

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Davis v. Rodriguez, et al.

Davis · No. 1:25-cv-00368-JLT-BAM (PC) · Decided December 3, 2025

SUMMARY

The document is a magistrate judge’s Findings and Recommendation in Davis v. Rodriguez concerning a state prisoner’s 42 U.S.C. § 1983 action. The court concludes that the second amended complaint fails to state cognizable claims under the Eighth, Fourth, and Fourteenth Amendments, the Americans with Disabilities Act, or other asserted theories, and that the claims are improperly joined. The court recommends dismissal for failure to state a claim without further leave to amend, subject to fourteen-day objections.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Barbara A. McAuliffe
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	December 3, 2025
DOCKET	1:25-cv-00368-JLT-BAM (PC)
DISPOSITION	other
PROCEDURAL POSTURE	A magistrate judge screened a state prisoner’s second amended complaint under 28 U.S.C. § 1915A and recommended dismissal for failure to state a cognizable claim after prior opportunities to amend.
STANDARD OF REVIEW	Screening under 28 U.S.C. § 1915A; the complaint must satisfy Federal Rule of Civil Procedure 8 and state a facially plausible claim under the standards articulated in Iqbal and Twombly. Factual allegations are accepted as true for screening, but legal conclusions and unwarranted inferences are not.
PRECEDENTIAL VALUE	Unknown; findings and recommendation of a federal magistrate judge in a prisoner screening matter
PARTIES	Cornell E. Davis v. Rodriguez, et al.

TOPICS

section 1983

prisoners rights

pleadings

civil procedure

ada / disability

PRACTICE AREAS

civil rights

constitutional law

prisoner litigation

civil procedure

disability discrimination

QUESTIONS PRESENTED

1. Whether the second amended complaint satisfied Federal Rule of Civil Procedure 8 and stated facially plausible claims under 42 U.S.C. § 1983.
2. Whether Plaintiff improperly joined unrelated claims and defendants in violation of Federal Rules of Civil Procedure 18 and 20.
3. Whether the allegations stated a claim under Title II of the Americans with Disabilities Act based on denial of hearing-aid batteries and alleged disability discrimination.
4. Whether claims for damages or injunctive relief against CDCR and the State of California were barred by Eleventh Amendment immunity.
5. Whether the allegations stated Eighth Amendment claims for deliberate indifference to medical needs, sexual abuse or harassment, verbal harassment, or failure to protect.
6. Whether the alleged medical examination with female nurses present stated a Fourth Amendment bodily-privacy claim.
7. Whether the allegations stated a Fourteenth Amendment equal-protection claim based on race or disability.
8. Whether Plaintiff had a constitutional right to early parole consideration or parole eligibility.

HOLDINGS

1. A prisoner complaint is subject to dismissal at screening when it fails to provide sufficient factual matter to state a facially plausible claim, and conclusory allegations and unwarranted inferences do not suffice.
2. Unrelated claims against unrelated defendants may not be joined in one action; claims must arise from the same transaction or occurrence and involve common questions of law or fact before multiple claims may be joined.
3. Denial of hearing-aid batteries, without facts showing exclusion from or denial of the benefits of a prison service, program, or activity because of disability, does not state a Title II ADA claim.
4. Claims for damages or injunctive relief against the State of California, CDCR, or equivalent state agencies are barred by Eleventh Amendment immunity absent waiver or valid congressional abrogation.
5. The second amended complaint did not state cognizable Eighth Amendment claims for deliberate indifference to medical needs, sexual abuse or harassment, verbal harassment, or failure to protect.
6. An intimate touching during a medical examination does not establish a Fourth Amendment privacy violation when the touching is directly related to the medical examination and supported by a legitimate penological justification.

7. Conclusory assertions that prison officials discriminated against Plaintiff because he was Black or deaf, without facts showing intentional discrimination or disparate treatment of similarly situated inmates, do not state an equal-protection claim.
8. A prisoner has no federal constitutional right to early release, parole eligibility, or parole consideration absent a protected liberty interest; therefore, denial of early parole consideration does not state a due-process claim.

