

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Charmar Williams v. Kern State Prison, et al.

Williams v. Kern State Prison · No. 1:24-cv-556-BAM (PC) · Decided November 20, 2025

SUMMARY

The document is a magistrate judge’s findings and recommendations in a prisoner civil-rights action under 42 U.S.C. § 1983. The court recommends dismissal for failure to state a cognizable claim, addressing pleading deficiencies, supervisory liability, joinder, Eleventh Amendment immunity, medical care, property deprivation, retaliation, and state-law claim requirements, and denies appointment of counsel without prejudice.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Barbara A. McAuliffe
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	November 20, 2025
DOCKET	1:24-cv-556-BAM (PC)
DISPOSITION	other
PROCEDURAL POSTURE	A pro se state prisoner proceeding in forma pauperis filed a second amended complaint under 42 U.S.C. § 1983. A magistrate judge screened the complaint and issued findings and recommendations that the action be dismissed for failure to state a cognizable claim, while directing the clerk to randomly assign a district judge.
STANDARD OF REVIEW	Screening under 28 U.S.C. § 1915A; failure-to-state-a-claim review under Federal Rule of Civil Procedure 8 and the facial plausibility standard of Ashcroft v. Iqbal and Bell Atlantic Corp. v. Twombly.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

- prisoners rights
- section 1983
- pleadings
- motions to dismiss
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the second amended complaint stated a plausible claim under 42 U.S.C. § 1983 and Federal Rule of Civil Procedure 8.
2. Whether Plaintiff adequately alleged personal participation or a legally sufficient connection between each defendant and an alleged constitutional deprivation.
3. Whether Plaintiff could impose supervisory liability on the warden or other supervisors based solely on their supervisory roles.
4. Whether Plaintiff improperly joined unrelated claims and defendants under Federal Rules of Civil Procedure 18 and 20.
5. Whether Kern State Prison Correction Healthcare was immune from suit under the Eleventh Amendment.
6. Whether Plaintiff adequately pleaded deliberate indifference to serious medical needs under the Eighth Amendment.
7. Whether the alleged unauthorized deprivation of property stated a Fourteenth Amendment due-process claim when a meaningful state post-deprivation remedy was available.
8. Whether Plaintiff adequately pleaded First Amendment retaliation.
9. Whether any state-law medical-malpractice claim was adequately pleaded absent allegations of compliance with the California Government Claims Act.
10. Whether Plaintiff was entitled to appointment of counsel.

HOLDINGS

1. The second amended complaint failed to state a cognizable claim because it consisted of conclusory allegations and did not clearly allege what happened, when it happened, or what each defendant did to violate Plaintiff's rights.
2. Plaintiff could not hold the warden or other supervisors liable solely because of their supervisory positions; he had to allege personal participation, direction, knowledge coupled with failure to act, or a deficient policy that was the moving force of the violation.
3. Plaintiff could not combine unrelated claims against unrelated defendants in one action; multiple defendants may be joined only when the claims arise from the same transaction or occurrence and present common questions of law or fact.
4. Kern Valley State Prison, as part of the California Department of Corrections and Rehabilitation, was entitled to Eleventh Amendment immunity from suit.
5. Plaintiff failed to state an Eighth Amendment medical-care claim because he did not allege facts showing that any particular defendant knew of and disregarded an excessive risk to his health or safety.

6. The alleged unauthorized deprivation of Plaintiff's property did not state a procedural due-process claim because California provided a meaningful post-deprivation remedy.
7. Plaintiff failed to state a First Amendment retaliation claim because he did not allege facts establishing the required elements, including protected conduct, the retaliatory actor, chilling of First Amendment rights, and absence of a legitimate correctional goal.
8. Any state-law medical-malpractice claim was facially deficient because Plaintiff did not allege compliance with or excuse from the California Government Claims Act, although the court stated he would be given leave to amend that deficiency in good faith.
9. Plaintiff's request for appointment of counsel was denied without prejudice because he did not demonstrate exceptional circumstances, including a likelihood of success on the merits and an inability to articulate his claims pro se in light of the complexity of the issues.

