

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Flores v. Boudreaux

No. 1:24-cv-00888-BAM (PC) (E.D. Cal. Mar. 10, 2025) · No. 1:24-cv-00888-BAM (PC) · Decided March 10,
2025

SUMMARY

The United States District Court for the Eastern District of California screened a pro se prisoner civil-rights complaint alleging inadequate medical care, excessive force, retaliation, and disability-related violations. The court found that the complaint failed to comply with Federal Rules of Civil Procedure 8, 18, and 20 and failed to state cognizable claims, and recommended dismissal based on failure to prosecute, failure to obey a court order, and failure to state a claim.

OPINION

(PC) Flores v. Boudreaux

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 JUAN FIDENCIO FLORES, Case No. 1:24-cv-00888-BAM (PC) 12 Plaintiff, ORDER
DIRECTING CLERK OF COURT TO

RANDOMLY ASSIGN DISTRICT JUDGE

13 v.

FINDINGS AND RECOMMENDATIONS

14 BOUDREAUX, et al., REGARDING DISMISSAL OF ACTION FOR
FAILURE TO PROSECUTE, FAILURE TO

15 Defendants. OBEY A COURT ORDER, AND FAILURE
TO STATE A CLAIM

16 (ECF No. 6) 17

FOURTEEN (14) DAY DEADLINE

18 19 I. Background 20 Plaintiff Juan Fidencio Flores (“Plaintiff”) is a former county jail inmate
proceeding pro 21 se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.
22 On January 13, 2025, the Court screened the complaint and granted Plaintiff leave to file a 23
first amended complaint or a notice of voluntary dismissal within thirty days. (ECF No. 6.) 24
Plaintiff was warned that failure to comply with the Court’s order would result in dismissal of this
25 action, with prejudice, for failure to obey a court order and failure to state a claim. (Id. at 15.)

26 The order was served on Plaintiff at his current address of record at Tulare County Pre-Trial 27 Facility in Visalia, California. On January 22, 2025, the Court's order was returned as 28 "Undeliverable, Not in Custody." 1 The deadline for Plaintiff to respond to the Court's order has now expired, and Plaintiff 2 has not filed a notice of change of address or otherwise communicated with the Court. 3 II. Failure to State a Claim 4 A. Screening Requirement 5 The Court is required to screen complaints brought by prisoners seeking relief against a 6 governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. 7 § 1915A(a). Plaintiff's complaint, or any portion thereof, is subject to dismissal if it is frivolous 8 or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary 9 relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b). 10 A complaint must contain "a short and plain statement of the claim showing that the 11 pleader is entitled to relief" Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not 12 required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere 13 conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell 14 Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). While a plaintiff's allegations are taken as 15 true, courts "are not required to indulge unwarranted inferences." *Doe I v. Wal-Mart Stores, Inc.*, 16 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). 17 To survive screening, Plaintiff's claims must be facially plausible, which requires 18 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable 19 for the misconduct alleged. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss v. U.S. Secret 20 Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully 21 is not sufficient, and mere consistency with liability falls short of satisfying the plausibility 22 standard. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss*, 572 F.3d at 969. 23 B. Plaintiff's Allegations 24 Plaintiff is currently housed at the Tulare County Pre-Trial Facility in Visalia, California 25 where the events in the complaint are alleged to have occurred. Plaintiff names as defendants: 26 (1) Mike Boudreaux, Sheriff, (2) Deputy Renteria, deputy, (3) Dr. Brar, doctor for Integrated 27 Wellness Solutions, (4) Judge Antonio Reyes, Tulare County Superior Court. 28 /// 1 In claim 1, Plaintiff alleges retaliation. Plaintiff filed a grievance due to being housed in a 2 holding cell with a bed that did not meet A.D.A regulations. Plaintiff could not make a phone call 3 because one has to stand to speak into the speaker. Plaintiff also asked for a bedside table so that 4 he could place his food and write letters. Sgt Sandoval said that she would work on these issues. 5 The next day, Plaintiff was moved out of the hospital unit to unit 2-S-109, an ADA cell and the 6 deputy said there's your accommodations. There was a desk and phone in the day room. 7 Plaintiff is paralyzed with open sores requiring medical care. By moving Plaintiff, he got 8 less treatment. He was told that he got his phone and desk. Plaintiff filed another grievance over 9 the retaliation. Plaintiff's wound treatment was being done within the unit and deputy would lock 10 down the entire unit causing other inmates to act upset. After this grievance was filed, FTO 11 Deputy Rodriguez notified Plaintiff that Plaintiff would be moved right back to the OPH unit cell 12 152,

