

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

John Anthony Cole v. F. Ortega, et al.

No. CV-26-00973-PHX-JAT (ASB) (D. Ariz. Apr. 14, 2026) · No. No. CV-26-00973-PHX-JAT (ASB) · Decided April 14, 2026

SUMMARY

This is an order from the United States District Court for the District of Arizona addressing a prisoner’s pro se civil rights action under 42 U.S.C. § 1983. The court grants the application to proceed in forma pauperis, denies several motions without prejudice, allows certain excessive-force and failure-to-intervene claims to proceed, and dismisses other claims and defendants without prejudice. The order also permits limited discovery to identify unnamed defendants.

CASE DETAILS

COURT	United States District Court for the District of Arizona
WRITING FOR THE COURT	James A. Teilborg
JURISDICTION	United States District Court for the District of Arizona
DECIDED	April 14, 2026
DOCKET	No. CV-26-00973-PHX-JAT (ASB)
DISPOSITION	other
PROCEDURAL POSTURE	Initial screening of a pro se prisoner civil-rights complaint under 28 U.S.C. § 1915A, together with rulings on an application to proceed in forma pauperis and motions for injunctive relief, a protective order, preservation of evidence, and limited early discovery.
STANDARD OF REVIEW	The court screened the complaint under 28 U.S.C. § 1915A and evaluated whether the allegations, liberally construed, stated plausible claims under Federal Rule of Civil Procedure 8 and governing constitutional standards. Motions for temporary restraining orders and preliminary injunctions were evaluated under Federal Rule of Civil Procedure 65 and Winter v. Natural Resources Defense Council, Inc.
PRECEDENTIAL VALUE	Nonprecedential district-court screening order
PARTIES	John Anthony Cole v. F. Ortega, Simmons, Chris Sanchez, Meyers, Rheem, Bachman, McCormick, Diaz, Benmen, Fulks, Levine, NaphCare, Ryan Thornell, Rogers, John Does 1-10

TOPICS

section 1983 prisoners rights civil procedure injunctions equal protection

PRACTICE AREAS

Civil rights Prisoner litigation Federal civil procedure Constitutional torts Injunctive relief

QUESTIONS PRESENTED

1. Whether the complaint stated plausible claims under § 1983 and survived statutory prisoner-complaint screening under § 1915A.
2. Whether the allegations stated claims for excessive force, failure to intervene, deliberate indifference to serious medical needs, First Amendment retaliation, or equal protection.
3. Whether the complaint adequately pleaded municipal or private-entity liability, official-capacity liability, supervisory liability, or civil conspiracy.
4. Whether the alleged wedgie and related conduct stated an Eighth Amendment sexual-assault claim.
5. Whether the state-law and criminal allegations in Count Eleven stated a viable claim.
6. Whether plaintiff was entitled to a temporary restraining order, preliminary injunction, preservation order, or early discovery.

HOLDINGS

1. Liberally construed, the complaint stated excessive-force claims arising from the February 22 incident against Simmons, Ortega, Sanchez, Meyers, Rheem, Bachman, McCormick, and John Does 1-6, and from the February 28 incident against Diaz, Simmons, Ortega, Meyers, Sanchez, Rheem, McCormick, and John Does 1-5.
2. Plaintiff stated a failure-to-intervene claim against Levine based on the allegation that Levine witnessed the February 28 assault and failed to intervene.
3. The allegation that Diaz gave plaintiff a wedgie, even in the alleged circumstances, did not state an Eighth Amendment sexual-assault claim, and Count Three was dismissed without prejudice.
4. Plaintiff stated deliberate-indifference claims against Benmen and Fulks in Counts Four and Eight, but did not state medical-care claims against the correctional officers who allegedly assaulted him.
5. Plaintiff stated a retaliation claim against Simmons in Count Five and against Simmons and Ortega in Count Nine; the retaliation allegations against the remaining defendants were dismissed at screening.
6. Plaintiff stated an equal-protection claim against Simmons, Ortega, Bachman, and Diaz based on alleged racial slurs and racial animus; the claim against the remaining defendants was dismissed.
7. The court dismissed NaphCare and Thornell without prejudice, dismissed Rogers without prejudice, and construed the remaining claims as individual-capacity claims because the complaint did not plausibly allege a policy, custom, or personal participation sufficient for entity, official-capacity, or supervisory liability.

8. Count Seven failed to state a § 1983 civil-conspiracy claim and was dismissed without prejudice.
9. Count Eleven was dismissed without prejudice because plaintiff could not initiate criminal charges and because the combined state-law allegations were vague, conclusory, and improperly joined in a single count.
10. The motions for injunctive relief, a temporary restraining order, preservation of evidence, and limited early discovery were denied without prejudice.

KEY QUOTATIONS

“whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.” (Discussion § IV.D)

“A viable claim of First Amendment retaliation contains 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” (Discussion § IV.H)

“that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” (Discussion § V.B.2)

FACTUAL BACKGROUND

Plaintiff, a state prisoner, alleged that correctional officers assaulted him during separate incidents on February 22 and February 28, 2025, while he was restrained. He alleged excessive force, failure to intervene, denial of medical care, retaliation for grievances and PREA reports, racial animus, conspiracy, and related state-law claims. He also sought emergency and preliminary injunctive relief based on alleged later harassment, food deprivation, threats, and retaliation at the prison.

PROCEDURAL HISTORY

Plaintiff filed a 12-count complaint under 42 U.S.C. § 1983 while confined in the Arizona State Prison Complex-Eyman. The court granted in forma pauperis status, dismissed specified claims and defendants without prejudice, allowed other claims to proceed, ordered identified defendants to answer, authorized limited time to identify John Doe defendants, and denied the motions without prejudice.

DISPOSITION

other

CASES CITED

- Thornton v. City of St. Helens, 425 F.3d 1158, 1163-64 (9th Cir. 2005)
- Shoshone-Bannock Tribes v. Idaho Fish & Game Commission, 42 F.3d 1278, 1284 (9th Cir. 1994)
- Rizzo v. Goode, 423 U.S. 362, 371-72, 377 (1976)
- Tsao v. Desert Palace, Inc., 698 F.3d 1128, 1138-39 (9th Cir. 2012)

- *Buckner v. Toro*, 116 F.3d 450, 452 (11th Cir. 1997) (per curiam)
- *Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985)
- *Monell v. Department of Social Services*, 436 U.S. 658, 694 (1978)
- *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998)
- *Hamilton v. Endell*, 981 F.2d 1062, 1067 (9th Cir. 1992)
- *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989)
- *Ashcroft v. Iqbal*, 556 U.S. 662, 676, 678-81 (2009)
- *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010)
- *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam)
- *Hudson v. McMillian*, 503 U.S. 1, 7, 9 (1992)
- *Johnson v. Glick*, 481 F.2d 1028, 1033 (2d Cir. 1973)
- *Wakefield v. Thompson*, 177 F.3d 1160, 1163 (9th Cir. 1999)
- *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980)
- *Cunningham v. Gates*, 229 F.3d 1271, 1289 (9th Cir. 2000)
- *Lolli v. County of Orange*, 351 F.3d 410, 418 (9th Cir. 2003)
- *Perez v. City of Fresno*, 591 F. Supp. 3d 725, 752 n.21 (E.D. Cal. 2022)
- *Schwenk v. Hartford*, 204 F.3d 1187, 1197 (9th Cir. 2000)
- *Austin v. Terhune*, 367 F.3d 1167, 1171 (9th Cir. 2004)
- *Wood v. Beauclair*, 692 F.3d 1041, 1050 (9th Cir. 2012)
- *Hill v. Rowley*, 658 F. App'x 840, 841 (9th Cir. 2016)
- *Watson v. Carter*, 668 F.3d 1108, 1112-14 (9th Cir. 2012)
- *Morman v. Dyer*, No. 16-cv-01523-SI, 2016 WL 5358592, at *3 (N.D. Cal. Sept. 26, 2016)
- *Walker v. Beshara*, No. 1:20-cv-01050-JLT-HBK (PC), 2023 WL 8654745, at *6 (E.D. Cal. Apr. 4, 2023)
- *Cooper v. Woodford*, No. 1:07-cv-00214-AWI-GSA PC, 2008 WL 1734557, at *3 (E.D. Cal. Apr. 11, 2008)
- *Toguchi v. Chung*, 391 F.3d 1051, 1060 (9th Cir. 2004)
- *Clement v. California Department of Corrections*, 220 F. Supp. 2d 1098, 1105 (N.D. Cal. 2002)
- *Broughton v. Cutter Laboratories*, 622 F.2d 458, 460 (9th Cir. 1980)
- *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)
- *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005)
- *Hines v. Gomez*, 108 F.3d 265, 267 (9th Cir. 1997)
- *Soranno's Gasco, Inc. v. Morgan*, 874 F.2d 1310, 1314 (9th Cir. 1989)
- *Thornton v. City of St. Helens*, 425 F.3d 1158, 1166-67 (9th Cir. 2005)
- *Gilbrook v. City of Westminster*, 177 F.3d 839, 856-57 (9th Cir. 1999)
- *Margolis v. Ryan*, 140 F.3d 850, 853 (9th Cir. 1998)
- *Delew v. Wagner*, 143 F.3d 1219, 1223 (9th Cir. 1998)