KEY QUOTATIONS

“Accordingly, for the reasons stated above, IT IS HEREBY RECOMMENDED that this action be dismissed for failure to state a cognizable claim upon which relief may be granted.” (at 18)

“Therefore, Plaintiff cannot pursue claims for damages or injunctive relief against the State, or CDCR in this action.” (at 9)

FACTUAL BACKGROUND

Plaintiff, a state prisoner housed at Salinas Valley State Prison, alleged that events at Kern Valley State Prison involved denial of hearing-aid batteries, disability-related verbal harassment, threats by correctional staff, a rectal medical examination, and discrimination based on race and disability. He also asserted claims concerning medical care, ADA accommodations, prison disciplinary matters, rehabilitation, parole eligibility, and CDCR liability. The court concluded that the allegations were largely conclusory, involved unrelated claims and defendants, and did not plausibly establish constitutional or statutory violations.

PROCEDURAL HISTORY

Plaintiff filed a § 1983 civil rights action while proceeding pro se and in forma pauperis. The court screened the complaint, granted leave to amend, construed a later lodged complaint as a request to file a second amended complaint, and granted that request. After screening the second amended complaint, the magistrate judge found that Plaintiff failed to state a claim and recommended dismissal without further leave to amend, subject to objections and review by the assigned district judge.

DISPOSITION

other

CASES CITED

- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007)
- Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)
- Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009)
- Owens v. Hinsley, 635 F.3d 950, 952 (7th Cir. 2011)
- George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007)
- Mackey v. Price, 2020 WL 7319420, at *3-4 (E.D. Cal. Dec. 11, 2020)

- Coughlin v. Rogers, 130 F.3d 1348, 1349, 1351 (9th Cir. 1997)
- United States v. Georgia, 546 U.S. 151, 154 (2006)
- Armstrong v. Wilson, 124 F.3d 1019, 1023 (9th Cir. 1997)
- Duvall v. County of Kitsap, 260 F.3d 1124, 1138 (9th Cir. 2001)
- Bryant v. Madigan, 84 F.3d 246, 249 (7th Cir. 1996)
- Aholelei v. Department of Public Safety, 488 F.3d 1144, 1147 (9th Cir. 2007)
- Dittman v. California, 191 F.3d 1020, 1025-26 (9th Cir. 1999)
- Fireman's Fund Insurance Co. v. City of Lodi, Cal., 302 F.3d 928, 957 n.28 (9th Cir. 2002), cert. denied, 538 U.S. 961 (2003)
- Atascadero State Hospital v. Scanlon, 473 U.S. 234, 241 (1985)
- Brown v. California Department of Corrections, 554 F.3d 747, 752 (9th Cir. 2009)
- Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006)
- Estelle v. Gamble, 429 U.S. 97, 104-06 (1976)
- Farmer v. Brennan, 511 U.S. 825, 833-34, 837, 841 (1994)
- Toguchi v. Chung, 391 F.3d 1051, 1060 (9th Cir. 2004)
- Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980)
- Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990)
- Wood v. Beauclair, 692 F.3d 1041, 1046 (9th Cir. 2012)
- Schwenk v. Hartford, 204 F.3d 1187, 1197 (9th Cir. 2000)
- Bearchild v. Cobban, 947 F.3d 1130, 1144 (9th Cir. 2020)
- Keenan v. Hall, 83 F.3d 1083, 1092 (9th Cir. 1996), opinion amended on denial of reh'g, 135 F.3d 1318 (9th Cir. 1998)
- Gaut v. Sunn, 810 F.2d 923, 925 (9th Cir. 1987)
- Freeman v. Arpaio, 125 F.3d 732, 738 (9th Cir. 1997)
- Oltarzewski v. Ruggiero, 830 F.2d 136, 139 (9th Cir. 1987)
- Shakur v. Schriro, 514 F.3d 878, 891 (9th Cir. 2008)
- Cox v. Kernan, 2019 WL 6840136, at *5 (E.D. Cal. Dec. 16, 2019)
- Bull v. City and County of San Francisco, 595 F.3d 964, 972 (9th Cir. 2010) (en banc)
- Michenfelder v. Sumner, 860 F.2d 328, 332-34 (9th Cir. 1988)
- Grummett v. Rushen, 779 F.2d 491, 494-95 (9th Cir. 1985)
- Jordan v. Gardner, 986 F.2d 1521, 1524 (9th Cir. 1993) (en banc)
- City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 439-40 (1985)
- Committee Concerning Community Improvement v. City of Modesto, 583 F.3d 690, 702-03 (9th Cir. 2009)
- Serrano v. Francis, 345 F.3d 1071, 1082 (9th Cir. 2003)
- Engquist v. Oregon Department of Agriculture, 553 U.S. 591, 601-02 (2008)
- Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000)
- Lazy Y Ranch Ltd. v. Behrens, 546 F.3d 580, 592 (9th Cir. 2008)

