

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Hinton v. Mix

No. 1:24-cv-00960-KES-BAM (PC) (E.D. Cal. June 3, 2025) · No. 1:24-cv-00960-KES-BAM (PC) · Decided
June 3, 2025

SUMMARY

The United States District Court for the Eastern District of California addresses Plaintiff Natomee Hinton’s motion to assert additional claims and screens his fourth amended complaint under 28 U.S.C. § 1915A. The court recommends allowing certain claims to proceed, including Eighth Amendment excessive-force and failure-to-protect claims, First Amendment retaliation, and related state-law tort claims, while recommending dismissal of claims against the unidentified warden and official-capacity monetary claims. The document directs the Clerk of Court to file the lodged fourth amended complaint and provides a fourteen-day deadline.

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	June 3, 2025
DOCKET	1:24-cv-00960-KES-BAM (PC)
DISPOSITION	other
PROCEDURAL POSTURE	A prisoner civil-rights action under 42 U.S.C. § 1983 was before a magistrate judge for screening of a fourth amended complaint and consideration of the plaintiff’s motion to assert additional claims. The magistrate judge ordered the clerk to file the lodged fourth amended complaint and issued findings and recommendations to grant the motion in part, allow specified claims to proceed, and dismiss the remaining claims and defendants.
STANDARD OF REVIEW	Screening under 28 U.S.C. § 1915A and the facial-plausibility pleading standard under Federal Rule of Civil Procedure 8(a)(2), Ashcroft v. Iqbal, and Bell Atlantic Corp. v. Twombly. The court liberally construed the pro se pleading while accepting factual allegations as true but disregarding conclusory legal assertions.

PRECEDENTIAL VALUE	nonprecedential
PARTIES	Natomee Hinton v. M. Mix, B. Giannini, L. Vang, C. Baker, John Doe, Warden

TOPICS

[prisoners rights](#)
[section 1983](#)
[civil rights](#)
[first amendment](#)
[civil procedure](#)

PRACTICE AREAS

[prisoner civil rights](#)
[constitutional law](#)
[civil procedure](#)
[state tort law](#)

QUESTIONS PRESENTED

1. Whether the fourth amended complaint stated cognizable Eighth Amendment excessive-force and failure-to-protect claims.
2. Whether the complaint stated a First Amendment retaliation claim based on alleged threats, falsification of a report, and disciplinary consequences following Plaintiff's report of the incident.
3. Whether the complaint stated cognizable California claims for assault and battery, intentional infliction of emotional distress, and negligence.
4. Whether Plaintiff stated a cognizable malicious-prosecution claim based on prison disciplinary proceedings.
5. Whether Plaintiff could seek monetary damages against a state official in an official capacity.
6. Whether Plaintiff adequately linked the Doe warden to a constitutional violation or stated a supervisory-liability or failure-to-train claim.
7. Whether alleged false reports and fabricated evidence stated independent § 1983 or due-process claims based on prison disciplinary proceedings.
8. Whether Plaintiff could proceed against an unidentified John Doe defendant without first identifying and substituting the defendant.

HOLDINGS

1. The Eleventh Amendment bars Plaintiff's claims for monetary damages against state officials in their official capacities; the action may proceed for monetary damages against defendants only in their individual capacities.
2. A supervisor is not liable under § 1983 solely because of a supervisory position or respondeat superior; liability requires personal participation, direction, knowledge coupled with failure to act, or a deficient policy or training practice amounting to deliberate indifference and causing the constitutional violation.
3. The complaint stated a cognizable Eighth Amendment excessive-force claim against Mix and Giannini, but not against the other defendants because the allegations did not clearly show that they used force.

4. The complaint stated a cognizable Eighth Amendment failure-to-protect claim against Vang, Giannini, and Baker.
5. The complaint stated a cognizable First Amendment retaliation claim against Mix.
6. The complaint stated cognizable California assault-and-battery claims against Mix and Giannini.
7. The complaint stated a cognizable California intentional-infliction-of-emotional-distress claim against Mix.
8. Plaintiff did not state a cognizable malicious-prosecution claim based on prison disciplinary proceedings because he did not allege a criminal prosecution, and the Ninth Circuit had not held that prison disciplinary proceedings suffice for such a claim.
9. The complaint stated a cognizable California negligence claim against Mix, Vang, Giannini, and Baker.
10. The complaint did not state an independent § 1983 claim based merely on an allegedly false report or fabricated evidence arising from prison disciplinary proceedings.