- *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir.), amended on other grounds, 275 F.3d 1187 (9th Cir. 2001)
- *Woodrum v. Woodward County*, 866 F.2d 1121, 1126 (10th Cir. 1989)
- *Karim-Panahi v. Los Angeles Police Department*, 839 F.2d 621, 626 (9th Cir. 1988)
- *Miss Universe, Inc. v. Flesher*, 605 F.2d 1130, 1132-33 (9th Cir. 1979)
- *Environmental Council of Sacramento v. Slater*, 184 F. Supp. 2d 1016, 1027 (E.D. Cal. 2000)
- *Boardman v. Pacific Seafood Group*, 822 F.3d 1011, 1022 (9th Cir. 2016)
- *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44-45 (1991)
- *Ewing v. Freedom Forever, LLC*, No. 23-CV-1240 JLS (AHG), 2024 WL 4668144, at *3 (S.D. Cal. Nov. 4, 2024)
- *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)

OPINION

Ortega

PER CURIAM.

1 JL 2 WO

3 4 5

6 IN THE UNITED STATES DISTRICT COURT

7 FOR THE DISTRICT OF ARIZONA

8 9 John Anthony Cole, No. CV-26-00973-PHX-JAT (ASB) 10 Plaintiff, 11 v. ORDER 12 F.
 Ortega, et al., 13 Defendants. 14 15 Plaintiff John Anthony Cole, who is confined in the Arizona
 State Prison Complex- 16 Eyman, has filed a pro se civil rights Complaint pursuant to 42 U.S.C. §
 1983 (Doc. 1), an 17 Application to Proceed In Forma Pauperis (Doc. 2), a Motion for Injunctive
 Relief and 18 Protective Order (Doc. 6), a Motion for Preservation of Evidence and/or Motion for
 Leave 19 to Conduct Limited Early Discovery (Doc. 7), and a Motion for Injunctive Relief and 20
 Temporary Restraining Order (Doc. 8). The Court will grant the Application to Proceed; 21 deny
 the Motions without prejudice; order Defendants Simmons, Ortega, Sanchez, Meyers, 22 Rheem,
 Bachman, McCormick, Diaz, Benmen, Fulks, and Levine to answer portions of 23 the Complaint;
 and dismiss the remaining claims and Defendants without prejudice. 24 I. Application to Proceed
 In Forma Pauperis and Filing Fee 25 The Court will grant Plaintiff's Application to Proceed In
 Forma Pauperis. 26 U.S.C. § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28
 U.S.C. 27 § 1915(b)(1). The Court will assess an initial partial filing fee of \$35.49. The remainder
 28 of the fee will be collected monthly in payments of 20% of the previous month's income 1
 credited to Plaintiff's trust account each time the amount in the account exceeds \$10.00. 2 28
 U.S.C. § 1915(b)(2). The Court will enter a separate Order requiring the appropriate 3 government
 agency to collect and forward the fees according to the statutory formula. 4 II. Statutory Screening
 of Prisoner Complaints 5 The Court is required to screen complaints brought by prisoners seeking
 relief 6 against a governmental entity or an officer or an employee of a governmental entity. 28 7

U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised claims that are legally frivolous or malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. U.S.C. § 1915A(b)(1)–(2). A pleading must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does not demand detailed factual allegations, “it demands more than an unadorned, the- defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*, 19 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* “Determining whether a complaint states a plausible claim for relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s specific factual allegations may be consistent with a constitutional claim, a court must assess whether there are other “more likely explanations” for a defendant’s conduct. *Id.* at 681. But as the United States Court of Appeals for the Ninth Circuit has instructed, courts must “continue to construe pro se filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). A “complaint [filed by a pro se prisoner] ‘must be held to less stringent standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v. Pardus*, 551 2 U.S. 89, 94 (2007) (per curiam)).

III. Complaint

In his 12-count Complaint, Plaintiff sues NaphCare and Health Administrator Lauren Fulks; Arizona Department of Corrections, Rehabilitation and Reentry (ADCRR) Director Ryan Thornell; Associate Deputy Warden Rogers; Sergeant Benmen; Correctional Officers (COs) II F. Ortega, Simmons, Chris Sanchez, Diaz, Meyers, Rheem, Bachman, McCormick, and Levine; and John Does 1-10. (Doc. 1 at 1-2.) Plaintiff names each Defendant in his or her individual and official capacities and brings claims of excessive force, denial of constitutionally adequate medical care, retaliation, denial of equal protection, and civil conspiracy. (Id. at 5-17, 20.) Plaintiff also brings state-law claims of assault, battery, intentional infliction of emotional distress, medical negligence, and conversion. (Id. at 18-19.) He seeks declaratory and monetary relief. (Id. at 21.)

In Count One, Plaintiff alleges that on February 22, 2025, Defendants Simmons, Ortega, Sanchez, Meyers, Rheem, Bachman, McCormick, and three John Doe COs II physically assaulted him while he was handcuffed behind his back and restrained with leg shackles. (Id. at 5.) Plaintiff claims Defendant Ortega and one of the John Doe COs II “initiated the initial assault” by slamming Plaintiff’s face into a concrete wall “and then repetitively on the concrete floor.” (Id. at 6.) Plaintiff asserts that Defendants Sanchez and Simmons simultaneously kicked and stomped on Plaintiff with their boots while he was face down on the floor. (Id.) Plaintiff further alleges he was “compliant with all lawful commands,”

non[-]threatening, [and] non-combative” and that he remained composed and 23 non-resistant while he lay “limp in a vulnerable defenseless position.” (Id.) Plaintiff 24 alleges that Defendant John Doe #1 used his knee to kneel on Plaintiff’s neck; John Doe 25 #2 used his body weight and boot to stand on Plaintiff’s elbow; John Doe #3 used his body 26 weight to “suffocate/smo[other]” Plaintiff; John Doe #4 twisted Plaintiff’s left pinky finger, 27 causing it to break; John Doe #5 “violently applied pressure” to Plaintiff’s left thumb “in 28 1 an awkward position of opposite range of motion,” causing torn ligaments and tendons; 2 and John Doe #6 punched Plaintiff in the head. (Id.) 3 According to Plaintiff, Defendant Simmons stated, “Tell the other n*****s that we 4 got the ringleader writing the grievances and [Prison Rape Elimination Act (PREA)] 5 reports”; Defendant Ortega stated, “See if the n*****r’s got on a chain” and “Take the 6 n*****r’s new shoes”; and Defendant Bachman said, “Let me get a lick on the n*****r.” 7 (Id.) Plaintiff also claims Defendant Benmen told Defendant Fulks that Plaintiff was 8 “good,” and no treatment was needed. (Id.) 9 Plaintiff alleges that all Defendants “collectively played a role in the unprovoked 10 assault . . . whether limited or exclusively active,” and each Defendant “simultaneously 11 aided, assisted, conspired, facilit[ated], or failed to intervene.” (Id. at 5.) As his injury, 12 Plaintiff claims he suffered a concussion, headaches, migraines, a broken left pinky finger, 13 broken right ribs, torn ligaments and tendons in his left thumb, body aches, pain, bruising, 14 nerve damage, difficulty sleeping and breathing, post-traumatic stress disorder (PTSD), 15 anxiety, panic attacks, and mental and emotional distress. (Id.) 16 In Count Two, Plaintiff alleges that on February 28, 2025, Defendants Diaz, 17 Simmons, Ortega, Meyers, Sanchez, Rheem, McCormick, and three John Doe COs II 18 physically assaulted him. (Id. at 7.) Plaintiff claims Defendants Diaz and Simmons 19 “initiated the unprovoked attack” on Plaintiff, while he was bound and restrained with 20 handcuffs and leg shackles, by “aggressively and forcefully” pushing him face first into a 21 concrete wall. (Id.) Plaintiff asserts that Diaz “open-hand slapped Plaintiff’s right eye” 22 and “used a closed fist strike as an offensive weapon to punch Plaintiff in his left eye.” 23 Plaintiff further alleges that Defendants Simmons and Ortega “forcefully slammed [his] 24 body onto the concrete floor and repeated the action.” (Id.) According to Plaintiff, 25 Defendant John Doe #1 “used a barrage of close[d] fist strikes as offensive weapons to [hit] 26 Plaintiff’s head and body”; John Doe #2 used steel-toed boots to repeatedly kick Plaintiff 27 in the ribcage while he lay motionless on the floor; John Doe #3 used steel-toed boots to 28 kick Plaintiff’s body while he lay on the ground; John Doe #4 twisted Plaintiff’s left pinky 1 finger until it broke1; and John Doe #5 violently applied pressure to Plaintiff’s left thumb 2 in an “awkward of opposite range of motion” causing ligaments and tendons to be torn. 3 (Id.) 4 Plaintiff asserts that he remained “compliant, composed, non[-]combative, non[- 5]resistant, defenseless, and limp on his stomach” as Defendant Diaz stated, “Let’s give the 6 n*****r a wedgie.” (Id. at 8.) Plaintiff also alleges that Diaz used his body weight to 7 suffocate Plaintiff, placed his hand between Plaintiff’s boxer shorts and bare buttocks, and 8 “violently snatched the waistband of Plaintiff’s boxer shorts from the top of his hips/waist 9 to the middle of Plaintiff’s back below his lower shoulder blades[,] causing