which was the exact cell that Plaintiff was moved from. Moving Plaintiff from the medical 13 environment was not the best place for Plaintiff's medical condition. In fact, Sgt. Berry said that 14 medical was the best place for Plaintiff. Plaintiff requested a reasonable accommodation and they 15 took away "another federally protected right." Plaintiff has since been relocated to OPH-15, a 16 much smaller cell and given a bedside table and access to the phone. While in this cell, Plaintiff's 17 left leg got caught between the bed and wall and either broke or fractured. Several custody staff 18 said it's a medical issue and not custody problem. Sheriff Mike Boudreaux is responsible for 19 Plaintiff as a prisoner in all manners. 20 Plaintiff alleges his pressure ulcers got infected, plus the injury to his leg has gone 21 untreated. 22 In claim 2, Plaintiff alleges an American with Disability violations and threat to safety.

23 On 6/12/24 and [unintelligible]/24, Plaintiff was transported to court by deputy Renteria in an 24 illegal and demeaning manner. Plaintiff is paralyzed and Deputy Renteria instructed Plaintiff to 25 drag and pull himself up the step of the rear entrance to the transport van and sit on the floor of 26 the van. Plaintiff asked for a transport van. Deputy Renteria said that if Plaintiff does not get into 27 this van, he will mark that Plaintiff refused to go to court. On 6/12/24 while inmate King pulled 28 the neck of Plaintiff's shirt while Plaintiff was shackled, Plaintiff lost his balance and hit his head. 1 They pulled Plaintiff into a sitting position, while Deputy Renteria shut the rear door smashing 2 Plaintiff's left foot. Plaintiff's foot began bleeding. Plaintiff was left on the floor and transported 3 from Pre-trial to Visalia main jail. Upon getting out of the van, Plaintiff's bloody foot touched 4 Deputy Johnsons stomach and left blood on it. No medical attention was given. Once Plaintiff 5 was taken through the tunnel to the court building, deputy Nyguen hit Plaintiff foot into the door 6 to the holding cell between departments. It left a blood streak across the bottom portion of the 7 door. When Plaintiff confronted deputy Nyguen, he stated that he isn't the one with 4 DUIs.

8 On 6/13/24, Sgt Sandoval and Deputy Renteria came to his cell to take photos and Sgt. 9 Sandoval questioned Plaintiff about Plaintiff's grievance regarding the same deputy 10 photographing Plaintiff's injuries as well as causing them When Plaintiff told Sgt. Sandoval that 11 my foot was smashed, Deputy Renteria stated he waited until Plaintiff's foot crossed the threshold 12 before closing the door. When Plaintiff removed his sock, his foot started bleeding again. 13 Plaintiff told Deputy Renteria "then why is my foot bleeding," He said that it was Plaintiff right 14 foot that got hit. Plaintiff asked why he was transported on the floor, Deputy Renteria said that 15 Plaintiff was not transported on the floor, and that was not how he remembers how Plaintiff was 16 transported. Plaintiff was transported on the bottom, not the floor. Plaintiff complained about 17 Deputy Renteria not telling the truth and used expletives and he was cautioned about his 18 language. Plaintiff asked Sgt. Sandoval why she brought the victimizer to photograph and 19 question Plaintiff. Sgt Sandoval said that the video would be reviewed and they both left. 20 Lt. C. Jones responded that Plaintiff's complaint had been reviewed and resolved. He 21 further stated that we have taken steps necessary for corrective measure and this

will not happen 22 again. If in the further any staff attempt to transport you in an improper way, ask to speak to the 23 on duty supervisor to assist you. 24 In claim 3, Plaintiff alleges that since his arrest on 5/22/24, Plaintiff has been denied 25 adequate medical care. Plaintiff takes medication for several years named Sertraline that stops 26 bladder spasms and allows Plaintiff to urinate. Plaintiff was denied his medication which caused 27 Plaintiff to not be capable of passing urine through the catheter. So the urine travels within his 28 body until it burns an exit and left Plaintiff sitting and sleeping in his own urine. Plaintiff was 1 sent to the emergency room because the medical staff cannot legally treat his catheter because 2 nobody holds the license to do so. This issue became a problem again the last week of June 3 which caused Plaintiff to go to the ER again. In July, Plaintiff was still sitting in his urine. 4 Plaintiff was told that only way to get the medication was through mental health as an anti- 5 depressant. Plaintiff finally had no other option so Plaintiff told the psych doctor that Plaintiff is 6 depressed and need Sertraline. Three days later, Plaintiff is urinating properly. RN Jill told other 7 nurses that Plaintiff tried attacking RN Ezequiel with part of his wheelchair which was a lie. 8 Plaintiff reported that RN Ezequiel and Plaintiff had negative issues stemming from the streets. 9 RN Jill said that the name is Enrique. Medical staff turn their badges so nobody knows their 10 names to file grievances. Due to the two lies from Enrique/Ezequiel, Plaintiff's wound treatment 11 was ignored and the urine irritated his skin as well as wounds getting infected. 12 Plaintiff alleges his urine issue caused infection to his kidneys and he got fever and chills.