KEY QUOTATIONS

"Plaintiff must set forth 'sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" (Opinion at 3)

"A defendant does not act in a deliberately indifferent manner unless the defendant 'knows of and disregards an excessive risk to inmate health or safety.'" (Opinion at 7)

"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 such action (4) chilled the inmate's exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal." (Opinion at 10)

"failure to allege facts demonstrating or excusing compliance with the requirement subjects a complaint to general demurrer for failure to state a cause of action." (Opinion at 11)

FACTUAL BACKGROUND

Plaintiff, a state prisoner housed at Kern Valley State Prison, alleged that correctional and medical personnel used excessive force, failed to provide adequate medical care for hand nerve damage, lost or withheld property, retaliated against him for filing grievances, and engaged in misconduct or a cover-up. He named Kern State Prison Correction Healthcare, several correctional and medical employees, and a warden. The second amended complaint sought damages and appointment of counsel but did not clearly identify what each defendant did, when the conduct occurred, or how the conduct violated Plaintiff's rights.

PROCEDURAL HISTORY

The court previously screened the original and first amended complaints and granted leave to amend. After screening the second amended complaint, the magistrate judge concluded that Plaintiff had not cured the pleading deficiencies and recommended dismissal without further leave to amend. The recommendation was submitted to an assigned district judge under 28 U.S.C. § 636(b)(1), with fourteen days allowed for objections.

DISPOSITION

CASES CITED

- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007)
- Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)
- Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009)
- Monell v. Department of Social Services, 436 U.S. 658 (1978)
- Rizzo v. Goode, 423 U.S. 362 (1976)
- Simmons v. Navajo County, Arizona, 609 F.3d 1011, 1019-21 (9th Cir. 2010)
- Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009)
- Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002)
- Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989)
- Starr v. Baca, 652 F.3d 1202, 1205-06 (9th Cir. 2011)
- Corales v. Bennett, 567 F.3d 554, 570 (9th Cir. 2009)
- Redman v. County of San Diego, 942 F.2d 1435, 1446 (9th Cir. 1991)
- Farmer v. Brennan, 511 U.S. 825 (1970)
- Owens v. Hinsley, 635 F.3d 950, 952 (7th Cir. 2011)
- Mackey v. Price, 2020 WL 7319420, at *3-4 (E.D. Cal. Dec. 11, 2020)
- Coughlin v. Rogers, 130 F.3d 1348, 1349, 1351 (9th Cir. 1997)
- Lapidus v. Board of Regents, 535 U.S. 613, 616 (2002)
- Wolfson v. Brammer, 616 F.3d 1045, 1065-66 (9th Cir. 2010)
- Pennhurst State School & Hospital v. Halderman, 465 U.S. 89, 100 (1984)
- Buckwalter v. Nevada Board of Medical Examiners, 678 F.3d 737, 740 n.1 (9th Cir. 2012)
- Lake Country Estates, Inc. v. Tahoe Regional Planning Agency, 440 U.S. 391, 401 (1979)
- Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006)
- Estelle v. Gamble, 429 U.S. 97, 104-06 (1976)
- Toguchi v. Chung, 391 F.3d 1051, 1060 (9th Cir. 2004)
- Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980)
- Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990)
- Snow v. McDaniel, 681 F.3d 978, 987-88 (9th Cir. 2012)
- Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989)
- Peralta v. Dillard, 744 F.3d 1076, 1082-83 (9th Cir. 2014)
- Wilhelm v. Rotman, 680 F.3d 1113, 1122-23 (9th Cir. 2012)
- Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1986)
- Hansen v. May, 502 F.2d 728, 730 (9th Cir. 1974)

