights action 18 pursuant to 42 U.S.C. § 1983, the Americans with Disabilities Act (ADA), the Rehabilitation Act, 19 and state tort law. Plaintiff was given an opportunity to file an amended complaint after the 20 original complaint was screened and found to not state any claims for relief. ECF No. 9. He has 21 now filed a first amended complaint (ECF No. 16), which was accompanied by a motion to 22 appoint counsel (ECF No. 17). 23 I. Statutory Screening of Prisoner Complaints 24 The court is required to screen complaints brought by prisoners seeking relief against “a 25 governmental entity or officer or employee of a governmental entity.” 28 U.S.C. § 1915A(a). A 26 claim “is [legally] frivolous where it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). The court may dismiss a claim as frivolous if it is based on 28 an indisputably meritless legal theory or factual contentions that are baseless. *Id.*, 490 U.S. at 1 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an 2 arguable legal and factual basis. *Jackson v. Arizona*, 885 F.2d 639, 640 (9th Cir. 1989), 3 superseded by statute on other grounds as stated in *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 4 2000). 5 In order to avoid dismissal for failure to state a claim a complaint must contain more than 6 “naked assertion[s],” “labels and conclusions,” or “a formulaic recitation of the elements of a 7 cause of action.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 557 (2007). In other words, 8 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory 9 statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A claim upon which the 10 court can grant relief has facial plausibility. *Twombly*, 550 U.S. at 570. “A claim has facial 11 plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable 12 inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citation 13 omitted). When considering whether a complaint states a claim, the court must accept the 14 allegations as true, *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam), and construe the 15 complaint in the light most favorable to the plaintiff, *Jenkins v. McKeithen*, 395 U.S. 411, 421 16 (1969) (citations omitted). 17 II. Factual Allegations of the First Amended Complaint 18 The first amended complaint alleges that defendants Rueter, Patel, Gates, Awatani, 19 Ahmad, Onyeje, Felder, and Does 1-7, sued in their individual and official capacities, violated 20 plaintiff’s rights under the First, Eighth, and Fourteenth Amendments, the ADA, the RA, and 21 state tort law. ECF No. 16. Plaintiff alleges that Rueter refused to follow consultation orders 22 from an outside doctor and insisted that oxcarbazepine was sufficient to treat plaintiff’s pain. *Id.* 23 at 5. Rueter also blamed non-diagnosis on the COVID-19 pandemic, refused to evaluate 24 plaintiff’s pain management level or place him on a medial hold, and allowed him to be 25 transferred despite knowing his medical needs. *Id.* Awatani refused to reinstate referrals for 26 consultations and said that he was not obligated to follow outside doctors’ orders. *Id.* Ahmad 27 similarly stated that he was not obligated to follow outside doctors’ orders, blamed non-diagnosis 28 on the pandemic, and said that transfers were the responsibility of custody staff, not medical.

Id. 1 This appears to have been in response to plaintiff's request to have consultation orders for foot 2 surgery on both feet and proper recovery followed. Id. 3 Plaintiff also alleges that Onyeje failed to reinstate orders from consulting doctors, 4 allowed an unknown primary care physician to prescribe psychiatric medications in lieu of 5 regular pain medication, and failed to inform plaintiff about findings related to degenerative spine 6 discs and nerve obstructions. Id. Felder failed to acknowledge consultation doctors' orders 7 related to his feet surgeries and treatment for his neck and spine, while Gates, in what appears to 8 be a response to a grievance, failed to note the duration of time that passed or acknowledge that 9 surgery was facilitated within ten days followed by a transfer without time for recovery. Id. at 5- 10 6. Plaintiff asserts that all of the defendants failed to work with custody staff to minimize his 11 transfers to prevent changes to his care team and minimize disruptions to his care. Id. at 6. He 12 further alleges that they failed to recognize patient needs outside of those provided by the care 13 team, timely initiate referrals, manage patient handoffs from one care team to another, to 14 recognize the need for elevated levels of specialty care, and to manage the provision of 15 preventative service. Id. Doe 7, the Secretary of the California Department of Corrections and 16 Rehabilitation (CDCR) is responsible for overseeing all institutions and policies. Id. 17 Plaintiff also alleges that defendant Patel falsified documents to place him in the medical 18 infirmary for mobility issues after plaintiff asked for the continuance of podiatry orders for 19 surgery. Id. at 7. She then cancelled all of plaintiff's referrals for specialty consultations and 20 requested his immediate transfer. Id. Plaintiff was not allowed access to various programs based 21 solely on his disability. Id. 22 Finally, plaintiff appears to allege that Doe 5 and Gates sent him to a mental health facility 23 when he did not require mental health care. Id. at 8. 24 III. Failure to State a Claim 25 Having conducted the screening required by 28 U.S.C. § 1915A, the court finds that the 26 complaint does not state any valid claims for relief against the defendants. Plaintiff fails to state 27 any claims against Doe defendants 1-4 and 6 because he does not allege any conduct by these 28 defendants. He also fails to state a claim for deliberate indifference against any of the defendants 1 because he fails to demonstrate that he had a serious medical need that defendants failed to treat. 2 Although it is clear from the complaint that plaintiff was referred for surgery on his feet, it is 3 unclear what condition the surgery was intended to treat, whether defendants denied or delayed 4 the surgery or merely failed to follow the pain management plan ordered by the outside doctor, 5 and what injury plaintiff suffered. Plaintiff has alleged facts showing that there was a difference 6 in opinion between the outside doctor and defendants and between plaintiff and defendants as to 7 plaintiff's treatment, but that is not enough to demonstrate deliberate indifference. It is also 8 unclear how plaintiff's placement in a mental health facility relates to any asserted constitutional 9 violation. Plaintiff has also failed to state any claims under state law because he has not alleged 10 that he complied with the government claims act. 11 Plaintiff also indicates that he is attempting to bring a First Amendment claim based on 12 his right to file grievances. However, there are no allegations that he was prevented from filing 13 grievances, and it appears that his claim is instead