KEY QUOTATIONS

“For claims of excessive physical force, the issue is “whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.”” (at 10)

“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.” (at 13)

“In order to prevail on a Section 1983 claim of malicious prosecution, a plaintiff “must show that the defendants prosecuted [him] with malice and without probable cause, and that they did so for the purpose of denying [him] equal protection or another specific constitutional right.”” (at 17-18)

“The elements of a negligence cause of action are: (1) a legal duty to use due care; (2) a breach of that duty; (3) the breach was the proximate or legal cause of the resulting injury; and (4) actual loss or damage resulting from the breach of the duty of care.” (at 18)

FACTUAL BACKGROUND

Plaintiff alleged that, while incarcerated at Sierra Conservation Center on April 24, 2024, Sergeant Mix choked, struck, and otherwise used excessive force against him while he was restrained. Plaintiff alleged that Officers Vang, Giannini, and Baker watched the incident and failed to intervene, and that Giannini assisted in restraining his legs. Plaintiff further alleged that Mix falsified a report and initiated disciplinary proceedings after Plaintiff reported the incident, resulting in administrative segregation and transfer-related consequences. Plaintiff alleged that the warden failed to train, supervise, or discipline Mix despite notice of prior misconduct.

PROCEDURAL HISTORY

The court previously screened the third amended complaint and recommended that several constitutional and state-law claims proceed while dismissing other claims. The assigned district judge adopted those

recommendations in part and granted leave to add a First Amendment retaliation claim. Plaintiff then moved to add state-law malicious-prosecution and negligence claims, sought to add a Doe warden, and lodged a fourth amended complaint. The magistrate judge found several claims cognizable, found the malicious-prosecution and other additional claims deficient, directed filing of the fourth amended complaint, and recommended dismissal of the noncognizable claims and defendants.

DISPOSITION

other

CASES CITED

- Ashcroft v. Iqbal, 556 U.S. 662 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007)
- Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)
- Aholelei v. Department of Public Safety, 488 F.3d 1144, 1147 (9th Cir. 2007)
- Hafer v. Melo, 502 U.S. 21, 30 (1991)
- Porter v. Jones, 319 F.3d 483, 491 (9th Cir. 2003)
- Austin v. State Industrial Insurance System, 939 F.2d 676, 680 n.2 (9th Cir. 1991)
- Monell v. Department of Social Services, 436 U.S. 658 (1978)
- Rizzo v. Goode, 423 U.S. 362 (1976)
- Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)
- Simmons v. Navajo County, Arizona, 609 F.3d 1011, 1020-21 (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, 570-71 (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)
- Canell v. Lightner, 143 F.3d 1210, 1213-14 (9th Cir. 1998)
- City of Canton v. Harris, 489 U.S. 378, 391 (1989)
- Lee v. City of Los Angeles, 250 F.3d 668, 681 (9th Cir. 2001)
- Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2006)
- Hudson v. McMillian, 503 U.S. 1, 5, 7, 9-10 (1992)
- Whitley v. Albers, 475 U.S. 1078, 1085 (1986)
- Oliver v. Keller, 289 F.3d 623, 628 (9th Cir. 2002)
- Clem v. Lomeli, 566 F.3d 1177, 1181 (9th Cir. 2009)
- Hearn v. Terhune, 413 F.3d 1036, 1040 (9th Cir. 2005)