- Hudson v. Palmer, 468 U.S. 517, 532 n.13, 533 (1984)
- Logan v. Zimmerman Brush Co., 455 U.S. 422, 435-36 (1982)
- Quick v. Jones, 754 F.2d 1521, 1524 (9th Cir. 1985)
- Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005)
- Watison v. Carter, 668 F.3d 1108, 1114-15 (9th Cir. 2012)
- Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009)
- State v. Superior Court of Kings County (Bodde), 32 Cal. 4th 1234, 1239, 1244 (2004)
- Shirk v. Vista Unified School District, 42 Cal. 4th 201, 209 (2007)
- Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), rev'd in part on other grounds, 154 F.3d 952 (9th Cir. 1998)
- Mallard v. United States District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989)
- Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000)
- Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)
- Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)

OPINION

1 2 3 4 5 UNITED STATES DISTRICT COURT 6 EASTERN DISTRICT OF CALIFORNIA 7 8
CHARMAR WILLIAMS, Case No. 1:24-cv-556-BAM (PC) 9 Plaintiff, ORDER DIRECTING
CLERK OF COURT TO RANDOMLY ASSIGN DISTRICT JUDGE TO 10 v. ACTION 11
KERN STATE PRISON, et al., FINDINGS AND RECOMMENDATIONS TO DISMISS
ACTION FOR FAILURE TO 12 Defendant. STATE A CLAIM 13 (ECF No. 14) 14 FOURTEEN
(14) DAY DEADLINE 15 Plaintiff Charmar Williams (“Plaintiff”) is a state prisoner and is
proceeding pro se and in 16 forma pauperis in this civil rights action under 42 U.S.C. § 1983.

This case was recently 17 reassigned to the undersigned. The Court screened Plaintiff’s complaint
and the first amended 18 complaint, and Plaintiff was granted leave to amend. Plaintiff’s second
amended complaint is 19 currently before the Court for screening. (ECF No. 14.) 20 I. Screening
Requirement and Standard 21 The Court is required to screen complaints brought by prisoners
seeking relief against a 22 governmental entity and/or against an officer or employee of a
governmental entity.

28 U.S.C. 23 § 1915A(a). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it
is frivolous 24 or malicious, if it fails to state a claim upon which relief may be granted, or if it
seeks monetary 25 relief from a defendant who is immune from such relief. 28 U.S.C. §§
1915A(b). 26 A complaint must contain “a short and plain statement of the claim showing that the
27 pleader is entitled to relief....” Fed.

R. Civ. P. 8(a)(2). Detailed factual allegations are not 28 1 required, but “[t]hreadbare recitals of
the elements of a cause of action, supported by mere 2 conclusory statements, do not suffice.”
Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell 3 Atlantic Corp. v. Twombly, 550 U.S.

544, 555 (2007)). While a plaintiff's allegations are taken as true, courts "are not required to indulge unwarranted inferences." *Doe I v. Wal-Mart Stores, Inc.*, 557 F.3d 677, 681 (9th Cir.

2009) (internal quotation marks and citation omitted). 6 To survive screening, Plaintiff's claims must be facially plausible, which requires 7 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable 8 for the misconduct alleged. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir.

2009). The sheer possibility that a defendant acted unlawfully 10 is not sufficient, and mere consistency with liability falls short of satisfying the plausibility 11 standard. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss*, 572 F.3d at 969. 12 II. Plaintiff's Allegations 13 Plaintiff is currently housed in Kern Valley State Prison where the events in the second 14 amended complaint are alleged to have occurred.

Plaintiff names as defendants (1) Kern State 15 Prison Correction Healthcare, (2) Medina, correctional staff, (3) Melinda Chao, chief medical 16 staff, (4) Ramirez, correctional officer, (5) E. Perito, correctional officer, and (6) Pfeiffer, 17 Warden. 18 In claim 1, Plaintiff alleged medical neglect, misconduct deliberate indifference, abuse of 19 authority and cruel and unusual punishment for grievance.

Plaintiff alleges: 20 "The abuse of authority, and misconduct with retaliation by staff is all, and 21 more of defendants name in civil complaint Melinda Chau did not provide any 22 meaningful medical representation that aggravated pain in hand after the abuse by staff members extreme force by Medina along with Byard prejudiced cover up 23 maliciously to cause suffering.