- Does 1-5 v. Chandler, 83 F.3d 1150, 1155 (9th Cir. 1996)
- Swarthout v. Cooke, 562 U.S. 216, 220 (2011)
- Greenholtz v. Inmates of Nebraska Penal & Correctional Complex, 442 U.S. 1, 7 (1979)
- Fernandez v. Nevada, No. 3:06-CV-00628 LRH-RA, 2009 WL 700662, at *10 (D. Nev. Mar. 13, 2009)
- Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000)
- Lacey v. Maricopa County, 693 F.3d 896, 927 (9th Cir. 2012)
- Azadpour v. Sun Microsystems, Inc., No. 06-3272, 2007 WL 2141079, at *2 n.2 (N.D. Cal. July 23, 2007)
- Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)
- Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)

OPINION

Rodriguez

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 CORNELL E. DAVIS, Case No.: 1:25-cv-00368-JLT-BAM (PC) 12 Plaintiff, FINDINGS
AND RECOMMENDATION TO

DISMISS ACTION FOR FAILURE TO

13 v. STATE A CLAIM

14 RODRIGUEZ, et al., ECF No. 17 15 Defendants.

FOURTEEN (14) DAY DEADLINE

16 17 18 19 Plaintiff Cornell E. Davis (“Plaintiff”) is a state prisoner proceeding pro se and in
forma 20 pauperis in this civil rights action under 42 U.S.C. § 1983. On September 26, 2025, the
Court 21 screened Plaintiff’s complaint and granted him leave to file a first amended complaint
within 22 thirty days after service. (ECF No. 12.) On October 9, 2025, Plaintiff filed his first
amended 23 complaint, which was dated October 4, 2025. (ECF No. 14.) On October 20, 2025,
Plaintiff 24 lodged an amended complaint dated October 12, 2025. (ECF No. 15.) The Court
construed this 25 lodging as a request to file a second amended complaint, and granted leave to
amend. (ECF No. 26 23.) Plaintiff’s second amended complaint is before the Court for screening.
(ECF No. 17.) 27 I. Screening Requirement and Standard 28 The Court is required to screen
complaints brought by prisoners seeking relief against a 1 governmental entity and/or against an
officer or employee of a governmental entity. 28 U.S.C. 2 § 1915A(a). Plaintiff’s complaint, or
any portion thereof, is subject to dismissal if it is frivolous 3 or malicious, if it fails to state a claim
upon which relief may be granted, or if it seeks monetary 4 relief from a defendant who is immune
from such relief. 28 U.S.C. §§ 1915A(b). 5 A complaint must contain “a short and plain statement
of the claim showing that the 6 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed
factual allegations are not 7 required, but “[t]hreadbare recitals of the elements of a cause of

action, supported by mere 8 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell 9 Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are taken as 10 true, courts “are not required to indulge unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 11 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). 12 To survive screening, Plaintiff’s claims must be facially plausible, which requires 13 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable 14 for the misconduct alleged. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss v. U.S. Secret 15 Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully 16 is not sufficient, and mere consistency with liability falls short of satisfying the plausibility 17 standard. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss*, 572 F.3d at 969. 18 II. Plaintiff’s Allegations 19 Plaintiff is currently housed in Salinas Valley State Prison in Soledad, California. 20 Plaintiff alleges the events in the complaint occurred while Plaintiff was housed at Kern Valley 21 State Prison. Plaintiff names as defendants: (1) Rodriguez, correctional officer, (2) Gurrola, 22 correctional officer, (3) Angulo, correctional officer, (4) Dr. Zepp, (5) all officers/personnel 23 involving in case report, and (6) CDCR. 24 In claim 1, Plaintiff alleges violation of the Eighth Amendment for correctional officer 25 Gurrola talking his hearing aid home and denying Plaintiff the right, and for constantly mocked 26 by correctional officer Gurrolo1 and multiple other staff pertaining to his disability. Correctional 27 officer Gurrola took Plaintiff’s hearing aid and put it in his pocket intentionally to deprive 28 1 Plaintiff spells this name differently in the body of the complaint from the spelling in the list of defendants. 1 Plaintiff of a safe living condition denying Plaintiff the right to talk to his kids and hear their 2 voices. Davis constantly pleaded for batteries. Correctional officer Rodriguez went to ID 3 medical to refuse Plaintiff batteries which is not in correctional officer Rodriguez’s job 4 description. He is not a doctor, nurse or anything else. He did that because Plaintiff is black, deaf 5 and was being treated differently. 6 Correctional officer Angulo was intentionally putting Plaintiff’s life in jeopardy by telling 7 inmates there are not running program because of inmate Davis. That’s inciting a riot and 8 intentionally trying to put Plaintiff’s life in jeopardy. No where in the employee manual does it 9 say that that is ok. This was consistently Angulo trying to get Davis harmed out of spite and 10 because Davis is black and deaf. 11 In claim 2, Plaintiff alleges Dr. Zepp violated Plaintiff in front of 3 female nurses he 12 called them in to watch Dr. Zepp stick and penetrate Davis with exposed fingers and not gloved 13 in Plaintiff’s buttohole to humiliate Plaintiff in front of females. As best as the Court can 14 determine, Plaintiff alleges as follows. Dr. Zepp was agitated about Plaintiff having wipes. They 15 had a dispute. Dr. Zepp made Plaintiff stand up and pull his pants down or receive a 115. Dr. 16 Zepp called 3 female nurses in the room and forcefully shoved his fingers in Plaintiff’s rectum, 17 not asking, no lubricant, no glove, to humiliate Plaintiff and abuse his authority and rape Davis’s 18 mind. It was a violation of his rights to be forced to take Plaintiff’s clothing off in front of 19 females, stick a finger up Plaintiff’s butt and or receive a 115. Dr. Zepp took all of Plaintiff’s 20 chronos, his shoe chrono, his lower,