- *Olim v. Wakinekona*, 461 U.S. 238, 245 (1983)
- *Meachum v. Fano*, 427 U.S. 215, 225 (1976)
- *Montanye v. Haymes*, 427 U.S. 236, 242 (1976)
- *King v. Lemos*, No. 1:20-CV-01837-NONE-BAM (PC), 2021 WL 2038187, at *6 (E.D. Cal. May 21, 2021)
- *Rizzo v. Dawson*, 778 F.2d 527, 532 (9th Cir. 1985)
- *Valandingham v. Bojorquez*, 866 F.2d 1135 (9th Cir. 1989)
- *Pratt v. Rowland*, 65 F.3d 802, 807 (9th Cir. 1995)
- *Watison v. Carter*, 668 F.3d 1108, 1114-15 (9th Cir. 2012)
- *Silva v. Di Vittorio*, 658 F.3d 1090, 1104 (9th Cir. 2011)
- *Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir. 2009)
- *State v. Superior Court of Kings County (Bodde)*, 32 Cal. 4th 1234, 1245 (2004)
- *Mangold v. California Public Utilities Commission*, 67 F.3d 1470, 1477 (9th Cir. 1995)
- *Karim-Panahi v. Los Angeles Police Department*, 839 F.2d 621, 627 (9th Cir. 1988)
- *City of Stockton v. Superior Court*, 42 Cal. 4th 730, 741-42 (2007)
- *Brown v. Ransweiler*, 171 Cal. App. 4th 516, 526, 534 (2009)
- *Tekle v. United States*, 511 F.3d 839, 855 (9th Cir. 2007)
- *Usher v. City of Los Angeles*, 828 F.2d 556, 561-62 (9th Cir. 1987)
- *Freeman v. City of Santa Ana*, 68 F.3d 1180, 1189 (9th Cir. 1995)
- *Awabdy v. City of Adelanto*, 368 F.3d 1062, 1066 (9th Cir. 2004)
- *Lacey v. Maricopa County*, 693 F.3d 896, 919 (9th Cir. 2012)
- *Galbraith v. County of Santa Clara*, 307 F.3d 1119, 1126-27 (9th Cir. 2002)
- *Lassiter v. City of Bremerton*, 556 F.3d 1049, 1054 (9th Cir. 2009)
- *Singleton v. Perry*, 45 Cal. 2d 489, 494 (1955)
- *Flores v. EMC Mortgage Co.*, 997 F. Supp. 2d 1088, 1125 (E.D. Cal. 2014)
- *Fiorito v. Anderson*, No. 5:18-CV-00506 JFW KES, 2019 WL 1602176, at *4 (C.D. Cal. Apr. 10, 2019), report and recommendation adopted, 2019 WL 1596653 (C.D. Cal. Apr. 15, 2019)
- *Hernandez v. Johnston*, 833 F.2d 1316, 1319 (9th Cir. 1987)
- *Devereaux v. Abbey*, 263 F.3d 1070, 1074-75 (9th Cir. 2001) (en banc)
- *Spencer v. Peters*, 857 F.3d 789, 798 (9th Cir. 2017)
- *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980)
- *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)
- *Wolff v. McDonnell*, 418 U.S. 539, 556, 563-71 (1974)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 NATOMEE HINTON, Case No. 1:24-cv-00960-KES-BAM (PC) 12
Plaintiff, ORDER DIRECTING CLERK OF COURT TO FILE FOURTH AMENDED
COMPLAINT 13 v. LODGED ON MAY 30, 2025 (ECF No. 25) 14 MIX, et al., FINDINGS AND
RECOMMENDATIONS TO 15 Defendants. GRANT IN PART PLAINTIFF’S MOTION FOR
PERMISSION TO ASSERT 16 ADDITIONAL CLAIMS (ECF No. 24) 17 FINDINGS AND
RECOMMENDATIONS 18 RECOMMENDING DISMISSAL OF CERTAIN CLAIMS AND
DEFENDANTS 19 FOURTEEN (14) DAY DEADLINE 20 21 I. Procedural History 22 Plaintiff
Natomée Hinton (“Plaintiff”) is a former state prisoner appearing pro se and in 23 forma pauperis
in this civil rights action pursuant to 42 U.S.C. § 1983.

24 On April 11, 2025, the Court screened the third amended complaint and issued findings 25 and
recommendations that this action proceed on Plaintiff’s third amended complaint against: 26 (1)
Defendants Mix and Vang for excessive force in violation of the Eighth Amendment; 27 (2)
Defendants Vang, Giannini, and Baker for failure to protect in violation of the Eighth 28
Amendment; (3) Defendants Mix and Vang for state law assault and battery; and (4) Defendant 1
Mix for state law intentional infliction of emotional distress.