C/O E. Perito deprived and lost property never return P.C. 485 this intent to punish mental suffering deliberate indifference. C/O Ramirez 24 retaliation with missing property was remove when sent to ASU in retaliation. Nerve damage in hand with lost property that has never been return after grievance being 25 granted.

The abuse of authority continue with little oversight with protection to keep 26 abuse of authority going." 27 In claim 2, Plaintiff alleges PC 485 lost property never returned, retaliation for filing 28 1 grievance and staff misconduct and a fake investigation. Plaintiff alleges: 2 "Aggravated pain in hand nerved damage due to abuse of authority no meaningful 3 medical representation during misconduct.

I have sent all grievance with all 4 defendant from medical to institution staff. All misconduct has been documented, and sent to this court. Let the record know that outside medical records for nerve 5 damage to hand has not been sent to Plaintiff. Administration failed to protect Plaintiff from the abuse by authority with medical neglect, and retaliation, and 6 violation of right to file grievance without reprisal from staff.

Melinda, Perito, Ramirez, Medina, Pfeiffer all part of recklessness amounting to deliberate 7 indifference. The cause mental suffering and was maliciously sadistically to cause 8 harm. Intent was to cause Plaintiff harm oppressively with deliberate intent. Abuse of authority with cover up retaliation with damage property, and lost property never 9 return. 10 Plaintiff asks for appointment of counsel and damages.

11 As remedies, Plaintiff seeks appointment of counsel and monetary damages. 12 III. Discussion
13 Plaintiff's second amended complaint fails to state a cognizable claim under 42 U.S.C. § 14
1983. 15 Federal Rule of Civil Procedure 8 16 Pursuant to Rule 8, a complaint must contain "a
short and plain statement of the claim 17 showing that the pleader is entitled to relief." Fed.

R. Civ. P. 8(a). Detailed factual allegations 18 are not required, but "[t]hreadbare recitals of the
elements of a cause of action, supported by mere 19 conclusory statements, do not suffice." *Iqbal*,
556 U.S. at 678 (citation omitted). Plaintiff must 20 set forth "sufficient factual matter, accepted as
true, to 'state a claim to relief that is plausible on 21 its face.'" *Iqbal*, 556 U.S. at 678 (quoting
Twombly, 550 U.S. at 555).

While factual allegations 22 are accepted as true, legal conclusions are not. *Id.*; see also *Twombly*,
550 U.S. at 556–57; *Moss*, 23 572 F.3d at 969. 24 Plaintiff's second complaint is short, but it is not
a plain statement of his claims. While it 25 identifies the specific claims, the allegations are
conclusory as to what happened and who was 26 involved. Like his first amended complaint, it is
unclear what Plaintiff is complaining about in the 27 second amended complaint.

Plaintiff failed to clearly state factual support for what happened, 28 when it happened, and who
was involved. As Plaintiff was informed, he must allege what each 1 defendant did that violated
his rights. Plaintiff does not allege factual support as to what each 2 defendant did or did not do to
violate his rights. General assertions regarding Plaintiff's rights are 3 not sufficient, and Plaintiff
may not merely state he was denied rights without stating the factual 4 support for denial of those
right.

The Court cannot determine what happened to Plaintiff. The 5 second amended complaint includes
fewer facts than the prior complaints. 6 In addition, Section 1983 plainly requires that there be an
actual connection or link 7 between the actions of the defendants and the deprivation alleged to
have been suffered by 8 Plaintiff. See *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978); *Rizzo*
v. Goode, 423 U.S. 362 9 (1976).

Plaintiff must link each defendant to purported constitutional violations. Plaintiff has 10 been
unable to cure this deficiency 11 Supervisory Liability 12 Insofar as Plaintiff is attempting to sue
Defendant Warden, or any other defendant, based 13 on his supervisory role, he may not do so.
Liability may not be imposed on supervisory personnel 14 for the actions or omissions of their
subordinates under the theory of respondeat superior.