his special diet and his integrity. CDCR is denying Plaintiff 21 the proper standard of rehabilitation, not providing a job, denial of groups and proper 22 rehabilitation. Plaintiff is a high school graduate and it is a violation of the First, Fourth and 23 Eighth Amendment in being treated differently because of his disability and race. There is no 24 guideline for rehabilitation, no requirement. He was not set up goals so that he can be deemed 25 rehabilitated. The judge should have explained at sentencing that he should not get any 115s to 26 be eligible for parole. He is being denied his parole eligibility. 27 As remedies, Plaintiff seeks compensatory damages for being treated differently and 28 molested/raped because he is deaf. Plaintiff was never sentenced to not receiving 115s in prison. 1 He wants all CDCR employees to be fired and an apology. 2 III. Discussion 3 Federal Rule of Civil Procedure 8 4 Pursuant to Rule 8, a complaint must contain “a short and plain statement of the claim 5 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). Detailed factual allegations 6 are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere 7 conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678 (citation omitted). Plaintiff must 8 set forth “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on 9 its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). While factual allegations 10 are accepted as true, legal conclusions are not. *Id.*; see also *Twombly*, 550 U.S. at 556–57; *Moss*, 11 572 F.3d at 969. 12 As explained below, Plaintiff’s complaint fails to state a claim. Many of the allegations 13 are conclusory as to what happened, when it happened, and who was involved. Plaintiff has been 14 unable to cure this deficiency. 15 Federal Rules of Civil Procedure 18 and 20 16 Plaintiff may not bring unrelated claims against unrelated parties in a single action. Fed. 17 R. Civ. P. 18(a), 20(a)(2); *Owens v. Hinsley*, 635 F.3d 950, 952 (7th Cir. 2011); *George v. Smith*, 18 507 F.3d 605, 607 (7th Cir. 2007); *Mackey v. Price*, 2020 WL 7319420, at *3–4 (E.D. Cal. Dec. 19 11, 2020), report and recommendation adopted, 2021 WL 843462 (E.D. Cal. Mar. 5, 2021). 20 Plaintiff may bring a claim against multiple defendants so long as (1) the claim arises out of the 21 same transaction or occurrence, or series of transactions and occurrences, and (2) there are 22 commons questions of law or fact. Fed. R. Civ. P. 20(a)(2); *Coughlin v. Rogers*, 130 F.3d 1348, 23 1351 (9th Cir. 1997). The “same transaction” requirement refers to similarity in the factual 24 background of a claim. *Id.* at 1349. Only if the defendants are properly joined under Rule 20(a) 25 will the Court review the other claims to determine if they may be joined under Rule 18(a), which 26 permits the joinder of multiple claims against the same party. 27 Plaintiff may not raise different claims against different defendants in a single action. The 28 allegations are unclear if the claims are properly joined. For instance, Plaintiff not bring 1 challenges to medical treatment, and claims for ADA accommodations, 115s, race discrimination, 2 rehabilitation, and other claims. These claims are not properly joined and must be brought in 3 separate actions. Merely because Plaintiff was housed at the Kern Valley State Prison when the 4 incidents occurred does not make every injury or incident related. Separate unrelated claims must 5 be filed in separate lawsuits. Plaintiff has been unable to cure this deficiency. 6 Americans With Disabilities Act 7 The Americans with