based on the denial of his grievances, which 14 does not state a claim for relief. Plaintiff has a right under the First Amendment to file grievance, 15 not to receive a specific response to those grievances. Plaintiff also indicates that he is attempting 16 to bring a Fourteenth Amendment equal protection claim, but there are no facts showing that he 17 was discriminated against because he is a member of a protected class or that he was treated 18 differently than similarly situated prisoners. 19 With respect to plaintiff's claim that Patel violated his rights under the ADA and RA, 20 plaintiff fails to state a claim for relief because he does not establish that he had a disability or 21 that he was discriminated against because of that disability. Although plaintiff alleges that Patel 22 identified him as having mobility issues and classified him as disabled, he also alleges that he was 23 improperly classified. It is therefore unclear whether plaintiff was disabled and if he was, what 24 disability he suffered from. Because it is unclear whether plaintiff was actually disabled, it is also 25 unclear whether he was discriminated against because of his disability. 26 Because of these defects, the court will not order the complaint to be served on 27 defendants. Plaintiff may try to fix these problems by filing an amended complaint. In deciding 28 whether to file an amended complaint, plaintiff is provided with the relevant legal standards 1 governing his potential claims for relief which are attached to this order. See Attachment A. 2 IV. Legal Standards Governing Amended Complaints 3 If plaintiff chooses to file an amended complaint, he must demonstrate how the conditions 4 about which he complains resulted in a deprivation of his constitutional rights. *Rizzo v. Goode*, 5 423 U.S. 362, 370-71 (1976). The complaint must also allege in specific terms how each named 6 defendant is involved. *Arnold v. Int'l Bus. Machs. Corp.*, 637 F.2d 1350, 1355 (9th Cir. 1981). 7 There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or 8 connection between a defendant's actions and the claimed deprivation. *Id.*; *Johnson v. Duffy*, 9 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, "[v]ague and conclusory allegations of official 10 participation in civil rights violations are not sufficient." *Ivey v. Bd. of Regents*, 673 F.2d 266, 11 268 (9th Cir. 1982) (citations omitted). 12 Plaintiff is also informed that the court cannot refer to a prior pleading in order to make 13 his amended complaint complete. Local Rule 220 requires that an amended complaint be 14 complete in itself without reference to any prior pleading. This is because, as a general rule, an 15 amended complaint supersedes any prior complaints. *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 16 1967) (citations omitted). Once plaintiff files an amended complaint, any previous complaint no 17 longer serves any function in the case. Therefore, in an amended complaint, as in an original 18 complaint, each claim and the involvement of each defendant must be sufficiently alleged. 19 V. Motion for Appointment of Counsel 20 Plaintiff has filed a motion for appointment of counsel. ECF No. 17. The United States 21 Supreme Court has ruled that district courts lack authority to require counsel to represent indigent 22 prisoners in § 1983 cases. *Mallard v. United States Dist. Court*, 490 U.S. 296, 298 (1989). In 23 certain exceptional circumstances, the district court may request the voluntary assistance of 24 counsel pursuant to 28 U.S.C. § 1915(e)(1). *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 25 1991); *Wood v. Housewright*, 900 F.2d 1332, 1335-36