Iqbal, 15 556 U.S. at 676–77; Simmons v. Navajo Cty., Ariz., 609 F.3d 1011, 1020–21 (9th Cir. 2010); 16 Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009); Jones v. Williams, 297 F.3d 930, 17 934 (9th Cir. 2002). 18 Supervisors may be held liable only if they “participated in or directed the violations, or 19 knew of the violations and failed to act to prevent them.” Taylor v. List, 880 F.2d 1040, 1045 (9th Cir.

1989); accord Starr v. Baca, 652 F.3d 1202, 1205–06 (9th Cir. 2011); Corales v. Bennett, 21 567 F.3d 554, 570 (9th Cir. 2009). Supervisory liability may also exist without any personal 22 participation if the official implemented “a policy so deficient that the policy itself is a 23 repudiation of the constitutional rights and is the moving force of the constitutional violation.” 24 Redman v. Cty. of San Diego, 942 F.2d 1435, 1446 (9th Cir.

1991) (citations and quotations 25 marks omitted), abrogated on other grounds by Farmer v. Brennan, 511 U.S. 825 (1970). 26 Here, Plaintiff has failed to establish that Defendant Warden, or other supervisor, 27 participated in or directed any constitutional violation or that he implemented a policy so 28 deficient that it was the moving force of any constitutional violation.

1 Federal Rules of Civil Procedure 18 and 20 2 Plaintiff may not bring unrelated claims against unrelated parties in a single action. Fed. 3 R. Civ. P. 18(a), 20(a)(2); Owens v. Hinsley, 635 F.3d 950, 952 (7th Cir. 2011); Mackey v. Price, 4 2020 WL 7319420, at *3–4 (E.D. Cal. Dec. 11, 2020), report and recommendation adopted, 2021 5 WL 843462 (E.D. Cal. Mar.

5, 2021). Plaintiff may bring a claim against multiple defendants so 6 long as (1) the claim arises out of the same transaction or occurrence, or series of transactions and 7 occurrences, and (2) there are commons questions of law or fact. Fed. R. Civ. P. 20(a)(2); 8 Coughlin v. Rogers, 130 F.3d 1348, 1351 (9th Cir. 1997).

The “same transaction” requirement 9 refers to similarity in the factual background of a claim. Id. at 1349. Only if the defendants are 10 properly joined under Rule 20(a) will the Court review the other claims to determine if they may 11 be joined under Rule 18(a), which permits the joinder of multiple claims against the same party. 12 Plaintiff may not raise different claims against different defendants in a single action.

For 13 instance, Plaintiff may not state unrelated claims, arising on different dates, regarding different 14 claims, such as loss of property, denial of medical care, retaliation violations, and other claims. 15 Merely because Plaintiff was housed at Kern Valley State Prison when the incidents occurred 16 does not make every injury or incident related. Separate unrelated claims must be filed in separate 17 lawsuits.

Plaintiff has been unable to cure this deficiency. 18 Eleventh Amendment 19 Plaintiff names Kern State Prison Correction Healthcare as a defendant. “The Eleventh 20 Amendment grants a State immunity from suit in federal court by citizens of other States, and by 21 its own citizens as well.”

Lapides v. Bd. Of Regents, 535 U.S. 613, 616 (2002). (citation omitted); 22 see Wolfson v. Brammer, 616 F.3d 1045, 1065–66 (9th Cir.

2010) (citation and quotation marks 23 omitted). While “[t]he Eleventh Amendment does not bar suits against a state official for 24 prospective relief,” Wolfson, 616 F.3d at 1065–66, suits against the state or its agencies are barred 25 absolutely, regardless of the form of relief sought, e.g., Pennhurst State School & Hosp. v. 26 Halderman, 465 U.S. 89, 100 (1984); Buckwalter v. Nevada Bd.