discomfort and 10 bleeding from the anus/rectal skin being scrap[ed, chaf[ed, and torn.” (Id.) Plaintiff 11 claims Defendant Simmons stated, “Yeah since he likes to file PREA[is, this is not sexual 12 assault, it’s payback bxxch.” (Id.) Plaintiff asserts that Defendant Ortega kicked Plaintiff 13 in his right ribs, and Simmons told Ortega, “Break the other ribs, stay away from the right 14 side.” (Id.) Plaintiff alleges that John Doe #5 reapplied Plaintiff’s handcuffs to cut into 15 his wrist and prevent circulation, causing numbness, pain, and nerve damage. (Id.) 16 Plaintiff further claims John Doe #4 “inappropriately applied” his leg shackles “in the same 17 manner described above.” (Id.) Plaintiff contends Defendant Levine “witnessed this 18 assault and refused to intervene.” (Id.) 19 Plaintiff asserts that Defendant Fulks was “cuddled up with” Defendant Benmen 20 when Plaintiff was escorted to the infirmary, where Plaintiff alleges that Benmen “made 21 the statement, ‘no evidence,’ implying the refusal of medical emergency triage.” (Id.) 22 Plaintiff alleges he was “refused medical.” (Id.) 23 Plaintiff alleges that each Defendant “collectively played a role in the unprovoked 24 violent assault” against him, “[w]hether limited or excessively aggressive,” and each 25 Defendant “actively aided, assisted, conspired, facilitated, or failed to intervene.” (Id. at 26 7.) As his injury, Plaintiff alleges he suffered head trauma, a concussion, headache, 27 migraine, body aches, pain, bruising, soreness, broken left ribs, a broken left pinky finger, 28 1 Plaintiff alleges his left pinky finger was broken in the February 22, 2025 incident. 1 torn ligaments and tendons in his left thumb, difficulty breathing and sleeping, nerve 2 damage, numbness, hemorrhoids, anal/rectal tear, chafing, scrapes, PTSD, anxiety, panic 3 attacks, and mental and emotional distress. (Id.) 4 In Count Three, Plaintiff claims Defendant Diaz sexually assaulted him on

5 February 28, 2025, when Diaz placed his hand between Plaintiff’s boxer shorts and bare 6 buttocks and “forcefully and violently snatched the waistband of Plaintiff’s boxer shorts 7 from the top of his hips/waist to the middle of Plaintiff’s back below his lower shoulder 8 blades[.]” (Id. at 9.) Plaintiff alleges that Diaz “perpetuated this act of inappropriate sexual 9 contact while Plaintiff was face down on his stomach on the concrete ground” and 10 restrained by handcuffs, leg restraints, and the weight of multiple COs “in the form of feet, 11 knees, and forced hand pressure.” (Id.) Plaintiff asserts that no other Defendant named in 12 Count Two “intervened during the sexual assault.” (Id.) 13 In Count Four, Plaintiff alleges Defendants NaphCare, Fulks, Simmons, Ortega, 14 Sanchez, Meyers, Rheem, Benmen, Bachman, McCormick, and three John Doe COs II 15 denied him medical care, treatment, triage, examination, diagnosis, and aftercare. (Id. at 16 10.) Plaintiff asserts that Defendant Fulks intentionally denied him medical treatment, 17 although it was “obvious” that Plaintiff had visible injuries consistent with a physical 18 altercation. (Id.) Plaintiff claims he “conveyed to Fulks his need for medical attention,” 19 and when she asked how he sustained his injuries, Plaintiff told Fulks that the “ADCRR 20 CO[is had caused the injuries.” (Id.) Plaintiff alleges that Defendant Benmen told Fulks, 21 “He’s good, no treatment needed.” (Id.) Plaintiff also claims the Defendants who allegedly 22 assaulted him, as described in Counts One and Two, should have known that his injuries 23 necessitated emergency

medical treatment, and their “negligence” violated his Eighth 24 Amendment rights. (Id.) 25 In Count Five, Plaintiff repeats the allegation that during the February 22, 2025 26 incident, Defendant Simmons stated, “Tell the other n*****s that we got the ringleader 27 writing the grievances and PREA reports.” (Id. at 11.) Plaintiff asserts that he “took this 28 comment to [mean] that the sole reason, logic, and justification for the unprovoked assault 1 was Plaintiff’s utilization of the administrative remedy process to report ADCRR employee 2 misconduct.” (Id.) According to Plaintiff, this “direct admission by Defendant Simmons 3 provides motive for the assault” and violates Plaintiff’s First Amendment rights. (Id.) 4 Plaintiff further claims that Defendants NaphCare and Fulks retaliated against 5 Plaintiff by refusing him emergency medical treatment/triage because Plaintiff “made 6 allegations to NaphCare that the injuries sustained were the result of ADCRR staff 7 misconduct.” (Id.) 8 In Count Six, Plaintiff alleges that he was denied equal protection during the 9 incidents on February 22 and 28, 2025. (Id. at 12.) Plaintiff claims that Defendants “used 10 racial animus in the form de[]logatory speech designed to inflame, create hostility, terror, 11 intimidation, fear, and racial inferiority/superiority.” (Id.) Plaintiff contends “[t]his form 12 of racial animus in the commission of a violent crime violates [his] civil rights as a federal 13 hate crime being perpetrated against a minority victim” because he is African-American, 14 and none of the Defendants are African-American. (Id.) 15 In Count Seven, Plaintiff alleges that Defendants engaged in a civil conspiracy. (Id. 16 at 13.) Plaintiff asserts that on January 27, 2025, he submitted a PREA complaint against 17 a non-party CO. (Id.) Plaintiff claims the February 22, 2025 incident was a “preplanned 18 strategic attack calculated by” Defendants’ “conspiracy to retaliate against Plaintiff” for 19 submitting the grievance and PREA report. (Id. at 14.) 20 Plaintiff alleges that on February 21, 2025, Defendants “conspired to violently 21 attack, assault, kill, maim, hurt and injure” Plaintiff and gave “advanced forewarning 22 notice” about the incident that transpired the next day. (Id. at 13, 14.) Plaintiff claims 23 Defendant Ortega “taunted Plaintiff with chants of ‘Cell-9, Cole, go to rec.’” (Id. at 13.) 24 Plaintiff asserts Defendant Simmons stated, “Cole we got something for you . . . Don’t 25 bxxch out . . . Go to rec.” (Id.) Plaintiff alleges that Defendant Simmons threatened him 26 on four separate occasions on February 21, stating, “We will kill you and nobody will 27 care,” and “We’re going to smash you when you go to rec.” (Id.) Plaintiff claims he 28 1 “documented these encounters” through the ADCRR injunction portal and the inmate 2 emergency hotline. (Id.) 3 Plaintiff asserts that on the morning of February 22, 2026, Defendant Bachman 4 came to Plaintiff’s cell and stated, “See you there n*****r, don’t bxxch up!” (Id. at 14.) 5 According to Plaintiff, this was “in reference to going to outdoor recreation to expect to be 6 in a physical altercation.” (Id.) Plaintiff claims that after the “physical assault” began on