13 On 7/1/24, Dr. Brar changed the wound dressing from twice a day to every day, once a day and 14 only on Monday, Wednesday and Friday. Within a week, the wounds developed necrotic tissue. 15 Plaintiff was running a fever, chills and night seats. Medical staff was taking his vitals but said 16 nothing is wrong with Plaintiff. Yet, Plaintiff was given a shot of antibiotic and pills. On 17 7/12/24, Dr. Brar and RN Liz and several other performed a minor surgical procedure to remove 18 70% of the dead tissue from his wounds. This procedure occurred in Plaintiff cell while he was 19 awake because he was told you are paralyzed and you don't even feel pain. 20 Plaintiff's body registers pain differently. Plaintiff gets nauseated, temperature does up 21 and gets dizzy then he passes out. Plaintiff's cell has ants, spiders and it was never cleaned and 22 sanitized before Plaintiff being housed in the cell. Plaintiff believed without the procedure he 23 would have died. Another patient was transported to the hospital to have the exact procedure. On 24 6/29/24, RN Jill told Deputy Bolden to let Plaintiff know that she did not have time to change his 25 dressing and treat his wounds. That was at 4:00 p.m. Ten hours Plaintiff waited for his 26 treatment, yet two hours before her shift ends, RN Jill knew that she would not have time for 27 Plaintiff's treatment. However, RN Jill treated the patient in cell 152 and she treated others. She 28 also had time to take personal phone calls and work on the computer. 1 Plaintiff reported these issues to Benjamin Mitchell of Integrated Wellness Solutions who 2 stated that the records show that Plaintiff was seen each morning by the CNA for physical 3 mobility and the RN checks 6-8 times a day. Plaintiff said that that was a lie because the CNA 4 never came to his cell and neither did

the RN. Benjamin showed Plaintiff an Amazon.com order 5 for colostomy bags and RN Sarah later said she was to order the bags. Either way, Plaintiff has 6 not received any colostomy supplies. 7 Plaintiff has dead tissue flesh and several infections. Plaintiff has a broken leg or foot. 8 Plaintiff's mental health has been effected fighting for his life daily. Plaintiff has emotionally 9 given up. 10 As remedies, Plaintiff asks that the pretrial facility be brought to ADA standard, 11 purchase more wheelchair lifts and have a minimum of two per facility. Plaintiff asks that the 12 deputies take certified courses regarding the A.D.A. and HIPPA. Plaintiff requests that the OPH 13 unit be remodeled into an actual medical environment with ADA cells and purchase exam tables 14 that lower so paralyzed individual have access and to create an ADA recreational area. Plaintiff 15 requests that custody and medical staff, who violated his rights, be fired. Plaintiff seeks 16 damages. 17 C. Discussion 18 Plaintiff's complaint fails to comply with Federal Rules of Civil Procedure 8, 18, and 20 19 and fails to state a cognizable claim under 42 U.S.C. § 1983. 20 1. Federal Rule of Civil Procedure 8 and Linkage 21 Pursuant to Rule 8, a complaint must contain "a short and plain statement of the claim 22 showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). Detailed factual allegations 23 are not required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere 24 conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678 (citation omitted). Plaintiff must 25 set forth "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on 26 its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). While factual allegations 27 are accepted as true, legal conclusions are not. *Id.*; see also *Twombly*, 550 U.S. at 556–57; *Moss*, 28 572 F.3d at 969. 1 Here, Plaintiff's complaint is short, but it is not a plain statement of his claims showing 2 that he is entitled to relief. Many of Plaintiff's allegations are conclusory do not state what 3 happened, when it happened, or which defendant was involved. He fails to state the factual basis 4 for the conclusions and what each defendant did or did not do which violated Plaintiff's rights. 5 Plaintiff must provide factual allegations in support of his claims.