(ECF No. 18.) The Court further 2 recommended that all other claims be dismissed based on
Plaintiff’s failure to state claims upon 3 which relief may be granted. (Id.) Plaintiff filed objections
on May 2, 2025. (ECF No. 19.) 4 On May 16, 2025, the assigned District Judge adopted the
findings and recommendations 5 in part and granted Plaintiff thirty (30) days to file a fourth
amended complaint to add a First 6 Amendment retaliation claim consistent with the Court’s order.

(ECF No. 20.) The District 7 Judge further ordered that if Plaintiff did not file a fourth amended
complaint, the case would 8 proceed only on the cognizable claims identified in Plaintiff’s third
amended complaint. (Id.) 9 Currently before the Court are Plaintiff’s notice of change of address,
motion for 10 permission to assert two additional claims other than the First Amendment in the
fourth amended 11 complaint, and lodged a fourth amended complaint, all filed May 30, 2025.

(ECF Nos. 23–25.) 12 II. Motion to Assert Additional Claims 13 In his motion, Plaintiff requests
permission to assert additional claims for state tort 14 malicious prosecution and state tort
negligence. (ECF No. 24.) Plaintiff also seeks to add 15 Defendant John Doe, who was the Warden
at the time of the events in the fourth amended 16 complaint. Plaintiff states that he does not assert
any new allegations other than the ones already 17 in the record.

Although he did not separately identify these two state law torts as a claim and 18 cause of action
in the third amended complaint, Plaintiff argues that he does allege facts in the 19 complaint that
support such claims, and he further clarified the malicious prosecution claim in 20 part in his
objections to the prior findings and recommendations. Plaintiff seeks that the entire 21 record be
considered, including the proposed fourth amended complaint attached to his motion.

22 (Id.) 23 Having reviewed the proposed fourth amended complaint, the Court recommends that
24 Plaintiff's motion be granted, in part, based on the discussion below. The fourth amended 25
complaint is currently before the Court for screening. 26 III. Screening Requirement and Standard
27 The Court is required to screen complaints brought by prisoners seeking relief against a 28
governmental entity and/or against an officer or employee of a governmental entity.

28 U.S.C. 1 § 1915A(a). Plaintiff's complaint, or any portion thereof, is subject to dismissal if it is
frivolous 2 or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks
monetary 3 relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b). 4 A
complaint must contain "a short and plain statement of the claim showing that the 5 pleader is
entitled to relief...." Fed.

R. Civ. P. 8(a)(2). Detailed factual allegations are not 6 required, but "[t]hreadbare recitals of the
elements of a cause of action, supported by mere 7 conclusory statements, do not suffice."
Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell 8 Atlantic Corp. v. Twombly, 550 U.S.
544, 555 (2007)). While a plaintiff's allegations are taken as 9 true, courts "are not required to
indulge unwarranted inferences." Doe I v. Wal-Mart Stores, Inc., 10 572 F.3d 677, 681 (9th Cir.

2009) (internal quotation marks and citation omitted). 11 To survive screening, Plaintiff's claims
must be facially plausible, which requires 12 sufficient factual detail to allow the Court to
reasonably infer that each named defendant is liable 13 for the misconduct alleged. Iqbal, 556 U.S.
at 678 (quotation marks omitted); Moss v. U.S. Secret 14 Serv., 572 F.3d 962, 969 (9th Cir.

2009). The sheer possibility that a defendant acted unlawfully 15 is not sufficient, and mere
consistency with liability falls short of satisfying the plausibility 16 standard. Iqbal, 556 U.S. at
678 (quotation marks omitted); Moss, 572 F.3d at 969. 17 IV. Plaintiff's Allegations 18 It appears
Plaintiff has been released from custody. (ECF No. 23.)

The events in the 19 fourth amended complaint are alleged to have occurred while Plaintiff was
incarcerated at Sierra 20 Conservation Center ("SCC") in Jamestown, California. Plaintiff names
as defendants: (1) M. 21 Mix, CDCR Correctional Sgt.; (2) B. Giannini, Correctional Officer; (3)
L. Vang, Correctional 22 Officer; (4) C. Baker, Correctional Officer; and (5) John Doe, Warden.

All defendants are 23 employed at SCC and are sued in their individual capacities. John Doe is
also sued in his official 24 capacity. Plaintiff alleges as follows. 25 In claim 1, Plaintiff alleges
excessive force in violation of the Eighth Amendment.