7 February 22, Defendant Simmons yelled, “Sarge, call Rogers tell him it’s done.” (Id.)

8 Plaintiff alleges that Defendant Rogers “obviously was awar[e] of the preplanned strategic 9 assault on Plaintiff,” as “confirmed” by Simmons’s statement. (Id.) 10 In Count Eight, Plaintiff alleges that after the February 28, 2025 incident, 11 Defendants NaphCare, Fulks, Diaz, Benmen,

Simmons, Ortega, Sanchez, Meyers, Rheem, 12 Bachman, McCormick, and three John Doe COs II showed deliberate indifference to 13 Plaintiff's serious medical needs. (Id. at 15.) Plaintiff claims that when he was taken to 14 the medical unit, Defendant Benmen was physically "cuddled up" with Defendant Fulks, 15 and Benmen told Fulks, "no evidence" while shaking his head "no," to "suggest no medical 16 services." (Id.) Plaintiff asserts Defendant Fulks refused Plaintiff medical services and 17 told a medical provider that she could not take photos of Plaintiff's injuries. (Id.) Plaintiff 18 alleges the ADCRR COs "each used intimidation tactics to influence NaphCare medical to 19 refuse Plaintiff medical services by surrounding Plaintiff and blocking access, walkway, 20 pathway for medical personnel to effectively assess Plaintiff's injuries." (Id.) 21 In Count Nine, Plaintiff repeats his allegation that during the February 28, 2025 22 incident, Defendant Simmons stated, "Yeah since he likes to file PREA[]s, this is not sexual 23 assault, it's payback bxxch." (Id. at 16.) Plaintiff claims the assault on February 28 was 24 "motivated by" his use of the administrative remedy process and available PREA reporting 25 methods and that Defendant Ortega said Plaintiff had "lawyered up" with respect to the 26 February 22, 2025 incident. (Id.) Plaintiff further alleges that Defendants NaphCare and 27 Fulks retaliated against him by refusing him medical services for reporting ADCRR 28 employee misconduct. (Id.) 1 In Count Ten, Plaintiff alleges that Defendant Levine knowingly and willingly 2 failed to intervene and prevent the assault against Plaintiff on February 28, 2025. (Id. at 3 17.) 4 In Count Eleven, Plaintiff asserts that Defendants committed the crimes of 5 aggravated assault, sexual assault, and unlawful sexual conduct. (Id. at 18.) Plaintiff also 6 asserts claims of conversion, medical negligence, and intentional infliction of emotional 7 distress. (Id. at 19.) 8 In Count Twelve, Plaintiff alleges that Defendant Rogers "used his position to 9 establish unwritten policies, practices, customs, and a culture of retaliation, systemic 10 targeting, threatening, intimidation, and physical brutality." (Id. at 20.) Plaintiff asserts 11 that Rogers "fostered a culture of hostility with ag[]ressive hands[-]on tactics utilizing 12 ADCRR CO[]s" to "execute his agenda of breaking inmates." (Id.) Plaintiff claims he was 13 "targeted" by Defendant Rogers on multiple occasions with "documented" daily 14 harassment, sexual harassment, "physical/sexual assaultive violence," and denial of 15 medical care. (Id.) Plaintiff contends Rogers was aware of these practices and had 16 "advance[] knowledge" of the February 22, 2025 incident. (Id.) 17 IV. Discussion of Complaint 18 To prevail in a § 1983 claim, a plaintiff must show that (1) acts by the defendants 19 (2) under color of state law (3) deprived him of federal rights, privileges or immunities and 20 (4) caused him damage. *Thornton v. City of St. Helens*, 425 F.3d 1158, 1163-64 (9th Cir. 21 2005) (quoting *Shoshone-Bannock Tribes v. Idaho Fish & Game Comm'n*, 42 F.3d 1278, 22 1284 (9th Cir. 1994)). In addition, a plaintiff must allege that he suffered a specific injury 23 as a result of the conduct of a particular defendant and he must allege an affirmative link 24 between the injury and the conduct of that defendant. *Rizzo v. Goode*, 423 U.S. 362, 371- 25 72, 377 (1976). 26 A. NaphCare 27 To state a claim under § 1983 against a private entity performing a traditional public 28 function, such as providing medical care to prisoners, a plaintiff must allege

facts to support 1 that his constitutional rights were violated as a result of a policy, decision, or custom 2 promulgated or endorsed by the private entity. See *Tsao v. Desert Palace, Inc.*, 698 F.3d 3 1128, 1138-39 (9th Cir. 2012); *Buckner v. Toro*, 116 F.3d 450, 452 (11th Cir. 1997) (per 4 curiam). A plaintiff must allege the specific policy or custom and how it violated his 5 constitutional rights. A private entity is not liable merely because it employs persons who 6 allegedly violated a plaintiff's constitutional rights. See *Tsao*, 698 F.3d at 1139; *Buckner*, 7 116 F.3d at 452. 8 Plaintiff does not allege that any of the conduct described in the Complaint was the 9 result of a specific policy or custom of Defendant NaphCare. Thus, the Court will dismiss 10 without prejudice Defendant NaphCare. 11

B. Official versus Individual Capacity 12 A suit against a defendant in his or her individual capacity seeks to impose personal 13 liability upon the official. *Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985). For a person 14 to be liable in his or her individual capacity, "[a] plaintiff must allege facts, not simply 15 conclusions, that show that an individual was personally involved in the deprivation of his 16 civil rights." *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998). By comparison, 17 a suit against a defendant in his or her official capacity represents only another way of 18 pleading an action against the entity that employs the defendant. *Kentucky*, 473 U.S. at 19 165. That is, the real party in interest is not the named defendant, but the entity that 20 employs the defendant. *Id.* To bring a claim against an individual in his official capacity, 21 a plaintiff must show that the constitutional deprivation resulted from the entity's policy, 22 custom, or practice. *Id.*; *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978). 23 Although Plaintiff has named Defendants in both their individual and official 24 capacities, Plaintiff's allegations fail to plausibly show that any policy, practice, or custom 25 of any entity has resulted in his alleged injuries. Accordingly, the Court will construe 26 Plaintiff's claims as directed against the Defendants in their individual capacities only and 27 will evaluate them accordingly. 28

1 C. Supervisory Liability 2 There is no respondeat superior liability under § 1983, and therefore, a defendant's 3 position as the supervisor of persons who allegedly violated Plaintiff's constitutional rights 4 does not impose liability. *Monell*, 436 U.S. 658; *Hamilton v. Endell*, 981 F.2d 1062, 1067 5 (9th Cir. 1992); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). "Because vicarious 6 liability is inapplicable to Bivens and § 1983 suits, a plaintiff must plead that each 7 Government-official defendant, through the official's own individual actions, has violated 8 the Constitution." *Iqbal*, 556 U.S. at 676. 9 Plaintiff has not alleged that Defendant Thornell personally participated in a 10 deprivation of Plaintiff's constitutional rights, was aware of a deprivation and failed to act, 11 or formed policies that resulted in Plaintiff's injuries. Rather, Plaintiff names Thornell 12 solely based on Thornell's role as ADCRR Director. Thus, the Court will dismiss 13 Defendant Thornell. 14 With respect to Defendant Rogers, Plaintiff claims Rogers "targeted" Plaintiff with 15 "documented" daily harassment, sexual harassment, "physical/sexual assaultive violence," 16 and denial of medical care. Such vague and conclusory allegations are not sufficient to 17 show that Rogers was personally involved in a deprivation of Plaintiff's constitutional 18 rights, was aware of a deprivation and failed to act, or

formed policies that resulted in 19 Plaintiff's injuries. The Court will therefore dismiss Defendant Rogers. 20 D. Excessive Force 21 When an inmate claims that prison officials violated his Eighth Amendment rights 22 by using excessive physical force, the relevant inquiry is "whether force was applied in a 23 good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause 24 harm." *Hudson v. McMillian*, 503 U.S. 1, 7 (1992). However, the Supreme Court has 25 made it clear that not every use of physical force violates the Eighth Amendment: 26 That is not to say that every malevolent touch by a prison guard 27 gives rise to a federal cause of action. See *Johnson v. Glick*, 481 F.2d [1028, 1033 (2nd Cir. 1973)] ("Not every push or 28 shove, even if it may later seem unnecessary in the peace of a judge's chambers, violates a prisoner's constitutional rights").