6 Section 1983 requires that there be an actual connection or link between the actions of the 7 defendants and the deprivation alleged to have been suffered by Plaintiff. See *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978); *Rizzo v. Goode*, 423 U.S. 362, 9 96 S.Ct. 598, 46 L.Ed.2d 561 (1976). Plaintiff fails to link each of the defendants to the alleged 10 wrongful conduct. Plaintiff may not simply assert that a deprivation occurred and then accuse a 11 group of defendants of being "responsible" for that deprivation. 12 2. Federal Rules of Civil Procedure 18 and 20 13 Plaintiff may not bring unrelated claims against unrelated parties in a single action. Fed. 14 R. Civ. P. 18(a), 20(a)(2); *Owens v. Hinsley*, 635 F.3d 950, 952 (7th Cir. 2011); *George v. Smith*, 15 507 F.3d 605, 607 (7th Cir. 2007); *Mackey v. Price*, 2020 WL 7319420, at *3–4 (E.D. Cal. Dec. 16 11, 2020), report and recommendation adopted, 2021 WL 843462 (E.D. Cal. Mar. 5, 2021). 17 Plaintiff may bring a claim against multiple defendants so long as (1) the claim arises out of the 18 same transaction or occurrence, or series of transactions and occurrences, and (2) there are 19 commons questions of law or fact. Fed. R. Civ. P. 20(a)(2);

Coughlin v. Rogers, 130 F.3d 1348, 20 1351 (9th Cir. 1997). The “same transaction” requirement refers to similarity in the factual 21 background of a claim. Id. at 1349. Only if the defendants are properly joined under Rule 20(a) 22 will the Court review the other claims to determine if they may be joined under Rule 18(a), which 23 permits the joinder of multiple claims against the same party. 24 Plaintiff may not raise different claims against different defendants in a single action. The 25 allegations are unclear if the claims are properly joined. For instance, Plaintiff not bring 26 challenges to the various different medical treatments on different days by different people, and 27 claims for ADA accommodations, housing assignments, retaliation, grievance processing, and 28 other claims. These claims are not properly joined and must be brought in separate actions. 1 Merely because Plaintiff was housed at the Pre-trial facility when the incidents occurred does not 2 make every injury or incident related. Separate unrelated claims must be filed in separate 3 lawsuits. 4 3. Supervisor Liability 5 Insofar as Plaintiff is attempting to sue Defendant Warden, Lieutenant, or any other 6 defendant, based solely upon his supervisory role, he may not do so. Liability may not be 7 imposed on supervisory personnel for the actions or omissions of their subordinates under the 8 theory of respondeat superior. Iqbal, 556 U.S. at 676–77; Simmons v. Navajo Cty., Ariz., 609 9 F.3d 1011, 1020–21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 10 2009); Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). 11 Supervisors may be held liable only if they “participated in or directed the violations, or 12 knew of the violations and failed to act to prevent them.” Taylor v. List, 880 F.2d 1040, 1045 13 (9th Cir. 1989); accord Starr v. Baca, 652 F.3d 1202, 1205–06 (9th Cir. 2011); Corales v. 14 Bennett, 567 F.3d 554, 570 (9th Cir. 2009). “The requisite causal connection may be established 15 when an official sets in motion a ‘series of acts by others which the actor knows or reasonably 16 should know would cause others to inflict’ constitutional harms.” Corales v. Bennett, 567 F.3d at 17 570. Supervisory liability may also exist without any personal participation if the official 18 implemented “a policy so deficient that the policy itself is a repudiation of the constitutional 19 rights and is the moving force of the constitutional violation.” Redman v. Cty. of San Diego, 942 20 F.2d 1435, 1446 (9th Cir. 1991) (citations and quotations marks omitted), abrogated on other 21 grounds by Farmer v. Brennan, 511 U.S. 825 (1970). When a defendant holds a supervisory 22 position, the causal link between such defendant and the claimed constitutional violation must be 23 specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v. Saalfeld, 24 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory allegations concerning the involvement 25 of supervisory personnel in civil rights violations are not sufficient. See Ivey v. Board of Regents, 26 673 F.2d 266, 268 (9th Cir. 1982). 27 Here, Plaintiff has failed to establish that Defendant Warden, Defendant Deputy Warden, 28 or other supervisor, participated in or directed any constitutional violation or that he implemented 1 a policy so deficient that it was the moving force of any constitutional violation. 2 4. Due Process – Medical Care 3 Claims of inadequate medical care “brought by pretrial [or civil] detainees against 4 individual defendants under the Fourteenth Amendment must be evaluated under an objective 5 deliberate indifference