On 26 4/24/24, Defendant Mix had Plaintiff hog tied and carried by his clothes improperly to a
medical 27 holding cell while Plaintiff's breathing was being disrupted. Once inside, non-
defendant Officer 28 Pastor II closed the door to block eye view of other inmates and free staff.
While being carried, 1 Plaintiff was choking the words "I can't breathe" but ignored.

Plaintiff was laid on his stomach 2 face down in cuffs. Defendant Mix straddled Plaintiff and used Plaintiff's blue top to choke 3 Plaintiff even more, disrupting Plaintiff's breathing while telling Plaintiff to shut up. Plaintiff 4 continued to scream and cry but was struck multiple times in his face and told to shut up while 5 attempting to get the sergeant to stop.

Other officers such as Defendants Giannini, Vang, and 6 Baker stood watching in aid of Defendant Mix's attack. Mix ordered officers to take Plaintiff's 7 shoes/pants off and to pin Plaintiff's legs to his butt in a scissor position, which Defendant 8 Giannini did until they were numb, as Plaintiff warmed around from all the different things 9 happening at once.

10 The Warden was put on notice about Mix's constant excessive force allegations by other 11 inmates before, around, and after this incident and still deliberately didn't do anything to train, 12 discipline, fire, reprimand, or supervise Mix's outrageous behavior. 13 In claim 2, Plaintiff alleges failure to protect in violation of the Eighth Amendment. 14 While Sgt.

Mix punched and strangled Plaintiff, while straddling Plaintiff while Plaintiff's hands 15 were cuffed behind his back, other officers such as Vang, Giannini, and Baker sat and watched 16 the attack and didn't intervene as Sgt. Mix used excessive force against Plaintiff in a malicious 17 manner and not to regain order of the facility. He told Plaintiff to shut up as Plaintiff cried and 18 begged for help.

They falsified incident reports of what occurred and left out the force Sgt. Mix 19 used against Plaintiff and stated none was used. They had a job to intervene when watching 20 another use excessive force against Plaintiff unlawfully. 21 The Warden was put on notice before April 2024, prior to Plaintiff's incident, and knew of 22 or should have known of Mix's constant unreasonable use of excessive force through complaints 23 before, during, and after this event from numerous inmates.

There are also records of his 24 numerous allegations alleging that he used force unlawfully and deliberately failed to train, fire, 25 discipline, or reprimand Mix after becoming aware of his outrageous conduct, including 26 Plaintiff's incident, many before and after, after which led Mix to assaulting another inmate with 27 a total of 3–4 reported separate assaults in an approximately 90-day period.

It is the Warden's 28 duty to ensure and maintain a safe and assault free environment for inmates and correctional 1 officers, but he failed to discipline correctional officers, resulting in numerous excessive force 2 against inmates for no reason by multiple staff at SCC. Upon Plaintiff's return, Mix threatened 3 Plaintiff to round 2 of another assault, made fun of Plaintiff, harassed and humiliated Plaintiff 4 while following Plaintiff around the yard several months after Plaintiff's issue transpired, with no 5 cares or worries for any disciplinary action for his actions.

The Warden did nothing to ensure the 6 safety of the inmate population from Mix or uses of excessive force by other officers. 7 In claim 3, Plaintiff alleges a state tort for assault and battery. Sgt. Mix personally 8 battered Plaintiff while Plaintiff laid in cuffs face down on the ground in Facility C medical 9 holding cell. Giannini crossed Plaintiff's legs to Plaintiff's butt in major pain until they were 10 numb.

Plaintiff was screaming for help but no one came or assisted. Sgt. Mix started to strangle 11 Plaintiff with Plaintiff's blue top while telling Plaintiff to shut up as he straddled Plaintiff from 12 behind. Plaintiff screamed and cried that Plaintiff could not breathe. He struck Plaintiff multiple 13 times with his fist to Plaintiff's face as Plaintiff swarmed on the ground from the attack and all 14 the different things happening to him at once.

Officers Vang, Giannini, and Baker stood 15 watching and aiding in Sgt. Mix's attack. 16 In claim 4, Plaintiff alleges a state tort for intentional infliction of emotional distress. On 17 4/24/24, Sgt. Mix took Plaintiff off camera to a room with no witnesses except his fellow officers 18 and choked and struck Plaintiff multiple times while strangling Plaintiff, humiliating Plaintiff 19 through his cries and screaming for help.