Disabilities Act provides, “no qualified individual with a disability 8 shall, by reason of such disability, be excluded from participation in or be denied the benefits of 9 the services, programs, or activities of a public entity, or be subjected to discrimination by any 10 such entity.” 42 U.S.C. § 12132. The ADA defines “qualified individual with a disability” as “an 11 individual with a disability who, with or without reasonable modifications to rules, policies, or 12 practices, the removal of architectural, communication, or transportation barriers, or the provision 13 of auxiliary aids and services, meets the essential eligibility requirements for the receipt of 14 services or the participation in programs or activities provided by a public entity.” *Id.* § 12131(2). 15 The Supreme Court has held that “public entity” includes state prisons. *United States v. Georgia*, 16 546 U.S. 151, 154 (2006) (citation omitted). To state a claim under the ADA, the plaintiff must 17 have been “improperly excluded from participation in, and denied the benefit of, a prison service, 18 program, or activity on the basis of his physical handicap.” *Armstrong v. Wilson*, 124 F.3d 1019, 19 1023 (9th Cir. 1997). In addition, “[t]o recover monetary damages under Title II of the ADA ... a 20 plaintiff must prove intentional discrimination on the part of the defendant,” and the standard for 21 intentional discrimination is at least deliberate indifference. *Duvall v. County of Kitsap*, 260 F.3d 22 1124, 1138 (9th Cir. 2001). 23 Plaintiff does not state a viable claim under the ADA. He alleges he was denied hearing 24 aid batteries for some unknown period of time, but he does not allege facts that show he was 25 excluded from participation in, or denied the benefits of, any service or programs offered by the 26 prison because of his disability, or that he was subjected to any type of discrimination by reason 27 of his disability. Further, any allegations of inadequate medical care do not state a claim under 28 the ADA. *Bryant v. Madigan*, 84 F.3d 246, 249 (7th Cir. 1996) (“The ADA does not create a 1 remedy for medical malpractice.”). 2 Eleventh Amendment 3 “The Eleventh Amendment bars suits for money damages in federal court against a state, 4 its agencies, and state officials acting in their official capacities.” *Aholelei v. Dep’t of Public 5 Safety*, 488 F.3d 1144, 1147 (9th Cir. 2007). Indeed, the Eleventh Amendment prohibits federal 6 courts from hearing a Section 1983 lawsuit in which damages or injunctive relief is sought against 7 a state, its agencies (such as CDCR) or individual prisons, absent “a waiver by the state or a valid 8 congressional override. . . .” *Dittman v. California*, 191 F.3d 1020, 1025 (9th Cir. 1999). “The 9 Eleventh Amendment bars suits which seek either damages or injunctive relief against a state, ‘an 10 arm of the state,’ its instrumentalities, or its agencies.” See *Fireman’s Fund Ins. Co. v. City of 11 Lodi, Cal.*, 302 F.3d 928, 957 n.28 (9th Cir. 2002) (internal quotation and citations omitted), cert. 12 denied, 538 U.S. 961 (2003). “The State of California has not waived its Eleventh Amendment 13 immunity with respect to claims brought under § 1983 in federal court. . . .” *Dittman*, 191 F.3d at 14 1025–26 (citing *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 241 (1985)); see also *Brown v. 15 Cal. Dep’t. of Corrs.*, 554 F.3d 747, 752 (9th Cir. 2009) (finding California Department of 16 Corrections and California Board of Prison Terms entitled to Eleventh Amendment immunity). 17 Therefore, Plaintiff cannot pursue claims for damages or injunctive relief against the State, 18 or