(9th Cir. 1990). 26 “When determining whether ‘exceptional circumstances’ exist, a court must consider ‘the 27 likelihood of success on the merits as well as the ability of the [plaintiff] to articulate his claims 28 pro se in light of the complexity of the legal issues involved.’” *Palmer v. Valdez*, 560 F.3d 965, 1 970 (9th Cir. 2009) (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). The burden 2 of demonstrating exceptional circumstances is on the plaintiff. *Id.* Circumstances common to 3 most prisoners, such as lack of legal education and limited law library access, do not establish 4 exceptional circumstances that would warrant a request for voluntary assistance of counsel. 5 Plaintiff requests counsel on the grounds that he is indigent and will be disadvantaged in 6 serving defendants, conducting discovery, and representing himself at trial. Because plaintiff is 7 proceeding in forma pauperis, the United States Marshals Service will complete service on 8 defendants should plaintiff state cognizable claims. Plaintiff’s other grounds for seeking 9 appointment of counsel are common to most prisoners and do not show the existence of 10 extraordinary circumstances warranting the appointment of counsel. The motion will therefore be 11 denied. 12 VI. Plain Language Summary of this Order for Party Proceeding Without a Lawyer 13 Your complaint will not be served because the facts alleged are not enough to state a 14 claim. You are being given a chance to fix these problems by filing an amended complaint. If 15 you file an amended complaint, pay particular attention to the legal standards attached to this 16 order. Be sure to provide facts that show exactly what each defendant did to violate your rights. 17 Any claims and information not in the amended complaint will not be considered.

18 CONCLUSION

19 In accordance with the above, IT IS HEREBY ORDERED that: 20 1. Plaintiff’s motion for appointment of counsel (ECF No. 17) is DENIED; 21 2. Plaintiff’s complaint fails to state a claim upon which relief may be granted, see 28 22 U.S.C. § 1915A, and will not be served. 23 3. Within thirty days from the date of service of this order, plaintiff may file an amended 24 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil 25 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket 26 number assigned this case and must be labeled “Second Amended Complaint.” 27 4. Failure to file an amended complaint in accordance with this order will result in a 28 recommendation that this action be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil 1 } Procedure. 2 5. The Clerk of the Court is directed to send plaintiff a copy of the prisoner complaint 3 || form used in this district.

4 | DATED: March 17, 2025 ~ 5 Htttenr— Lhar—e_

ALLISON CLAIRE

6 UNITED STATES MAGISTRATE JUDGE

7 8 9 10 1] 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 1 Attachment A 2 This Attachment provides, for informational purposes only, the legal standards that may 3 apply to your claims for relief. Pay particular attention to these standards if you choose to file an 4 amended complaint. 5 A. Personal Involvement and Supervisory Liability 6 The civil rights statute requires

that there be an actual connection or link between the 7 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See 8 *Monell v. Department of Social Services*, 436 U.S. 658 (1978); *Rizzo v. Goode*, 423 U.S. 362 9 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation of a 10 constitutional right, within the meaning of section 1983, if he does an affirmative act, participates 11 in another’s affirmative acts or omits to perform an act which he is legally required to do that 12 causes the deprivation of which complaint is made.” *Johnson v. Duffy*, 588 F.2d 740, 743 (9th