Of Medical Examiners, 678 F.3d 27 737, 740 n. 1 (9th Cir. 2012). 28 A state agency is entitled to the same Eleventh Amendment immunity enjoyed by the 1 State when a judgment against the agency “would have had essentially the same practical 2 consequences as a judgment against the State itself.” Lake Country Estates, Inc. v. Tahoe 3 Regional Planning Agency, 440 U.S. 391, 401 (1979).

Accordingly, because Kern Valley State 4 Prison is part of the California Department of Corrections and Rehabilitation, which is a state 5 agency, it is also entitled to Eleventh Amendment immunity from suit. 6 Eighth Amendment – Deliberate Indifference to Medical Care 7 A prisoner’s claim of inadequate medical care constitutes cruel and unusual punishment in 8 violation of the Eighth Amendment where the mistreatment rises to the level of “deliberate 9 indifference to serious medical needs.” Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir.

2006) 10 (quoting Estelle v. Gamble, 429 U.S. 97, 104 (1976)). The two-part test for deliberate 11 indifference requires Plaintiff to show (1) “a ‘serious medical need’ by demonstrating that failure 12 to treat a prisoner’s condition could result in further significant injury or the ‘unnecessary and 13 wanton infliction of pain,’” and (2) “the defendant’s response to the need was deliberately 14 indifferent.” Jett, 439 F.3d at 1096.

15 A defendant does not act in a deliberately indifferent manner unless the defendant “knows 16 of and disregards an excessive risk to inmate health or safety.” Farmer v. Brennan, 511 U.S. 825, 17 837 (1994). “Deliberate indifference is a high legal standard,” Simmons v. Navajo Cty. Ariz., 609 18 F.3d 1011, 1019 (9th Cir. 2010); Toguchi v. Chung, 391 F.3d 1051, 1060 (9th Cir.

2004), and is 19 shown where there was “a purposeful act or failure to respond to a prisoner’s pain or possible 20 medical need” and the indifference caused harm. Jett, 439 F.3d at 1096. In applying this 21 standard, the Ninth Circuit has held that before it can be said that a prisoner’s civil rights have 22 been abridged, “the indifference to his medical needs must be substantial.

Mere ‘indifference,’ 23 ‘negligence,’ or ‘medical malpractice’ will not support this cause of action.” Broughton v. Cutter 24 Labs., 622 F.2d 458, 460 (9th Cir. 1980) (citing Estelle, 429 U.S. at 105–06). Even gross 25 negligence is insufficient to establish deliberate indifference to serious medical needs. See Wood 26 v. Housewright, 900 F.2d 1332, 1334 (9th Cir.

1990). 27 Further, a “difference of opinion between a physician and the prisoner—or between 28 medical professionals—concerning what medical care is appropriate does not amount to 1 deliberate indifference.” *Snow v. McDaniel*, 681 F.3d 978, 987 (9th Cir. 2012) (citing *Sanchez v. 2 Vild*, 891 F.2d 240, 242 (9th Cir. 1989)), overruled in part on other grounds, *Peralta v. Dillard*, 3 744 F.3d 1076, 1082–83 (9th Cir.

2014); *Wilhelm v. Rotman*, 680 F.3d 1113, 1122–23 (9th Cir. 4 2012) (citing *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1986)). Rather, Plaintiff “must 5 show that the course of treatment the doctors chose was medically unacceptable under the 6 circumstances and that the defendants chose this course in conscious disregard of an excessive 7 risk to [his] health.” *Snow*, 681 F.3d at 988 (citing *Jackson*, 90 F.3d at 332) (internal quotation 8 marks omitted).

9 Plaintiff fails to allege a cognizable claim. Plaintiff fails to allege that each defendant 10 “knows of and disregards an excessive risk to inmate health or safety.” It is unclear what each 11 defendant did related to Plaintiff’s medical care. Plaintiff has been unable to cure this deficiency. 12 Fourteenth Amendment Denial of Due Process 13 Insofar as Plaintiff also alleges that any Defendant wrongfully destroyed or took his 14 property, these allegations also are not sufficient to support a cognizable claim.