He continually told Plaintiff to shut up as he struck 20 Plaintiff and choked Plaintiff, as Plaintiff told him he could not breathe, while straddling Plaintiff. 21 He told Plaintiff to clean up before he got medical saying whatever Plaintiff disclosed to 22 medical/admin would be Plaintiff's fate moving forward. But Plaintiff still told medical and 23 admin what Mix did to Plaintiff while he was present and that he battered Plaintiff for no reason.

24 Mix then falsified documents that got Plaintiff sent to Ad-seg and change of living conditions. 25 Plaintiff was found not guilty of the falsified RVR after being sent to High Desert State Prison 26 ("HDSP"), and Plaintiff was returned to SCC about 90 days later. While in Ad-seg, Plaintiff had 27 limited access to yard, recreation, rehabilitative programs/services, and no communications with 28 family or support system, leaving Plaintiff with a deteriorating mental health.

Officers Vang, 1 Giannini, and Baker failed to help Plaintiff when they saw he was beaten by the supervisor. 2 When Plaintiff returned to SCC, Mix constantly antagonized Plaintiff and made jokes and 3 threats to harm Plaintiff again, with great disregard for civilization or punishment, as he could do 4 whatever he wanted, cursing at Plaintiff. 5 In claim 5, Plaintiff alleges retaliation in violation of the First Amendment.

After Mix's 6 attack on Plaintiff ceased and before he got medical, he told Plaintiff that whatever Plaintiff 7 disclosed to medical/admin would be Plaintiff's fate moving forward, in an attempt to silence 8 Plaintiff and not disclose what actually transpired.

As an inmate Plaintiff has a First Amendment 9 right to complain in CDCR through a 602 process, but in times of emergency nothing precludes 10 reporting verbally, then following the 602

procedure. Upon medical arriving, Plaintiff was still 11 crying and hysterical and told them that Mix beat Plaintiff and Plaintiff hadn't done anything 12 wrong, while Mix was physically present.

He then in return falsified a report to cover up what 13 happened, stating Plaintiff battered him. That false report by Mix got Plaintiff re-housed in Ad- 14 seg for months, which changed Plaintiff's living conditions. 15 In claim 6, Plaintiff alleges a state tort for malicious prosecution.

On 4/24/24 Mix 16 initiated an administrative proceeding against Plaintiff, false RVR disciplinary proceedings. Mix 17 stated his intentions of Plaintiff telling anyone what occurred, when disclosing what occurred he 18 proceeded with malice and without probable cause to falsify documents in an attempt to cover 19 what happened, which got Plaintiff sent to Ad-seg and a RVR disciplinary process initiated.

20 Plaintiff was later found not guilty of the falsified battery on a peace officer, when Plaintiff was 21 released from Ad-seg and returned from Level IV HDSP back to SCC. 22 In claim 7, Plaintiff alleges a state tort for negligence. All Defendants breached their duty 23 of care to ensure that Plaintiff wasn't beaten in custody and left with multiple injuries.

They had 24 an obligation to ensure malicious harm or excessive force against Plaintiff was not done in an 25 unlawful manner, as they have a job to protect the inmate population and staff from any unwanted 26 harm or injury, which could be prevented. All defendants had an obligation but failed to act on 27 that obligation deliberately by standing and just watching and aiding in the attack.

28 /// 1 The Warden knew before Plaintiff's injuries about violence occurring at SCC but failed to 2 take steps to remedy it, resulting in Plaintiff's injury. Plaintiff stated specific dates when he 3 became aware of specifically Sgt. Mix's actions and potential staff misconduct, but took no action 4 as he assaulted another inmate after Plaintiff and was still deployed on the yard upon Plaintiff's 5 return months later, which led to more unlawful acts.

The Warden holds a duty to control the 6 conduct of his employees to ensure their compliance with policy. 7 Mix knew what transpired on 4/24/24 in the Facility C medical holding cell and also knew 8 that the falsified report with false allegations would get Plaintiff sent to Ad-seg and possibly a 9 Level IV after the RVR was finalized, as he has been with the department for 30 years and was 10 currently at the Sgt. rank.