standard.” *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1124-25 (9th Cir. 6 2018). Under this standard, plaintiff must allege facts from which to infer: (1) “[t]he defendant 7 made an intentional decision with respect to the conditions under which the plaintiff was 8 confined;” (2) “[t]hose conditions put the plaintiff at substantial risk of suffering serious harm;” 9 (3) the defendant’s conduct was objectively unreasonable . . . ; and (4) [b]y not taking such 10 measures, the defendant caused the plaintiff’s injuries.” *Id.* (citing *Castro v. Cty. of Los Angeles*, 11 833 F.3d 1060, 1071 (9th Cir. 2016) (en banc)). The “mere lack of due care by a state official 12 does not deprive an individual of life, liberty, or property under the Fourteenth Amendment.” 13 *Castro*, 833 F.3d at 1071 (citations omitted). Thus, to adequately plead objective deliberate 14 indifference, plaintiff must plead facts from which to infer that a defendant acted with “something 15 akin to reckless disregard” for his health. *Id.* 16 Plaintiff alleges numerous medical claims against multiple defendants including for 17 wound treatment, for moving Plaintiff’s housing, for breaking his leg and treatment, denial of 18 medication, delay or lack of medical care, among other wrongs. As stated above, Plaintiff must 19 not improperly join different medical claims. For each properly joined claim and each defendant, 20 Plaintiff must allege sufficient factual support satisfying the elements of a claim for denial of 21 medical care. 22 5. Due Process – Excessive Force 23 As Plaintiff was a pretrial detainee at the time of the incident, constitutional questions 24 regarding the conditions and circumstances of Plaintiff’s confinement are properly raised under 25 the Due Process Clause of the Fourteenth Amendment. *City of Revere v. Mass. Gen. Hosp.*, 463 26 U.S. 239, 244, 77 (1983); *Bell v. Wolfish*, 441 U.S. 520, 535 (1979); *Oregon Advocacy Ctr. v. 27 Mink*, 322 F.3d 1101, 1120 (9th Cir. 2003). The due process rights of pretrial detainees are “at 28 least as great as the Eighth Amendment protections available to a convicted prisoner.” *Revere*, 1 463 U.S. at 244. Thus, while the Eighth Amendment provides a minimum standard of care for 2 detainees, plaintiff’s rights while detained in custody are determined under the Due Process 3 Clause of the Fourteenth Amendment rather than the Eighth Amendment’s protection against 4 cruel and unusual punishment. *Gibson v. Cty. of Washoe*, 290 F.3d 1175, 1197 (2001) (overruled 5 on other grounds by *Castro v. Cty. of Los Angeles*, 833 F.3d 1060 (2016)). 6 The Constitution does not prohibit the use of reasonable force by officers. *Tatum v. City 7 & Cty. of San Francisco*, 441 F.3d 1090, 1095 (9th Cir. 2006). Whether force used was excessive 8 depends on “whether the officers’ actions [were] ‘objectively reasonable’ in light of the facts and 9 circumstances confronting them, without regard to their underlying intent or motivation.” 10 *Graham v. Connor*, 490 U.S. 386, 397 (1989); *Tatum*, 441 F.3d at 1095; *Lolli v. Cty. of Orange*, 11 351 F.3d 410, 415 (9th Cir. 2003). The proper inquiry balances the nature and quality of the 12 intrusion against the countervailing governmental interests at stake. *Graham*, 490 U.S. at 396; 13 *Lolli*, 351 F.3d at 415). To state an excessive force claim under the Fourteenth Amendment, “a 14 pretrial detainee must show only that the force purposely or knowingly used against him was 15 objectively unreasonable.” *Kingsley v. Hendrickson*, 576 U.S. 389, 396–97 (2015). 16 The “reasonableness” of a particular use of force must be judged from the perspective of a 17 reasonable officer on the