Prisoners have a 15 protected interest in their personal property. *Hansen v. May*, 502 F.2d 728, 730 (9th Cir. 1974). 16 An authorized, intentional deprivation of property is actionable under the Due Process Clause. 17 See *Hudson v. Palmer*, 468 U.S. 517, 532 n.13 (1984) (citing *Logan v. Zimmerman Brush Co.*, 18 455 U.S. 422, 435–36 (1982)); *Quick v. Jones*, 754 F.2d 1521, 1524 (9th Cir.

1985). However, 19 “an unauthorized intentional deprivation of property by a state employee does not constitute a 20 violation of the procedural requirements of the Due Process Clause of the Fourteenth Amendment 21 if a meaningful post deprivation remedy for the loss is available.” *Hudson*, 468 U.S. at 533. 22 As Plaintiff alleges that the conduct was an unauthorized deprivation of property, due 23 process is satisfied if there is a meaningful post-deprivation remedy available to Plaintiff.

Id. 24 Plaintiff has an adequate post-deprivation remedy available under California law. *Barnett v. 25 Centoni*, 31 F.3d 813, 816–17 (9th Cir. 1994) (citing Cal. Gov’t Code §§ 810–95). Therefore, 26 Plaintiff fails to allege a cognizable due process claim for the alleged deprivation of his property. 27 First Amendment – Retaliation 28 Allegations of retaliation against a prisoner's First Amendment rights to speech or to 1 petition the government may support a 1983 claim.

Rizzo v. Dawson, 778 F.2d 5527, 532 (9th Cir. 2 1985); see also *Valandingham v. Bojorquez*, 866 F.2d 1135 (9th Cir. 1989); *Pratt v. Rowland*, 65 3 F.3d 802, 807 (9th Cir. 1995). “Within the prison context, a viable claim of First Amendment 4 retaliation entails five basic elements: (1) An

assertion that a state actor took some adverse action 5 against an inmate (2) because of (3) that prisoner's protected conduct, and that such action (4) 6 chilled the inmate's exercise of his First Amendment rights, and (5) the action did not reasonably 7 advance a legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567–68 (9th Cir.

8 2005); accord Watison v. Carter, 668 F.3d 1108, 1114–15 (9th Cir. 2012); Brodheim v. Cry, 584 9 F.3d 1262, 1269 (9th Cir. 2009). 10 Plaintiff fails to state a cognizable claim. Plaintiff has failed to allege the facts for each of 11 the elements of a claim for retaliation. Plaintiff's allegations are conclusory as to any protected 12 conduct he in engaged in or fails to allege he engaged in protected conduct.

Plaintiff fails to 13 allege who retaliated against him. Plaintiff fails to allege that any conduct chilled Plaintiff's First 14 Amendment rights or that it did not reasonably advance a legitimate correctional goal. Further, 15 this claim is improperly joined. Plaintiff has been unable to cure this deficiency. 16 State Law Claim – Medical Malpractice 17 To the extent Plaintiff alleges a medical malpractice claim, the complaint does not allege 18 that Plaintiff complied with the exhaustion requirements of the Government Claims Act (“GCA”) 19 as to his pendent state law claim.1 Cal. Gov’t Code §§ 905, 905.2, 910, 911.2, 945.4, 950–950.2.

20 Plaintiff is informed that the California Government Claims Act requires that a tort claim against 21 a public entity or its employees be presented to the California Victim Compensation and 22 Government Claims Board no more than six months after the cause of action accrues. Cal. Gov’t 23 Code §§ 905.2, 910, 911.2, 945.4, 950-950.2. Presentation of a written claim, and action on or 24 rejection of the claim are conditions precedent to suit.

State v. Super. Ct. of Kings Cnty. (Bodde), 25 32 Cal.4th 1234, 1239 (Cal. 2004); Shirk v. Vista Unified Sch. Dist., 42 Cal.4th 201, 209 (2007). 26 To state a tort claim against a public employee, a plaintiff must allege compliance with the 27 1 This exhaustion requirement is separate and apart from the exhaustion requirement under the 28 Prison Litigation Reform Act.