13 Cir. 1978) (citation omitted). In order to state a claim for relief under section 1983, plaintiff must

14 link each named defendant with some affirmative act or omission that demonstrates a violation of 15 plaintiff’s federal rights. 16 Government officials may not be held liable for the unconstitutional conduct of their 17 subordinates under a theory of respondeat superior. *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009) 18 (“In a § 1983 suit . . . the term “supervisory liability” is a misnomer. Absent vicarious liability, 19 each Government official, his or her title notwithstanding is only liable for his or her own 20 misconduct.”). When the named defendant holds a supervisory position, the causal link between 21 the defendant and the claimed constitutional violation must be specifically alleged; that is, a 22 plaintiff must allege some facts indicating that the defendant either personally participated in or 23 directed the alleged deprivation of constitutional rights or knew of the violations and failed to act 24 to prevent them. See *Fayle v. Stapley*, 607 F.2d 858, 862 (9th Cir. 1979); *Taylor v. List*, 880 F.2d 25 1040, 1045 (9th Cir. 1989); *Mosher v. Saalfeld*, 589 F.2d 438, 441 (9th Cir. 1978). 26 B. Deliberate Indifference 27 Denial or delay of medical care for a prisoner’s serious medical needs may constitute a 28 violation of the prisoner’s Eighth and Fourteenth Amendment rights. *Estelle v. Gamble*, 429 U.S. 1 97, 104-05 (1976). An individual is liable for such a violation only when the individual is 2 deliberately indifferent to a prisoner’s serious medical needs. *Id.*; see *Jett v. Penner*, 439 F.3d 3 1091, 1096 (9th Cir. 2006); *Hallett v. Morgan*, 296 F.3d 732, 744 (9th Cir. 2002); *Lopez v. 4 Smith*, 203 F.3d 1122, 1131-32 (9th Cir. 2000). 5 In the Ninth Circuit, the test for deliberate indifference consists of two parts. *Jett*, 439 6 F.3d at 1096, citing *McGuckin v. Smith*, 974 F.2d 1050 (9th Cir. 1991), overruled on other 7 grounds by *WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997) (en banc). First, the 8 plaintiff must show a “serious medical need” by demonstrating that “failure to treat a prisoner’s 9 condition could result in further significant injury or the ‘unnecessary and wanton infliction of 10 pain.’” *Id.*, citing *Estelle*, 429 U.S. at 104. “Examples of serious medical needs include ‘[t]he 11 existence of an injury that a reasonable doctor or patient would find important and worthy of 12 comment or treatment; the presence of a medical condition that significantly affects an 13 individual’s daily activities; or the existence of chronic and substantial pain.’” *Lopez*, 203 F. 3d 14 at 1131-1132, citing *McGuckin*, 974 F.2d at 1059-60. 15 Second, the plaintiff must show the defendant’s response to the need was deliberately 16 indifferent. *Jett*, 439 F.3d at 1096. This second prong is satisfied by showing (a) a purposeful act 17 or failure to respond to a prisoner’s

pain or possible medical need and (b) harm caused by the 18 indifference. *Id.* Under this standard, the prison official must not only “be aware of facts from 19 which the inference could be drawn that a substantial risk of serious harm exists,” but that person 20 “must also draw the inference.” *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). This “subjective 21 approach” focuses only “on what a defendant’s mental attitude actually was.” *Id.* at 839. A 22 showing of merely negligent medical care is not enough to establish a constitutional violation. 23 *Frost v. Agnos*, 152 F.3d 1124, 1130 (9th Cir. 1998), citing *Estelle*, 429 U.S. at 105-106. A 24 difference of opinion about the proper course of treatment is not deliberate indifference, nor does 25 a dispute between a prisoner and prison officials over the necessity for or extent of medical 26 treatment amount to a constitutional violation. *Toguchi v. Chung*, 391 F.3d 1051, 1058 (9th Cir. 27 2004); *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989). Furthermore, mere delay of medical 28 treatment, “without more, is insufficient to state a claim of deliberate medical indifference.” 1 *Shapley v. Nev. Bd. of State Prison Comm’rs*, 766 F.2d 404, 407 (9th Cir. 1985). Where a 2 prisoner alleges that delay of medical treatment evinces deliberate indifference, the prisoner must 3 show that the delay caused “significant harm and that Defendants should have known this to be 4 the case.” *Hallett*, 296 F.3d at 745-46; see *McGuckin*, 974 F.2d at 1060. 5 C. Grievances 6 The First Amendment protects an inmate’s right to litigate and to file grievances. *Silva v. 7 Di Vittorio*, 658 F.3d 1090, 1104 (9th Cir. 2011). However, a prisoner has no claim for the “loss 8 of a liberty interest in the processing of his appeals . . . because inmates lack a separate 9 constitutional entitlement to a specific prison grievance procedure.” *Ramirez v. Galaza*, 334 F.3d 10 850, 860 (9th Cir. 2003) (citing *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988)). 11 D. Equal Protection 12 The Fourteenth Amendment’s Equal Protection Clause requires the State to treat all 13 similarly situated people equally. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 14 (1985) (citation omitted). “To state a claim for violation of the Equal Protection Clause, a 15 plaintiff must show that the defendant acted with an intent or purpose to discriminate against him 16 based upon his membership in a protected class.” *Serrano v. Francis*, 345 F.3d 1071, 1082 (9th 17 Cir. 2003) (citing *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998)). Alternatively, a 18 plaintiff may state an equal protection claim if he shows similarly situated individuals were 19 intentionally treated differently without a rational relationship to a legitimate government 20 purpose. *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (citations omitted). 21 E. ADA and RA 22 Title II of the ADA and the RA apply to inmates within state prisons. *Penn. Dept. of 23 Corr. v. Yeskey*, 524 U.S. 206 (1998). To state a claim for violation of Title II of the ADA, a 24 plaintiff must allege four elements: 25 (1) [H]e is an individual with a disability; (2) he is otherwise qualified to participate in or receive the benefit of some public 26 entity’s services, programs, or activities; (3) he was either excluded from participation in or denied the benefits of the public entity’s 27 services, programs, or activities, or was otherwise discriminated against by the public entity; and (4) such exclusion, denial of 28 benefits, or discrimination was by reason of [his] disability. 1 *O’Guinn v. Lovelock Corr. Ctr.*, 502 F.3d 1056, 1060 (9th Cir. 2007); see also