CDCR in this action. 19 Eighth Amendment 20 1. Medical Deliberate Indifference 21 A prisoner's claim of inadequate medical care constitutes cruel and unusual punishment in 22 violation of the Eighth Amendment where the mistreatment rises to the level of "deliberate 23 indifference to serious medical needs." *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) 24 (quoting *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)). The two-part test for deliberate 25 indifference requires Plaintiff to show (1) "a 'serious medical need' by demonstrating that failure 26 to treat a prisoner's condition could result in further significant injury or the 'unnecessary and 27 wanton infliction of pain,'" and (2) "the defendant's response to the need was deliberately 28 indifferent." *Jett*, 439 F.3d at 1096. 1 A defendant does not act in a deliberately indifferent manner unless the defendant "knows 2 of and disregards an excessive risk to inmate health or safety." *Farmer v. Brennan*, 511 U.S. 825, 3 837 (1994). "Deliberate indifference is a high legal standard," *Toguchi v. Chung*, 391 F.3d 1051, 4 1060 (9th Cir. 2004), and is shown where there was "a purposeful act or failure to respond to a 5 prisoner's pain or possible medical need" and the indifference caused harm. *Jett*, 439 F.3d at 6 1096. In applying this standard, the Ninth Circuit has held that before it can be said that a 7 prisoner's civil rights have been abridged, "the indifference to his medical needs must be 8 substantial. Mere 'indifference,' 'negligence,' or 'medical malpractice' will not support this 9 cause of action." *Broughton v. Cutter Labs.*, 622 F.2d 458, 460 (9th Cir. 1980) (citing *Estelle*, 10 429 U.S. at 105–06). Even gross negligence is insufficient to establish deliberate indifference to 11 serious medical needs. See *Wood v. Housewright*, 900 F.2d 1332, 1334 (9th Cir. 1990). 12 Plaintiff's complaint fails to state a claim for medical deliberate indifference. Plaintiff 13 fails to allege any individual defendant knew of and disregarded an excessive risk to his serious 14 medical need. 15 2. Sexual Harassment or Abuse 16 Plaintiff is attempting to allege a claims for sexual harassment or abuse. "Sexual 17 harassment or abuse of an inmate by a corrections officer is a violation of the Eighth 18 Amendment." *Wood v. Beauclair*, 692 F.3d 1041, 1046 (9th Cir. 2012) (citing *Schwenk v. 19 Hartford*, 204 F.3d 1187, 1197 (9th Cir. 2000)). "In the simplest and most absolute of terms ... 20 prisoners [have a clearly established Eighth Amendment right] to be free from sexual abuse" 21 *Schwenk*, 204 F.3d at 1197. "In evaluating a prisoner's claim, courts consider whether 'the 22 officials act[ed] with a sufficiently culpable state of mind' and if the alleged wrongdoing was 23 objectively 'harmful enough' to establish a constitutional violation." *Wood*, 692 F.3d at 1046. 24 "[A] prisoner presents a viable Eighth Amendment claim where he or she proves that a prison 25 staff member, acting under color of law and without legitimate penological justification, touched 26 the prisoner in a sexual manner or otherwise engaged in sexual conduct for the staff member's 27 own sexual gratification, or for the purpose of humiliating, degrading, or demeaning the 28 prisoner." *Bearchild v. Cobban*, 947 F.3d 1130, 1144 (9th Cir. 2020). 1 In this second amended complaint, Plaintiff does not allege that Defendant Zepp touched 2 Plaintiff during a medical examination. His original complaint alleged he was touched during a 3 medical examination. 2 Zepp asked Plaintiff to spread his buttocks to examine whether further 4 medical treatment was necessary. It appears based on the factual support that there was a