1 Id. at 9.

2 Liberally construed, Plaintiff has stated an excessive force claim in Count One 3 against Defendants Simmons, Ortega, Sanchez, Meyers, Rheem, Bachman, and 4 McCormick, and John Does 1-6 and in Count Two against Defendants Diaz, Simmons, 5 Ortega, Meyers, Sanchez, Rheem, McCormick, and John Does 1-5. The Court will require 6 Defendants Simmons, Ortega, Sanchez, Meyers, Rheem, Bachman, and McCormick to 7 answer Count One and order Defendants Diaz, Simmons, Ortega, Meyers, Sanchez, 8 Rheem, and McCormick to answer Count Two. 9 Although Plaintiff has stated a claim against Defendants John Does 1-6, the Court 10 will not require service on the Doe Defendants at this time because it is, in most instances, 11 impossible for the United States Marshal or his designee to serve a summons and complaint 12 upon an anonymous defendant. 13 The Ninth Circuit has held that where identity is unknown prior to the filing of a 14 complaint, the plaintiff should be given an opportunity through discovery to identify the 15 unknown defendants, unless it is clear that discovery would not uncover the identities, or 16 that the complaint would be dismissed on other grounds. *Wakefield v. Thompson*, 177 F.3d 17 1160, 1163 (9th Cir. 1999) (citing *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980)). 18 The Court will allow Plaintiff 120 days in which to discover the actual name of Defendants 19 John Does 1-6, through subpoena or otherwise, and to substitute the Defendant's actual 20 name by filing a "notice of substitution." See *Wakefield*, 177 F.3d at 1163. The Court may 21 dismiss these Defendants without prejudice if Plaintiff fails to timely file a notice of 22 substitution, unless Plaintiff seeks and is granted an extension of time. 23 E. Failure to Intervene 24 In Count Ten, Plaintiff alleges that Defendant Levine witnessed the February 28, 25 2025 incident but failed to intervene. An officer's failure to intervene in unconstitutional 26 conduct can support a claim where the officer has a realistic opportunity to intervene but 27 fails to do so. *Cunningham v. Gates*, 229 F.3d 1271, 1289 (9th Cir. 2000); see also *Lolli 28 v. County of Orange*, 351 F.3d 410, 418 (9th Cir. 2003). Such a claim is dependent on the 1 existence of an underlying claim against the officers who directly violated a plaintiff's 2 constitutional rights. See, e.g., *Perez v. City of Fresno*, 591 F. Supp. 3d 725, 752 n.21 (E.D.

3 Cal. 2022); *Valadez v. County of Los Angeles*, No. 2:20-CV-03724-JWH-SKX, 2024 WL

4 3153207, at *16 (C.D. Cal. June 24, 2024). 5 Liberally construed, Plaintiff has stated a claim in Count Ten against Defendant 6 Levine. The Court will require Defendant Levine to answer Count Ten. 7 F. Sexual Assault 8 Physical sexual assault on a prisoner by a prison official violates the Eighth 9 Amendment, *Schwenk v. Hartford*, 204 F.3d 1187, 1197 (9th Cir. 2000), and “prisoners 10 have a right to be free from sexual abuse,” *Austin v. Terhune*, 367 F.3d 1167, 1171 (9th 11 Cir. 2004). To state a claim, Plaintiff must allege that “a prison staff member, acting under 12 color of law and without legitimate penological justification, touched the prisoner in a 13 sexual manner or otherwise engaged in sexual conduct for the staff member’s own sexual 14 gratification, or for the purpose of humiliating, degrading, or demeaning the prisoner.” 15 *Bearchild v. Cobban*, 947 F.3d 1130, 1144 (9th Cir. 2020); see also *Wood v. Beauclair*, 16 692 F.3d 1041, 1050 (9th Cir. 2012) (sexually touching and harassing prisoner during a 17 strip search “in a manner designed to demean and humiliate” can state an Eighth 18 Amendment claim); *Hill v. Rowley*, 658 F. App’x 840, 841 (9th Cir. 2016) (prison officer’s 19 “gripping” a prisoner’s buttocks “intentionally to discriminate against him” stated claim 20 for sexual harassment under the Eighth Amendment). 21 Plaintiff fails to state a claim for sexual assault against Defendant Diaz. “The Eighth 22 Amendment’s prohibition of ‘cruel and unusual’ punishments necessarily excludes from 23 constitutional recognition de minimis uses of physical force, provided that the use of force 24 is not of a sort ‘repugnant to the conscience of mankind.’” *Hudson*, 503 U.S. at 9 (citation 25 omitted); see, e.g., *Watson v. Carter*, 668 F.3d 1108, 1112-14 (9th Cir. 2012) (finding no 26 Eighth Amendment violation where officer allegedly rubbed his thigh against plaintiff’s 27 thigh while plaintiff was on toilet and began smiling before leaving cell laughing). 28 Plaintiff’s allegation that Defendant Diaz gave him a “wedgie” fails to state a claim under 1 § 1983 because it is “the sort of trivial use of force that falls below constitutional 2 recognition.” *Morman v. Dyer*, No. 16-cv-01523-SI, 2016 WL 5358592, at 3 (N.D. Cal. 3 Sept. 26, 2016); see also *Walker v. Beshara*, No. 1:20-cv-01050-JLT-HBK (PC), 2023 WL 4 8654745, at *6 (E.D. Cal. Apr. 4, 2023) (allegation that officer grabbed plaintiff’s pants 5 from the back and “forcefully yank[ed] the pants up into [the plaintiff’s] private area and 6 buttocks[,] causing excruciating pain,” did not state an Eighth Amendment excessive force 7 claim); *Cooper v. Woodford*, No. 1:07-cv-00214-AWI-GSA PC, 2008 WL 1734557, at *3, 8 (E.D. Cal. Apr. 11, 2008) (“Plaintiff’s allegations that Defendant Morales slammed him 9 into the wall and gave him a wedgie in an effort to provoke him fall short of supporting a 10 claim that Defendant inflicted upon him physical force which rose to the level of sadistic 11 and malicious.”). The Court will therefore dismiss Count Three. 12 G. Medical Care 13 Not every claim by a prisoner relating to inadequate medical treatment states a 14 violation of the Eighth Amendment. To state a § 1983 medical claim, a plaintiff must show 15 (1) a “serious medical need” by demonstrating that failure to treat the condition could result 16 in further significant injury or the unnecessary and wanton infliction of pain and (2) the 17 defendant’s response was deliberately indifferent. *Jett v. Penner*, 439 F.3d 1091, 1096 (9th

18 Cir. 2007). Plaintiff’s claim that Defendant Diaz gave him a “wedgie” fails to state a claim under 1 § 1983 because it is “the sort of trivial use of force that falls below constitutional 2 recognition.” *Morman v. Dyer*, No. 16-cv-01523-SI, 2016 WL 5358592, at 3 (N.D. Cal. 3 Sept. 26, 2016); see also *Walker v. Beshara*, No. 1:20-cv-01050-JLT-HBK (PC), 2023 WL 4 8654745, at *6 (E.D. Cal. Apr. 4, 2023) (allegation that officer grabbed plaintiff’s pants 5 from the back and “forcefully yank[ed] the pants up into [the plaintiff’s] private area and 6 buttocks[,] causing excruciating pain,” did not state an Eighth Amendment excessive force 7 claim); *Cooper v. Woodford*, No. 1:07-cv-00214-AWI-GSA PC, 2008 WL 1734557, at *3, 8 (E.D. Cal. Apr. 11, 2008) (“Plaintiff’s allegations that Defendant Morales slammed him 9 into the wall and gave him a wedgie in an effort to provoke him fall short of supporting a 10 claim that Defendant inflicted upon him physical force which rose to the level of sadistic 11 and malicious.”). The Court will therefore dismiss Count Three. 12 G. Medical Care 13 Not every claim by a prisoner relating to inadequate medical treatment states a 14 violation of the Eighth Amendment. To state a § 1983 medical claim, a plaintiff must show 15 (1) a “serious medical need” by demonstrating that failure to treat the condition could result 16 in further significant injury or the unnecessary and wanton infliction of pain and (2) the 17 defendant’s response was deliberately indifferent. *Jett v. Penner*, 439 F.3d 1091, 1096 (9th