Thompson v. 2 Davis, 295 F.3d 890, 895 (9th Cir. 2002); Duvall v. County of Kitsap, 260 F.3d 1124 (9th Cir. 3 2001). 4 While the RA has the additional requirement that the program or activity receive federal 5 funds, 29 U.S.C. § 794, “[t]here is no significant difference in analysis of the rights and 6 obligations created by the ADA and the Rehabilitation Act. Thus, courts have applied the same 7 analysis to claims brought under both statutes,” Zukle v. Regents of the Univ. of Cal., 166 F.3d 8 1041, 1045 n.11 (9th Cir. 1999) (internal citations omitted). Claims under the ADA and RA 9 cannot be brought against defendants in their individual capacities because “[t]he ADA applies 10 only to public entities.” Lovell v. Chander, 303 F.3d 1039, 1052 (9th Cir. 2002)); 42 U.S.C. 11 § 12131(1)(A)-(B) (defining a public entity under the ADA as any state or local government or 12 agency of a state or local government); see also Gable v. Wash. Corr. Ctr. For Women, 857 F. 13 App’x 918, 919 (9th Cir. 2021) (individuals not liable under Title II of the ADA); Garcia v. 14 S.U.N.Y. Health Scis. Ctr. of Brooklyn, 280 F.3d 98, 107 (2d Cir. 2001) (“[N]either Title II of the 15 ADA nor § 504 of the Rehabilitation Act provides for individual capacity suits against state 16 officials.” (citations omitted)); A.W. v. Jersey City Pub. Schs., 486 F.3d 791, 804 (3rd Cir. 2007) 17 (citation omitted) (no cause of actions against individuals under RA). 18 The treatment, or lack of treatment, concerning plaintiff’s medical condition does not 19 provide a basis upon which to impose liability under the RA or the ADA. “The ADA prohibits 20 discrimination because of disability, not inadequate treatment for disability.” Simmons v. Navajo 21 County, 609 F.3d 1011, 1022 (9th Cir. 2010) (citing Bryant v. Madigan, 84 F.3d 246, 249 (7th 22 Cir. 1996)).

23 F. State Law Claims 24 For claims against the state, timely presentation of a claim under the Government Claims 25 Act is an element of the cause of action and must be pled in the complaint. See State v. Superior 26 Court (Bodde), 32 Cal. 4th 1234, 1240, 1237 (2004); Cal. Gov’t Code § 900.6 (defining “State” 27 as “the State and any office, officer, department, division, bureau, board, commission or agency 28 of the State claims against which are paid by warrants drawn by the Controller”). 1 G. Doe Defendants 2 Although the use of Doe defendants is acceptable to withstand dismissal at the initial 3 screening stage, service of process for these defendants will not be ordered until such time as 4 plaintiff has: 1) identified them by their real names through discovery; and, 2) filed a motion to 5 amend the complaint to substitute their real names. See Mosier v. Cal. Dep’t of Corr. & Rehab., 6 2012 WL 2577524, at *3, 2012 U.S. Dist. LEXIS 92286, at * 8-9 (E.D. Cal. July 2, 2012), 7 Robinett v. Correctional Training Facility, 2010 WL 2867696, at *4, 2010 U.S. Dist. LEXIS 8 76327, at * 12-13 (N.D. Cal. July 20, 2010). Additionally, to state a claim against Doe 9 defendants, plaintiff must allege conduct by each specific Doe defendant to establish liability 10 under 42 U.S.C. § 1983. This means that plaintiff should identify each Doe defendant separately 11 (e.g., Doe 1, Doe 2, etc.) and explain what each individual did to violate his rights. 12 H. Official Capacity 13 Claims for damages against state officials acting in their official capacity are barred by 14 sovereign immunity because “a suit against a state official in his or her official capacity is not a 15 suit against the official but rather is a suit against the official’s

office” and therefore “no different 16 from a suit against the State itself.” *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1989) 17 (citations omitted). However, state officials sued in their official capacity for prospective 18 injunctive relief are “persons” within the meaning of § 1983. *Id.* n.10. 19 20 21 22 23 24 25 26 27 28

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