scene, rather than with the 20/20 vision of hindsight. “Not every push 18 or shove, even if it may later seem unnecessary in the peace of a judge’s chambers,” violates the 19 Fourth Amendment. Graham, 490 U.S. at 396 (citations omitted). 20 Plaintiff may be able to state a claim against Defendant Renteria for slamming Plaintiff’s 21 foot in the door, but currently fails to do so. Plaintiff fails to allege facts that the force purposely 22 or knowingly used against him was objectively unreasonable. Further, claim is improperly joined 23 with other claims. 24 6. Americans with Disabilities Act (“ADA”) and Rehabilitation Act 25 The ADA provides, “no qualified individual with a disability shall, by reason of such 26 disability, be excluded from participation in or be denied the benefits of the services, programs, or 27 activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. 28 § 12132. The ADA defines “qualified individual with a disability” as “an individual with a 1 disability who, with or without reasonable modifications to rules, policies, or practices, the 2 removal of architectural, communication, or transportation barriers, or the provision of auxiliary 3 aids and services, meets the essential eligibility requirements for the receipt of services or the 4 participation in programs or activities provided by a public entity.” Id. § 12131(2). 5 To the extent Plaintiff intends to sue the individual named defendants for violation of his 6 rights under the ADA, he may not “bring an action under 42 U.S.C. § 1983 against a State official 7 in her individual capacity to vindicate rights created by Title II of the ADA.” Vinson v. Thomas, 8 288 F.3d 1145, 1156 (9th Cir. 2002). The proper defendant in ADA actions is the public entity 9 responsible for the alleged discrimination. U.S. v. Georgia, 546 U.S. 151, 153 (2006). State 10 correctional facilities are “public entities” within the meaning of the ADA. See 42 U.S.C. 11 § 12131(1)(A) & (B); Pennsylvania Dep’t. of Corr. v. Yeskey, 524 U.S. 206, 210 (1998); 12 Armstrong v. Wilson, 124 F.3d 1019, 1025 (9th Cir. 1997). 13 In order to state a claim under the ADA, the plaintiff must have been “improperly 14 excluded from participation in, and denied the benefit of, a prison service, program, or activity on 15 the basis of his physical handicap.” Armstrong, 124 F.3d at 1023. Plaintiff has alleged no facts 16 demonstrating such exclusion or denial. Any claim for ADA violation is improperly joined. 17 To the extent Plaintiff intends to sue the individually named defendants for violation of 18 his rights under the ADA, he may not “bring an action under 42 U.S.C. § 1983 against a State 19 official in her individual capacity to vindicate rights created by Title II of the ADA.” Vinson v. 20 Thomas, 288 F.3d 1145, 1156 (9th Cir. 2002). The proper defendant in ADA actions is the public 21 entity responsible for the alleged discrimination. U.S. v. Georgia, 546 U.S. 151, 153 (2006). 22 State correctional facilities are “public entities” within the meaning of the ADA. See 42 U.S.C. 23 § 12131(1)(A) & (B); Pennsylvania Dep’t. of Corr. v. Yeskey, 524 U.S. 206, 210 (1998); 24 Armstrong v. Wilson, 124 F.3d 1019, 1025 (9th Cir. 1997). 25 7. False Reports 26 To the extent Plaintiff alleges that Defendants falsified chronos, disciplinary or medical 27 reports against Plaintiff, he cannot state a claim. 28 /// 1 The creation of false evidence, standing alone, is not actionable under § 1983. See 2 Hernandez v. Johnston, 833 F.2d 1316, 1319 (9th Cir. 1987) (independent right to accurate prison 3 record has not been

recognized); *Johnson v. Felker*, No. 1:12-cv-02719 GEB KJN (PC), 2013 4 WL 6243280, at *6 (E.D. Cal. Dec. 3, 2013) (“Prisoners have no constitutionally guaranteed right to be free from false accusations of misconduct, so the mere falsification of a report does not give rise to a claim under section 1983.”) (citations omitted).

8. Retaliation

Allegations of retaliation against a prisoner’s First Amendment rights to speech or to petition the government may support a section 1983 claim. *Rizzo v. Dawson*, 778 F.2d 527, 532 (9th Cir. 1985); see also *Valandingham v. Bojorquez*, 866 F.2d 1135 (9th Cir. 1989); *Pratt v. Rowland*, 65 F.3d 802, 807 (9th Cir. 1995). “Within the prison context, a viable claim of First Amendment retaliation entails five basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2) because of (3) that prisoner’s protected conduct, and that (4) such action (5) chilled the inmate’s exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal.” *Rhodes v. Robinson*, 408 F.3d 559, 567–68 (9th Cir. 2005); accord *Watson v. Carter*, 668 F.3d 1108, 1114–15 (9th Cir. 2012); *Silva*, 658 F.3d at 1104; *Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir. 2009).

Plaintiff uses the word retaliation but Plaintiff fails to allege factual support for each of the elements of a claim for retaliation against any defendant. Further, this claim may not be improperly joined.