18 Cir. 2006).

19 “Deliberate indifference is a high legal standard.” *Toguchi v. Chung*, 391 F.3d 20 1051, 1060 (9th Cir. 2004). To act with deliberate indifference, a prison official must both 21 know of and disregard an excessive risk to inmate health; “the official must both be aware 22 of facts from which the inference could be drawn that a substantial risk of serious harm 23 exists, and he must also draw the inference.” *Farmer*, 511 U.S. at 837. Deliberate 24 indifference in the medical context may be shown by a purposeful act or failure to respond 25 to a prisoner’s pain or possible medical need and harm caused by the indifference. *Jett*, 26 439 F.3d at 1096. Deliberate indifference may also be shown when a prison official 27 intentionally denies, delays, or interferes with medical treatment or by the way prison 28 1 doctors respond to the prisoner’s medical needs. *Estelle v. Gamble*, 429 U.S. 97, 104-05 2 (1976); *Jett*, 439 F.3d at 1096. 3 As noted, deliberate indifference is a higher standard than negligence or lack of 4 ordinary due care for the prisoner’s safety. *Farmer*, 511 U.S. at 835. “Neither negligence 5 nor gross negligence will constitute deliberate indifference.” *Clement v. Cal. Dep’t of 6 Corr.*, 220 F. Supp. 2d 1098, 1105 (N.D. Cal. 2002); see also *Broughton v. Cutter Labs.*, 7 622 F.2d 458, 460 (9th Cir. 1980) (mere claims of “indifference,” “negligence,” or 8 “medical malpractice” do not support a claim under § 1983). “A difference of opinion does 9 not amount to deliberate indifference to [a plaintiff’s] serious medical needs.” *Sanchez v. 10 Vild*, 891 F.2d 240, 242 (9th Cir. 1989). A mere delay in medical care, without more, is 11 insufficient to state a claim against prison officials for deliberate indifference. See *Shapley 12 v. Nev. Bd. of State Prison Comm’rs*, 766 F.2d 404, 407 (9th Cir. 1985). The indifference 13 must be substantial. The action must rise to a level of “unnecessary and wanton infliction 14 of pain.” *Estelle*, 429 U.S. at 105. 15 Liberally construed, Plaintiff has stated Eighth Amendment claims against 16 Defendants Benmen and Fulks in Counts Four and Eight. The Court will require 17 Defendants Benmen and Fulks to answer Counts Four and Eight. 18 Plaintiff does not state medical care claims against the Defendants who allegedly 19 assaulted him on February 22 and 28, 2025. Plaintiff does not allege that Defendants Diaz, 20 Simmons, Ortega, Sanchez, Meyers, Rheem, Bachman, McCormick, or the John Doe COs 21 II delayed Plaintiff’s transport to the medical unit or otherwise prevented Plaintiff from 22 obtaining medical treatment. 23 H. Retaliation 24 A viable claim of First Amendment retaliation contains five basic elements: (1) an 25 assertion that a state actor took some adverse action against an inmate (2) because of 26 (3) that prisoner’s protected conduct, and that such action (4) chilled the inmate’s exercise 27 of his First Amendment rights (or that the inmate suffered more than minimal harm) and 28 (5) did not reasonably advance a legitimate correctional goal. *Rhodes v. Robinson*, 408 1 F.3d 559, 567-68 (9th Cir. 2005); see also *Hines v. Gomez*, 108 F.3d 265, 267 (9th Cir. 2 1997) (retaliation claim requires an inmate to show (1) that the prison official acted in 3 retaliation for the exercise of a constitutionally protected right, and (2) that the action 4 “advanced no legitimate penological interest”). The plaintiff has the burden of 5 demonstrating that his exercise of his First Amendment rights was a substantial or 6 motivating factor behind the defendants’ conduct. *Mt. Healthy City*

Sch. Dist. Bd. of Educ. 7 v. Doyle, 429 U.S. 274, 287 (1977); Soranno’s Gasco, Inc. v. Morgan, 874 F.2d 1310, 1314 8 (9th Cir. 1989). 9 1. Count Five 10 Liberally construed, Plaintiff states a retaliation claim in Count Five against 11 Defendant Simmons. The Court will require Defendant Simmons to answer Count Five. 12 Plaintiff’s allegations in Count Five do not state a retaliation claim against the 13 remaining Defendants. Plaintiff does not allege that on February 22, 2025, Defendants 14 Benmen, Fulks, Diaz, Ortega, Sanchez, Meyers, Rheem, Bachman, McCormick, or the 15 John Doe COs II were aware that Plaintiff had submitted a grievance and PREA report 16 against the CO. 17 2. Count Nine 18 Liberally construed, Plaintiff states a retaliation claim in Count Nine against 19 Defendants Simmons and Ortega. The Court will require Defendants Simmons and Ortega 20 to answer Count Nine. 21 Plaintiff’s allegations in Count Nine do not state a retaliation claim against the 22 remaining Defendants. Plaintiff does not allege that on February 28, 2025, Defendants 23 Benmen, Fulks, Diaz, Sanchez, Meyers, Rheem, Bachman, McCormick, or the John Doe 24 COs II were aware that Plaintiff had submitted a grievance and PREA report against the 25 CO or that he had contacted a lawyer regarding the February 22, 2025 incident. 26 I. Equal Protection 27 “To state a § 1983 claim for violation of the Equal Protection Clause, a plaintiff 28 must show that he was treated in a manner inconsistent with others similarly situated, and 1 that the defendants acted with an intent or purpose to discriminate against the plaintiff 2 based upon membership in a protected class.” Thornton v. City of St. Helens, 425 F.3d 3 1158, 1166–67 (9th Cir. 2005) (internal quotations omitted). Plaintiff alleges he is African- 4 American, and during the February 22 and 28, 2025 incidents, Defendants Simmons, 5 Ortega, Bachman, and Diaz used racial slurs, suggesting their conduct was motivated by 6 racial bias. 7 Liberally construed, Plaintiff has stated an equal protection claim in Count Six 8 against Defendants Simmons, Ortega, Bachman, and Diaz. The Court will require 9 Defendants Simmons, Ortega, Bachman, and Diaz to answer Count Six. 10 Plaintiff fails to state an equal protection claim against the remaining Defendants 11 who were involved in the February 22 and 28, 2025 incidents. Plaintiff alleges no facts to 12 support that the other Defendants made any racially charged statements or exhibited any 13 other racial animus toward Plaintiff. 14 J. Civil Conspiracy 15 In Count Seven, Plaintiff purports to assert a claim for civil conspiracy under § 1983. 16 To state a conspiracy claim under § 1983, a plaintiff must allege specific facts showing two 17 or more persons intended to accomplish an unlawful objective of causing plaintiff harm 18 and took some concerted action in furtherance thereof. Gilbrook v. City of Westminster, 19 177 F.3d 839, 856–57 (9th Cir. 1999); Margolis v. Ryan, 140 F.3d 850, 853 (9th Cir. 1998) 20 (to state claim for conspiracy under § 1983, plaintiff must allege facts showing an 21 agreement among the alleged conspirators to deprive him of his rights); Delew v. Wagner, 22 143 F.3d 1219, 1223 (9th Cir. 1998) (to state claim for conspiracy under § 1983, plaintiff 23 must allege at least facts from which such an agreement to deprive him of rights may be 24 inferred). The Court “need not, however, accept as true allegations that are merely 25 conclusory, unwarranted deductions of fact, or unreasonable inferences.” Sprewell v. 26 Golden State Warriors, 266 F.3d 979, 988 (9th Cir.),