5 legitimate penological justification for the examination. 6 3. Verbal Harassment 7 To the extent Plaintiff alleges verbal harassment, Plaintiff fails to state a cognizable 8 claim for threats. Allegations of name-calling, verbal abuse, or threats generally fail to state a 9 constitutional claim under the Eighth Amendment, which prohibits cruel and unusual punishment. 10 See Keenan v. Hall, 83 F.3d 1083, 1092 (9th Cir. 1996) (“[V]erbal harassment generally does not 11 violate the Eighth Amendment.”), opinion amended on denial of reh’g, 135 F.3d 1318 (9th Cir. 12 1998); see also Gaut v. Sunn, 810 F.2d 923, 925 (9th Cir. 1987) (holding that a prisoner’s 13 allegations of threats allegedly made by guards failed to state a cause of action). Even in cases 14 concerning “abusive language directed at [a plaintiff’s] religious and ethnic background, ‘verbal 15 harassment or abuse is not sufficient to state a constitutional deprivation under 42 U.S.C. § 16 1983.’” Freeman v. Arpaio, 125 F.3d 732, 738 (9th Cir. 1997) (quoting Oltarzewski v. Ruggiero, 17 830 F.2d 136, 139 (9th Cir. 1987)) (alterations omitted), abrogated on other grounds by Shakur v. 18 Schriro, 514 F.3d 878 (9th Cir. 2008). However, verbal harassment may violate the constitution 19 when it is “unusually gross even for a prison setting and [is] calculated to and [does] cause 20 [plaintiff] psychological damage.” Cox v. Kernan, 2019 WL 6840136, at *5 (E.D. Cal. Dec. 16, 21 2019) (alterations in original) (quoting Keenan, 83 F.3d 1083 at 1092). 22 The factual allegations do not support a claim. Plaintiff fails to allege a cognizable claim 23 against Gurrola or Angulo for verbal harassment. 24 // 25 2 While an amended complaint supersedes the original complaint, Lacey v. Maricopa Cty., 693 F.3d 896, 927 (9th Cir. 2012), Plaintiff also may not omit relevant facts in an attempt to state a cognizable claim. See Azadpour v. Sun 26 Microsys., Inc., No. 06–3272, 2007 WL 2141079, at *2 n. 2 (N.D. Cal. July 23, 2007) (“Where allegations in an amended complaint contradict those in a prior complaint, a district court need not accept the new alleged facts as 27 true, and may, in fact, strike the changed allegations as ‘false and sham.’ ”) (citations omitted). The Court therefore takes judicial notice of the original complaint that alleged Plaintiff saw Dr. Zepp who said he wanted to see 28 Plaintiff’s butt to evaluate if he needs wipes. (ECF No. 1.) 1 4. Failure to Protect 2 Prison officials have a duty under the Eighth Amendment to protect prisoners from 3 violence at the hands of other prisoners or others because being violently assaulted in prison is 4 simply not part of the penalty that criminal offenders pay for their offenses against society. 5 Farmer, 511 U.S. at 833; Clem v. Lomeli, 566 F.3d 1177, 1181 (9th Cir.2009); Hearn v. 6 Terhune, 413 F.3d 1036, 1040 (9th Cir. 2005). However, prison officials are liable under the 7 Eighth Amendment only if they demonstrate deliberate indifference to conditions posing a 8 substantial risk of serious harm to an inmate; and it is well settled that deliberate indifference 9 occurs when an official acted or failed to act despite his knowledge of a substantial risk of serious 10 harm. Farmer, 511 U.S. at 834, 841; Clem, 566 F.3d at 1181; Hearn, 413 F.3d at 1040. 11 The Court finds that Plaintiff’s complaint does not state a cognizable claim for failure to 12 protect against Defendant Correctional officer Angulo. There is no indication in the complaint 13 that Defendant Angulo was aware that Plaintiff was at risk of serious harm at the hands of 14 unknown inmates or that he was harmed by any unknown inmates. 15 Fourth Amendment Right of