9. No Right to Appeals Process or to a Particular Investigation

To the extent Plaintiff is challenging how his grievances were handled, a prison official’s processing of an inmate’s appeals, without more, cannot serve as a basis for Section 1983 liability. See *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003) (Prisoners do not have a “separate constitutional entitlement to a specific prison grievance procedure.”) (citation omitted), cert. denied, 541 U.S. 1063 (2004); *Shallowhorn v. Molina*, 572 F. App’x 545, 547 (9th Cir. 2014) (district court properly dismissed Section 1983 claims against defendants who “were only involved in the appeals process”) (citing *Ramirez*, 334 F.3d at 860); *Evans v. Cisneros*, No. 1:22-1 CV-01238 AWI BAM PC, 2023 WL 2696670, at *5 (E.D. Cal. Mar. 29, 2023) (no claim for failing to address appeals).

To the degree Plaintiff is trying to hold the individuals or others liable for an independent, unspecified constitutional violation based upon an allegedly inadequate investigation, there is no such claim. See *Gomez v. Whitney*, 757 F.2d 1005, 1006 (9th Cir. 1985) (per curiam) (“[W]e can find no instance where the courts have recognized inadequate investigation as sufficient to state a civil rights claim unless there was another recognized constitutional right involved.”); *Page v. Stanley*, 2013 WL 2456798, at *8–9 (C.D. Cal. June 5, 2013) (dismissing Section 1983 claim alleging that officers failed to conduct thorough investigation of plaintiff’s complaints because plaintiff “had no constitutional right to any investigation of his citizen’s complaint, much less a ‘thorough’ investigation or a particular outcome”); *Ellis v. Cty. of Kern*, No. 1:22-CV-00436 ADA BAM PC, 2023 WL 7005188, at *5 (E.D. Cal. Oct. 24, 2023), report and recommendation adopted, No. 1:22-CV-00436 NODJ BAM PC, 2023 WL 8934370 (E.D. Cal. Dec. 27, 2023) (stating no claim existed for Defendants’ failure to investigate Plaintiff’s appeal regarding alleged excessive force and sexual assault).

10. Judicial Immunity

Plaintiff attempts to bring suit

against Superior Court Judges Reyes. However, judges 18 “are absolutely immune from damages actions for judicial acts taken within the jurisdiction of 19 their courts.” See *Schucker v. Rockwood*, 846 F.2d 1202, 1204 (9th Cir. 1988) (per curiam). 20 “Grave procedural errors or acts in excess of judicial authority do not deprive a judge of this 21 immunity.” *Id.* Rather, this immunity is lost only when the judge “acts in the clear absence of all 22 jurisdiction or performs an act that is not judicial in nature.” *Id.* Judges retain their immunity 23 even when they are accused of acting maliciously or corruptly, see *Mireles v. Waco*, 502 U.S. 9, 24 11 (1991) (per curiam); *Stump v. Sparkman*, 435 U.S. 349, 356–57 (1978), and when they are 25 accused of acting in error, see *Meek v. Cty. of Riverside*, 183 F.3d 962, 965 (9th Cir. 1999). 26 Further, Plaintiff fails to link this defendant to any wrongful conduct. 27 /// 28 /// 1 11. Injunctive Relief 2 Plaintiff seeks to have defendants fired and seeks modification to facilities and other 3 physical alterations. The requests for prospective relief are limited by 18 U.S.C. § 3626(a)(1)(A) 4 of the Prison Litigation Reform Act [“PLRA”], which requires that the Court find the “relief 5 [sought] is narrowly drawn, extends no further than necessary to correct the violation of the 6 Federal right, and is the least intrusive means necessary to correct the violation of the Federal 7 right.” In cases brought by prisoners involving conditions of confinement, any injunction “must 8 be narrowly drawn, extend no further than necessary to correct the harm the court finds requires 9 preliminary relief, and be the least intrusive means necessary to correct the harm.” 18 U.S.C. 10 § 3626(a)(2). Moreover, where, as here, “a plaintiff seeks a mandatory preliminary injunction 11 that goes beyond maintaining the status quo pendente lite, ‘courts should be extremely cautious’ 12 about issuing a preliminary injunction and should not grant such relief unless the facts and law 13 clearly favor the plaintiff.” *Comm. of Cent. Amer. Refugees v. I.N.S.*, 795 F.2d 1434, 1441 (9th 14 Cir. 1986), quoting *Martin v. Int’l Olympic Comm.*, 740 F.2d 670, 675 (9th Cir. 1984). Plaintiff’s