amended on other grounds, 275 F.3d 27 1187 (9th Cir. 2001); see also *Woodrum v. Woodward County*, 866 F.2d 1121, 1126 (9th Cir. 1989) (conclusory allegations of conspiracy did not support a § 1983 claim); *Karim-1 Panahi v. L.A. Police Dep't*, 839 F.2d 621, 626 (9th Cir. 1988) (“A mere allegation of 2 conspiracy without factual specificity is insufficient.”). 3 Plaintiff’s allegations do not state a claim for civil conspiracy. Plaintiff alleges no 4 facts to support that any Defendants made an agreement to deprive him of his rights. The 5 Court will therefore dismiss Count Seven. 6 K. State-Law Claims 7 As noted, in Count Eleven, Plaintiff purports to assert claims for the crimes of 8 aggravated assault, sexual assault, and sexual misconduct against Defendants. Neither 9 Plaintiff nor this Court may initiate criminal charges against any person. 10 Plaintiff also asserts claims for intentional infliction of emotional distress, medical 11 negligence, and conversion against Defendants NaphCare, Thornell, Simmons, Diaz, 12 Ortega, Sanchez, Meyers, Rheem, Benmen, Bachman, and Fulks. Plaintiff may not assert 13 more than one claim per count, but in Count Eleven, he has asserted five claims against 14 nine Defendants. Plaintiff’s vague and conclusory allegations in Count Eleven are 15 insufficient to state a claim. The Court will therefore dismiss Count Eleven. 16 V. Plaintiff’s Motions 17 A. Injunctive Relief 18 1. Plaintiff’s Allegations 19 In his first Motion for Injunctive Relief, Plaintiff seeks a “temporary and/or 20 permanent injunction or order of protection” against ADCRR “employees and policies that 21 have systematically targeted [him].” (Doc. 6.) Plaintiff alleges the following: 22 On February 12, 2026—two days after he filed the Complaint in this case— 23 Defendant Diaz and three other ADCCR officers who are not named in the Complaint 24 arrived at Plaintiff’s cell to escort him to recreation, although Plaintiff had not signed up 25 for recreation. (Doc. 6 at 2.) The officers “stated that they knew of the pending litigation 26 that had been submitted.” (Id.) Shortly thereafter, Plaintiff called the institutional medical 27 emergency line to make a mental health emergency request based on post-traumatic stress 28 disorder, anxiety, and panic attacks induced by the “harassment [and] intimidation tactics 1 deployed by Defendant Diaz[]” and other officers who had knowledge of the Complaint. 2 (Id. at 2-3.) 3 Later that day, a sergeant returned to Plaintiff’s cell with Defendant Diaz and three 4 other COs. (Id. at 3.) The officers tried to “coerce” Plaintiff out of his cell for a shower. 5 (Id.) At the time, Plaintiff had not been out of his cell since January 19, 2026; had not had 6 a shower since January 4, 2026; and had not had recreation since October 18 or 19, 2025. 7 (Id.) Plaintiff “was questioned” and harassed about this case “mere hours” after it was 8 filed. (Id.) The sergeant threw Plaintiff’s medical prescription on the floor, and the officers 9 left. (Id.) The same day, the second shift “refused to issue the last meal,” per the sergeant. 10 (Id.) 11 On February 13, 2026, Plaintiff was denied three consecutive meals. (Id.) The next 12 day, Plaintiff again was denied three consecutive meals. (Id. at 3-4.) He also refused 13 outside recreation, a shower, and scheduled x-rays because he feared for his life, health, 14 safety, and security. (Id. at 4.) On one of those dates, the sergeant opened Plaintiff’s food 15 slot but “refused to feed” Plaintiff and instead “stole Plaintiff’s weekly toilet paper 16 allotment.” (Id.) 17 Between February

15 and 18, 2026, the “back end” shift rotation for Browning Unit 18 started and ended. (Id.) Plaintiff received all his meals with no issues. (Id.) No officer 19 on the “back end” shift is listed as a Defendant in this case. (Id.) On February 18, 2026, 20 Defendant Ortega “made an inappropriate gesture to mimic blowing a kiss and winking his 21 eye which is deemed to be sexual harassment” under ADCRR Department Order 501. (Id.) 22 While Defendant Ortega had his back to the surveillance camera, Plaintiff submitted a 23 PREA complaint and a complaint to the inmate emergency PREA institutional hotline. 24 (Id.) Plaintiff also made a call to the institutional emergency medical/mental health call 25 center seeking mental health treatment for PTSD, anxiety, and a panic attack “induced by” 26 Defendant Ortega. (Id. at 4-5.) Plaintiff submitted a message/complaint to the inmate 27 ombudsman and a complaint to the ADCRR injunction portal. (Id. at 5.) Plaintiff also 28 spoke with the Court Monitor “concerning issues listed in this statement of facts.” (Id.) 1 On the evening of February 18, 2026, a sergeant refused to issue Plaintiff’s evening 2 meal with no justification. (Id.) The next morning, officers refused to issue Plaintiff’s 3 morning meal with no justification. (Id.) Plaintiff made complaints to the inmate 4 ombudsman, the institutional medical/mental health emergency hotline, and the injunction 5 portal. (Id.) Officers refused to issue Plaintiff’s noon meal that day, without justification. 6 (Id.) 7 In his second Motion for Injunctive Relief, Plaintiff “seek[s] relief in the form of an 8 injunction to keep” Defendants Ortega and Diaz “away from him” and an immediate 9 transfer to any other facility of the Browning Unit if Defendants “are unable to comply 10 with a court injunction.” (Doc. 8 at 14.) Plaintiff alleges the following: 11 On March 18, 2026, Plaintiff received an ADCRR Institutional Disciplinary Report, 12 which Defendant Rheem had issued on March 13, 2026. (Id. at 2.) According to Plaintiff, 13 the report is “fraudulent” and is “a form of retaliation designed to place [his] life, health, 14 safety, security and well[-]being in jeopardy by labeling him as a sex offender or a sexually 15 devi[a]nt predator in prison.” (Id.) 16 Plaintiff alleges that he is being “systematically targeted” by the Defendants he has 17 named in his cases in this Court, who “use physical intimidation tactics designed to create 18 a hostile environment by instilling fear into [him].” (Id. at 13.) Plaintiff asserts that 19 Defendants’ behavior “serves no legitimate penological interest and creates an unsafe, 20 unhealthy atmosphere” for him. (Id.) Plaintiff states that he “reserves the right to protect 21 and defend himself against any perceived threat upon his life, persons, or property by using 22 any and all force necessary including legal in an offensive or defensive manner to preserve 23 his life.”² 24 25 2 The Court construes this statement as a threat to ADCRR officers. The Court will 26 not tolerate threats of violence, and any further threats may result in dismissal of this case. See *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44–45 (1991) (federal courts have the inherent 27 power to “fashion an appropriate sanction for conduct which abuses the judicial process”); *Ewing v. Freedom Forever, LLC*, No.: 23-CV-1240 JLS (AHG), 2024 WL 4668144, at *3 28 (S.D. Cal. Nov. 4, 2024) (“Terminating sanctions are more than justified in situations of repeated threats of violence.”). 1 2. Discussion 2 Whether to grant or deny a motion for a temporary restraining order or preliminary 3 injunction is within the Court’s discretion. See

Miss Universe, Inc. v. Flesher, 605 F.2d 4 1130, 1132-33 (9th Cir. 1979). 5 a. Temporary Restraining Order 6 A temporary restraining order can be issued without notice 7 only if: (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or 8 damage will result to the movant before the adverse party can be heard in opposition; and (B) the movant's attorney certifies 9 in writing any efforts made to give notice and the reasons why 10 it should not be required. 11 Fed. R. Civ. P. 65(b)(1) (emphasis added). See also LRCiv 65.1 ("Ex parte restraining 12 orders shall only issue in accordance with Rule 65, Federal Rules of Civil Procedure."). 13 Plaintiff has not shown that he will suffer irreparable injury before Defendants can 14 be heard in opposition and has not certified the "efforts made to give notice and the reasons 15 why it should not be required." Fed. R. Civ. P. 65(b)(1)(B). Because the request for a 16 temporary restraining order fails to comply with Rule 65(b)(1)(B), the Court, in its 17 discretion, will deny Plaintiff's request for a temporary restraining order without prejudice. 18 See LRCiv 65.1. 19 b. Motion for Preliminary Injunction 20 To obtain a preliminary injunction, the moving party must show "that he is likely to 21 succeed on the merits, that he is likely to suffer irreparable harm in the absence of 22 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in 23 the public interest." Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). The 24 moving party has the burden of proof on each element of the test. Envtl. Council of 25 Sacramento v. Slater, 184 F. Supp. 2d 1016, 1027 (E.D. Cal. 2000). 26 Plaintiff has not shown that he is likely to suffer irreparable harm in the absence of 27 an injunction. See Boardman v. Pac. Seafood Grp., 822 F.3d 1011, 1022 (9th Cir. 2016) 28 (explaining that "[s]peculative injury does not constitute irreparable injury sufficient [to 1 obtain a preliminary injunction]"). The Court will therefore deny his requests for 2 injunctive relief without prejudice. 3 B. Motion for Preservation of Evidence 4 In his Motion for Preservation of Evidence, Plaintiff asks the Court to order 5 Defendants and ADCRR to preserve security camera footage, body worn camera footage, 6 prison unit logs, and employee roster attendance records. The Court will deny Plaintiff's 7 requests. As discussed, the Court will direct service on Defendants Simmons, Ortega, 8 Sanchez, Meyers, Rheem, Bachman, McCormick, Diaz, Benmen, Fulks, and Levine. After 9 one or more Defendants have been served, the Court will issue a scheduling order that sets 10 forth deadlines for discovery. Until then, any motions for discovery are premature and will 11 be denied. 12 VI. Warnings 13 A. Release 14 If Plaintiff is released while this case remains pending, and the filing fee has not 15 been paid in full, Plaintiff must, within 30 days of his release, either (1) notify the Court 16 that he intends to pay the unpaid balance of his filing fee within 120 days of his release or 17 (2) file a non-prisoner application to proceed in forma pauperis. Failure to comply may 18 result in dismissal of this action. 19 B. Address Changes 20 Plaintiff must file and serve a notice of a change of address in accordance with Rule 21 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other 22 relief with a notice of change of address. Failure to comply may result in dismissal of this 23 action. 24 C. Copies 25 Because Plaintiff is currently confined in an Arizona Department of Corrections, 26