This was an attempt to maliciously prosecute Plaintiff for wanting to 11 exercise his First Amendment right to complain about what occurred on the morning of 4/24/24. 12 Plaintiff alleges he complied with the Government Claims Act within 6 months of the 13 incident, claim #202402083 and it is still pending. 14 As injuries, Plaintiff suffered black eye, swollen temples, bruising on back and face, back 15 pain, nerve damage, neck tenderness, lost consciousness, dizziness, among other injuries.

16 Plaintiff alleges he has PTSD, anxiety, depression, separation from family, living conditions 17 restricted, hardship, helplessness, hair loss, weight loss, medication. 18 As remedies, Plaintiff seeks compensatory and punitive damages. 19 V. Discussion 20 A. Official Capacity 21 Plaintiff is attempting to sue Defendant Warden John Doe in his official capacity, and is 22 seeking only monetary relief.

Plaintiff may not pursue his claims for monetary damages against 23 the named defendants in their official capacities. “The Eleventh Amendment bars suits for money 24 damages in federal court against a state, its agencies, and state officials in their official 25 capacities.” *Aholelei v. Dep’t. of Pub. Safety*, 488 F.3d 1144, 1147 (9th Cir. 2007) (citations 26 omitted).

However, the Eleventh Amendment does not bar suits seeking damages against state 27 officials in their personal capacities, *Hafer v. Melo*, 502 U.S. 21, 30 (1991); *Porter v. Jones*, 319 28 F.3d 483, 491 (9th Cir. 2003), or suits for injunctive relief brought against state officials in their 1 official capacities, *Austin v. State Indus. Ins. Sys.*, 939 F.2d 676, 680 n.2 (9th Cir.

1991). Thus, 2 Plaintiff may only proceed in this action for monetary damages against defendants in their 3 individual capacities. 4 B. Linkage Requirement and Supervisory Liability 5 The Civil Rights Act under which this action was filed provides: 6 Every person who, under color of [state law]... subjects, or causes to be subjected, any citizen of the United States... to the deprivation of any rights, 7 privileges, or immunities secured by the Constitution... shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for 8 redress.

9 42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link between 10 the actions of the defendants and the deprivation alleged to have been suffered by Plaintiff. See 11 *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658 (1978); *Rizzo v. Goode*, 423 U.S. 362 (1976).

The 12 Ninth Circuit has held that “[a] person ‘subjects another to the deprivation of a constitutional 13 right, within the meaning of section 1983, if he does an affirmative act, participates in another’s 14 affirmative acts or omits to perform an act which he is legally required to do that causes the 15 deprivation of which complaint is made.” *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir.

1978). 16 Here, Plaintiff’s complaint fails to link Defendant Warden John Doe to any wrongful 17 conduct. Plaintiff alleges in a conclusory fashion that the Warden was put on notice about 18 violence occurring at SSC, by Defendant Mix and other unspecified officers, by other inmates 19 before, around, and after Plaintiff suffered his injuries, and still took no action to train, discipline, 20 or supervise Defendant Mix or any other officers.

While Plaintiff alleges that he stated specific 21 dates when the Warden became specifically aware of Defendant Mix’s actions, Plaintiff does not 22 provide any of those specific dates or otherwise allege that the Warden was actually made aware 23 of misconduct by Defendant Mix or any other

officer. 24 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a 25 cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678 26 (citation omitted).

This is because, while factual allegations are accepted as true, legal 27 conclusions are not. *Id.*; see also *Twombly*, 550 U.S. at 556–57; *Moss*, 572 F.3d at 969. 28 Therefore, Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim to 1 relief that is plausible on its face.’” A claim has facial plausibility when the plaintiff pleads factual 2 content that allows the court to draw the reasonable inference that the defendant is liable for the 3 misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citations and internal quotation marks omitted).

4 Insofar as Plaintiff is attempting to sue Defendant Warden based on his supervisory role, 5 he may not do so. Liability may not be imposed on supervisory personnel for the actions or 6 omissions of their subordinates under the theory of respondeat superior. *Iqbal*, 556 U.S. at 676– 77; *Simmons v. Navajo Cty., Ariz.*, 609 F.3d 1011, 1020–21 (9th Cir. 2010); *Ewing v. City of 8 Stockton*, 588 F.3d 1218, 1235 (9th Cir.2009); *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir.