15 request to fire Defendants is not narrowly drawn and is not the least intrusive means necessary to 16 correct the harms alleged. 17 III. Failure to Prosecute and Failure to Obey a Court Order 18 A. Legal Standard 19 Plaintiff is required to keep the Court apprised of his current address at all times. Local

20 Rule 183(b) provides:

21 Address Changes. A party appearing in propria persona shall keep the Court and 22 opposing parties advised as to his or her current address. If mail directed to a plaintiff in propria persona by the Clerk is returned by the U.S. Postal Service, 23 and if such plaintiff fails to notify the Court and opposing parties within thirty

(30) days thereafter of a current address, the Court may dismiss the action without

24 prejudice for failure to prosecute. 25 Federal Rule of Civil Procedure 41(b) also provides for dismissal of an action for failure to 26 prosecute.¹ 27 1 Courts may dismiss actions sua sponte under Rule 41(b) based on the plaintiff’s failure to prosecute. *Hells Canyon Pres. Council v. U. S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005) (citation omitted). 1 Local Rule 110 provides

that “[f]ailure . . . of a party to comply with these Rules or with any order of the Court may be grounds for imposition by the Court of any and all sanctions . . . within the inherent power of the Court.” District courts have the inherent power to control their dockets and “[i]n the exercise of that power they may impose sanctions including, where appropriate, . . . dismissal.” *Thompson v. Hous. Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See, e.g., *Ghazali v. Moran*, 468 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130–33 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action, the Court must consider several factors: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions. *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986); *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988). B. Discussion Here, Plaintiff’s address change was due no later than February 24, 2025, and Plaintiff’s response to the Court’s January 13, 2025 order is also overdue. Plaintiff has failed to comply with the Court’s order or otherwise communicate with the Court. The Court cannot effectively manage its docket if Plaintiff ceases litigating his case. Thus, the Court finds that both the first and second factors weigh in favor of dismissal. The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action. *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against dismissal because public policy favors disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002). However, “this factor lends little support to a party whose responsibility it is to move a case toward disposition on the merits but whose conduct impedes progress in that direction,” which is the case here. *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted). Finally, the Court’s warning to a party that failure to obey the court’s order will result in dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 at 132–33; *Henderson*, 779 F.2d at 1424. The Court’s January 13, 2025 order expressly warned Plaintiff that his failure to comply with the Court’s order would result in dismissal of this action, with prejudice. (ECF No. 6, p. 15.) Thus, Plaintiff had adequate warning that dismissal could result from his noncompliance. Additionally, at this stage in the proceedings there is little available to the Court that would constitute a satisfactory lesser sanction while protecting the Court from unnecessary expenditure of its scarce resources. Plaintiff is proceeding in forma pauperis in this action, making monetary sanctions of little use, and the preclusion of evidence or witnesses is likely to have no effect given that Plaintiff has ceased litigating his case and

updating his address. 14 More importantly, given the Court's apparent inability to communicate with Plaintiff, there are no 15 other reasonable alternatives available to address Plaintiff's failure to prosecute this action and his 16 failure to apprise the Court of his current address. In re PPA, 460 F.3d at 1228–29; Carey, 856 17 F.2d at 1441. 18 IV. Order and Recommendation 19 Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a 20 District Judge to this action. 21 Furthermore, the Court finds that dismissal is the appropriate sanction and HEREBY 22 RECOMMENDS that this action be dismissed, with prejudice, for failure to obey a Court order, 23 failure to prosecute, and for failure to state a claim. 24 These Findings and Recommendation will be submitted to the United States District Judge 25 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen 26 (14) days after being served with these Findings and Recommendation, Plaintiff may file written 27 objections with the Court. The document should be captioned "Objections to Magistrate Judge's 28 Findings and Recommendation." Objections, if any, shall not exceed fifteen (15) pages or 1 include exhibits. Exhibits may be referenced by document and page number if already in 2 the record before the Court. Any pages filed in excess of the 15-page limit may not be 3 considered. The parties are advised that failure to file objections within the specified time may 4 result in the waiver of the "right to challenge the magistrate's factual findings" on 5 appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing Baxter v. Sullivan, 6 923 F.2d 1391, 1394 (9th Cir. 1991)). 7 IT IS SO ORDERED. 8 9 Dated: March 10, 2025 /s/ Barbara A. McAuliffe _
UNITED STATES MAGISTRATE JUDGE
10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28