Privacy 16 The Fourth Amendment applies to the invasion of bodily privacy in prisons and jails. Bull 17 v. City and Cnty. of San Francisco, 595 F.3d 964, 972 (9th Cir. 2010) (en banc). “[I]ncarcerated 18 prisoners retain a limited right to bodily privacy.” *Michenfelder v. Sumner*, 860 F.2d 328, 333 19 (9th Cir. 1988). “Shielding one’s unclothed figure from the view of strangers, particularly 20 strangers of the opposite sex, is impelled by elementary self-respect and personal dignity.” *Id.* 21 However, “assigned positions of female guards that require only infrequent and casual 22 observation, or observation at distance, and that are reasonably related to prison needs are not so 23 degrading as to warrant court interference.” *Id.* at 334 (citing *Grummett v. Rushen*, 779 F.2d 491, 24 494-95 (9th Cir. 1985) (noting that “The Supreme Court has not recognized that an interest in 25 shielding one’s naked body from public view should be protected under the rubric of the right of 26 privacy”)); see *id.* at 332 (holding that the infringement of male inmates’ right to privacy by 27 allowing female officers to observe strip searches of male prisoners is “reasonably related to 28 legitimate penological interests”). The Ninth Circuit has explained that: 1 we cannot assume from the fact that the [conditions] cause immense anguish 2 that they therefore violate protected Fourth Amendment interests. Far from it, our 3 prior case law suggests that prisoners’ legitimate expectations of bodily privacy from persons of the opposite sex are extremely limited. 4 *Jordan v. Gardner*, 986 F.2d 1521, 1524 (9th Cir. 1993) (en banc) (citations omitted) (declining 5 to reach Fourth Amendment claim and instead deciding case based on Eighth Amendment 6 grounds). 7 Here, Plaintiff alleges that Dr. Zepp touched him during a medical procedure to see if 8 Plaintiff needed wipes with female nurses present. An intimate touching during a medical 9 examination is not an invasion of privacy when the touching is directly related to the medical 10 examination. There was a legitimate penological justification for the examination and touching. 11 Fourteenth Amendment – Equal Protection 12 The Equal Protection Clause requires that persons who are similarly situated be treated 13 alike. *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439, (1985); *Shakur v.* 14 *Schriro*, 514 F.3d 878, 891 (9th Cir. 2008). An equal protection claim may be established by 15 showing that defendants intentionally discriminated against a plaintiff based on his membership 16 in a protected class, *Comm. Concerning Cmty. Improvement v. City of Modesto*, 583 F.3d 690, 17 702– 03 (9th Cir. 2009); *Serrano v. Francis*, 345 F.3d 1071, 1082 (9th Cir. 2003), or that 18 similarly situated individuals were intentionally treated differently without a rational relationship 19 to a legitimate state purpose, *Engquist v. Oregon Dep’t of Agr.*, 553 U.S. 591, 601–02 (2008); 20 *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000); *Lazy Y Ranch Ltd. v. Behrens*, 546 21 F.3d 580, 592 (9th Cir. 2008). 22 “[T]he disabled do not constitute a suspect class” for equal protection purposes.” *Does 1– 23 5 v. Chandler*, 83 F.3d 1150, 1155 (9th Cir. 1996) (citing *City of Cleburne*, 473 U.S. at 440). 24 While Plaintiff uses the word “discrimination” in his complaint, Plaintiff has not shown 25 that he was discriminated against because of his membership in any protected class. While 26 Plaintiff alleges he is black, his allegations are conclusory that conduct was directed at him 27 because of his race. Nor has Plaintiff shown that he was intentionally treated differently than 28 1 other similarly

situated inmates without a rational relationship to a legitimate state purpose. 2 Plaintiff's conclusory statements about discrimination do not suffice. Therefore, he has not stated 3 any claim for a violation of his Fourteenth Amendment rights. 4 No Right to Early Parole 5 Plaintiff cannot maintain a due process claim, or any other claim, based on denial of early 6 parole consideration, because he has no protected property interest in parole. There is no right 7 under the U.S. Constitution to be conditionally released before the expiration of a valid sentence. 8 *Swarthout v. Cooke*, 562 U.S. 216, 220, 131 S.Ct. 859, 178 L.Ed.2d 732 (2011); see also 9 *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 7, 99 S.Ct. 2100, 60 L.Ed.2d 10 668 (1979) (there is no federal constitutional right to parole). It follows that there is no 11 constitutional right to parole consideration. See *Fernandez v. Nevada*, No. 3:06-CV-00628 LRH- 12 RA, 2008 U.S. Dist. LEXIS 131876, 2009 WL 700662, at *10 (D. Nev. Mar. 13, 2009). And 13 where there is no liberty interest in parole eligibility or parole, there can be no due process 14 violation. *Id.* 15 IV. Conclusion and Recommendation 16 For the reasons discussed, the Court finds that Plaintiff has failed to state a cognizable 17 claim for relief. Despite being provided with the relevant pleading and legal standards, and given 18 multiple opportunities to amend, Plaintiff has been unable to cure the deficiencies in his second 19 amended complaint. Further leave to amend is not warranted. *Lopez v. Smith*, 203 F.3d 1122, 20 1130 (9th Cir. 2000). 21 Accordingly, for the reasons stated above, IT IS HEREBY RECOMMENDED that this 22 action be dismissed for failure to state a cognizable claim upon which relief may be granted. 23 These Findings and Recommendations will be submitted to the United States District 24 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within 25 fourteen (14) days after being served with these Findings and Recommendations, the parties may 26 file written objections with the court. The document should be captioned "Objections to 27 Magistrate Judge's Findings and Recommendations." Objections, if any, shall not exceed 28 fifteen (15) pages or include exhibits. Exhibits may be referenced by document and page 1 number if already in the record before the Court. Any pages filed in excess of the 15-page 2 limit may not be considered. The parties are advised that failure to file objections within the 3 specified time may result in the waiver of the "right to challenge the magistrate's factual 4 findings" on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)). 6 IT IS SO ORDERED. 7 8 Dated: December 3, 2025 /s/ Barbara A. McAuliffe _
UNITED STATES MAGISTRATE JUDGE
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