1 GCA. Cal. Gov’t Code § 950.6; Bodde, 32 Cal. 4th at 1244. “[F]ailure to allege facts 2 demonstrating or excusing compliance with the requirement subjects a complaint to general 3 demurrer for failure to state a cause of action.” Bodde, 32 Cal.4th at 1239.

Because Plaintiff does 4 not affirmatively allege compliance with the GCA, the complaint facially fails to state a tort claim 5 for medical malpractice. Plaintiff will be given leave to amend to cure this deficiency to extent 6 he may do so in good faith. 7 IV. Motion to Appoint Counsel 8 Plaintiff is advised that does not have a constitutional right to appointed counsel in this 9 action.

Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), rev'd in part on other grounds, 154 10 F.3d 952, 954 n.1 (9th Cir. 1998). The court cannot require an attorney to represent Plaintiff 11 pursuant

to 28 U.S.C. § 1915(e)(1). *Mallard v. U.S. Dist. Court for the S. Dist. of Iowa*, 490 U.S. 12 296, 298 (1989).

However, in certain exceptional circumstances the Court may request the 13 voluntary assistance of counsel pursuant to section 1915(e)(1). *Rand*, 113 F.3d at 1525. Without a 14 reasonable method of securing and compensating counsel, the Court will seek volunteer counsel 15 only in the most serious and exceptional cases.

In determining whether “exceptional 16 circumstances exist, a district court must evaluate both the likelihood of success on the merits 17 [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the 18 legal issues involved.” *Id.* (internal quotation marks and citations omitted). 19 In the present case, the Court does not find the required exceptional circumstances.

Even 20 if it is assumed that Plaintiff is not well versed in the law and that he has made serious allegations 21 which, if proved, would entitle him to relief, his case is not exceptional. His indigent status and 22 incarceration are not sufficient to make this case exceptional. This Court is faced with similar 23 cases almost daily from indigent, incarcerated plaintiffs proceeding pro se.

These litigants also 24 must conduct legal research, pay for photocopies, and litigate their cases without the assistance of 25 counsel. 26 Furthermore, at this early stage in the proceedings, the Court cannot make a determination 27 that Plaintiff is likely to succeed on the merits.

The second amended complaint has been screened, 28 and found not to state a cognizable claim, and no defendants have appeared. There also is no 1 indication from the record that Plaintiff is unable to articulate his claims pro se. Plaintiff's request 2 for appointment of counsel will therefore be denied without prejudice. 3 V. Conclusion and Recommendation 4 For the reasons discussed, the Court finds that Plaintiff has failed to state a cognizable 5 claim for relief.

Despite being provided with the relevant pleading and legal standards, Plaintiff 6 has been unable to cure the deficiencies in his amended complaint. Further leave to amend is not 7 warranted. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000). 8 Accordingly, the Court HEREBY DIRECTS the Clerk of the Court to randomly assign a 9 district judge to this action.

10 Further, for the reasons stated above, IT IS HEREBY RECOMMENDED that this action 11 be dismissed for failure to state a cognizable claim upon which relief may be granted. 12 These Findings and Recommendations will be submitted to the United States District 13 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within 14 fourteen (14) days after being served with these Findings and Recommendations, the parties may 15 file written objections with the court.

The document should be captioned “Objections to 16 Magistrate Judge’s Findings and Recommendations.” Objections, if any, shall not exceed 17 fifteen (15) pages or include exhibits. Exhibits may be referenced by document and page 18 number if already in the record before the Court. Any pages filed in excess of the 15-page 19 limit may not be considered.

The parties are advised that failure to file objections within the 20 specified time may result in the waiver of the “right to challenge the magistrate’s factual 21 findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing *Baxter 22 v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)). 23 IT IS SO ORDERED. 24 25 Dated: November 20, 2025 /s/ Barbara A. McAuliffe _ UNITED STATES MAGISTRATE JUDGE 26 27 28