Rehabilitation & Reentry Complex or Private Facility subject to General Order 23-19, 27 Plaintiff can comply with Federal Rule of Civil Procedure 5(d) by including, with every 28 document Plaintiff files, a certificate of service stating that this case is subject to General

1 Order 23-19 and indicating the date the document was delivered to prison officials for filing

2 with the Court. Plaintiff is not required serve Defendants with copies of every document 3 or provide an additional copy of every document for the Court's use. 4 If Plaintiff is transferred to a facility other than one subject to General Order 23-19, 5 Plaintiff will be required to: (a) serve Defendants, or counsel if an appearance has been 6 entered, a copy of every document Plaintiff files, and include a certificate stating that a 7 copy of the filing was served; and (b) submit an additional copy of every filing for use by 8 the Court. See Fed. R. Civ. P. 5(a) and (d); LRCiv 5.4. Failure to comply may result in 9 the filing being stricken without further notice to Plaintiff. 10 D. Possible Dismissal 11 If Plaintiff fails to timely comply with every provision of this Order, including these 12 warnings, the Court may dismiss this action without further notice. See *Ferdik v. Bonzelet*, 13 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure 14 to comply with any order of the Court). 15 IT IS ORDERED: 16 (1) Plaintiff's Application to Proceed In Forma Pauperis (Doc. 2) is granted. 17 (2) As required by the accompanying Order to the appropriate government 18 agency, Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing fee 19 of \$35.49. 20 (3) Plaintiff's Motions (Docs. 6, 7, and 8) are denied without prejudice. 21 (4) Counts Three, Seven, Eleven, and Twelve are dismissed without prejudice. 22 (5) Defendants NaphCare, Thornell, Rogers, and John Does 7-10 are dismissed 23 without prejudice. 24 (6) If Plaintiff attempts to amend to address the shortcomings identified in this 25 Order, the amended complaint must be filed on the court-approved form and retyped or 26 rewritten in its entirety (including those claims and Defendants that were not dismissed), 27 and Plaintiff must comply with Rule 15 of the Federal Rules of Civil Procedure and Rule 28 15.1 of the Local Rules of Civil Procedure. 1 (7) Defendants Simmons, Ortega, Sanchez, Meyers, Rheem, Bachman, and 2 McCormick must answer Count One. Defendants Diaz, Simmons, Ortega, Meyers, 3 Sanchez, Rheem, and McCormick must answer Count Two. Defendants Benmen and Fulks 4 must answer Counts Four and Eight. Defendant Simmons must answer Count Five. 5 Defendants Simmons, Ortega, Bachman, and Diaz must answer Count Six. Defendants 6 Simmons and Ortega must answer Count Nine. Defendant Levine must answer Count Ten. 7 (8) The Clerk of Court must send Plaintiff this Order, and a copy of the Marshal's 8 Process Receipt & Return form (USM-285) and Notice of Lawsuit & Request for Waiver 9 of Service of Summons form for Defendants Simmons, Ortega, Sanchez, Meyers, Rheem, 10 Bachman, McCormick, Diaz, Benmen, Fulks, and Levine. 11 (9) Plaintiff must complete³ and return the service packet to the Clerk of Court 12 within 21 days of the date of filing of this Order. The United States Marshal will not 13 provide service of process if Plaintiff fails to comply with this Order. 14 (10) If Plaintiff does not either obtain a waiver of service of the summons or 15 complete service of the Summons and Complaint on a Defendant within 90 days

of the 16 filing of the Complaint or within 60 days of the filing of this Order, whichever is later, the 17 action may be dismissed as to each Defendant not served. Fed. R. Civ. P. 4(m); LRCiv 18 16.2(b)(2)(B)(ii). 19 (11) The United States Marshal must retain the Summons, a copy of the 20 Complaint, and a copy of this Order for future use. 21 (12) The United States Marshal must notify Defendants of the commencement of 22 this action and request waiver of service of the summons pursuant to Rule 4(d) of the 23 Federal Rules of Civil Procedure. The notice to Defendants must include a copy of this 24 Order. 25 26 3 If a Defendant is an officer or employee of the Arizona Department of Corrections, 27 Rehabilitation & Reentry, Plaintiff must list the address of the specific institution where the officer or employee works. Service cannot be effected on an officer or employee at the 28 Central Office of the Arizona Department of Corrections, Rehabilitation & Reentry unless the officer or employee works there. 1 (13) A Defendant who agrees to waive service of the Summons and Complaint 2 must return the signed waiver forms to the United States Marshal, not the Plaintiff, within 3 30 days of the date of the notice and request for waiver of service pursuant to Federal 4 Rule of Civil Procedure 4(d)(1)(F) to avoid being charged the cost of personal service. 5 (14) The Marshal must immediately file signed waivers of service of the 6 summons. If a waiver of service of summons is returned as undeliverable or is not returned 7 by a Defendant within 30 days from the date the request for waiver was sent by the Marshal, 8 the Marshal must: 9 (a) personally serve copies of the Summons, Complaint, and this Order 10 upon Defendant pursuant to Rule 4(e)(2) of the Federal Rules of Civil 11 Procedure; and 12 (b) within 10 days after personal service is effected, file the return of 13 service for Defendant, along with evidence of the attempt to secure a 14 waiver of service of the summons and of the costs subsequently 15 incurred in effecting service upon Defendant. The costs of service 16 must be enumerated on the return of service form (USM-285) and 17 must include the costs incurred by the Marshal for photocopying 18 additional copies of the Summons, Complaint, or this Order and for 19 preparing new process receipt and return forms (USM-285), if 20 required. Costs of service will be taxed against the personally served 21 Defendant pursuant to Rule 4(d)(2) of the Federal Rules of Civil 22 Procedure, unless otherwise ordered by the Court. 23 (15) Defendants Simmons, Ortega, Sanchez, Meyers, Rheem, Bachman, 24 McCormick, Diaz, Benmen, Fulks, and Levine must answer the relevant portions of the 25 Complaint or otherwise respond by appropriate motion within the time provided by the 26 applicable provisions of Rule 12(a) of the Federal Rules of Civil Procedure. 27 (16) Any answer or response must state the specific Defendant by name on whose 28 behalf it is filed. The Court may strike any answer, response, or other motion or paper that 1 | does not identify the specific Defendant by name on whose behalf it is filed. 2 (17) Within 120 days from the filing date of this Order, Plaintiff must file a 3| “Notice of Substitution,” substituting the John Doe Defendants’ actual names. The Court may dismiss the John Doe Defendants if Plaintiff fails to timely file a notice of substitution, 5| unless Plaintiff seeks and is granted an extension of time. 6 (18) This matter is referred to Magistrate Judge Alison S. Bachus pursuant to Rules 72.1 and 72.2 of the Local Rules of Civil Procedure for all pretrial proceedings

as 8 | authorized under 28 U.S.C. § 636(b)(1). 9 Dated this 14th day of April, 2026. 10 12 B _
James A. Teil Org Senior United States District Judge 14 15 16 17 18 19 20 21 22 23 24 25 26 27
28