9 2002). 10 Supervisors may be held liable only if they “participated in or directed the violations, or 11 knew of the violations and failed to act to prevent them.” *Taylor v. List*, 880 F.2d 1040, 1045 (9th 12 Cir. 1989); accord *Starr v. Baca*, 652 F.3d 1202, 1205–06 (9th Cir. 2011); *Corales v. Bennett*, 13 567 F.3d 554, 570 (9th Cir. 2009). Supervisory liability may also exist without any personal 14 participation if the official implemented “a policy so deficient that the policy itself is a 15 repudiation of the constitutional rights and is the moving force of the constitutional violation.” 16 *Redman v. County of San Diego*, 942 F.2d 1435, 1446 (9th Cir.

1991) (citations and quotations 17 marks omitted), abrogated on other grounds by *Farmer v. Brennan*, 511 U.S. 825 (1970). 18 Here, Plaintiff has failed to establish that Defendant Warden participated in or directed 19 any constitutional violation or that he implemented a policy so deficient that it was the moving 20 force of any constitutional violation. 21 Further, a supervisor's failure to train subordinates may give rise to individual liability 22 under Section 1983 where the failure amounts to deliberate indifference to the rights of persons 23 with whom the subordinates are likely to come into contact.

See *Canell v. Lightner*, 143 F.3d 24 1210, 1213-14 (9th Cir. 1998). To impose liability under this theory, a plaintiff must demonstrate 25 the subordinate's training was inadequate, the inadequate training was a deliberate choice on the 26 part of the supervisor, and the inadequate training caused a constitutional violation. *Id.* at 1214; 27 see also *City of Canton v. Harris*, 489 U.S. 378, 391, 109 S.Ct.

1197, 103 L.Ed.2d 412 (1989); 28 *Lee v. City of Los Angeles*, 250 F.3d 668, 681 (9th Cir. 2001). Plaintiff has not alleged facts 1 demonstrating that Defendant Warden was deliberately indifferent

to a need for more or different 2 training. 3 C. Eighth Amendment 4 The Eighth Amendment protects prisoners from inhumane methods of punishment and 5 from inhumane conditions of confinement.

Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 6 2006). The unnecessary and wanton infliction of pain violates the Cruel and Unusual 7 Punishments Clause of the Eighth Amendment. Hudson v. McMillian, 503 U.S. 1, 5 (1992) 8 (citations omitted).

Although prison conditions may be restrictive and harsh, prison officials must 9 provide prisoners with food, clothing, shelter, sanitation, medical care, and personal safety. 10 Farmer v. Brennan, 511 U.S. 825, 832–33 (1994) (quotations omitted). 11 1. Excessive Force 12 For claims of excessive physical force, the issue is “whether force was applied in a good- 13 faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.” 14 Hudson, 503 U.S. at 7.

Relevant factors for this consideration include “the extent of injury... [,] 15 the need for application of force, the relationship between that need and the amount of force used, 16 the threat ‘reasonably perceived by the responsible officials,’ and ‘any efforts made to temper the 17 severity of a forceful response.’” Id. (quoting Whitley v. Albers, 475 U.S. 1078, 1085 (1986)).

18 Although de minimis uses of force do not violate the Constitution, the malicious and sadistic use 19 of force to cause harm always violates the Eighth Amendment, regardless of whether or not 20 significant injury is evident. Hudson, 503 U.S. at 9–10; Oliver v. Keller, 289 F.3d 623, 628 (9th 21 Cir. 2002). 22 Liberally construing the allegations, and considering the allegations as a whole, Plaintiff 23 states a cognizable claim for excessive force against Defendant Sgt.

Mix and Correctional Officer 24 Giannini. Plaintiff fails to state a claim against the other defendants because it is not clear they 25 engaged in force. 26 2. Failure to Protect 27 Prison officials have a duty under the Eighth Amendment to protect prisoners from 28 violence at the hands of other prisoners or others because being violently assaulted in prison is 1 simply not part of the penalty that criminal offenders pay for their offenses against society.

2 Farmer, 511 U.S. at 833; Clem v. Lomeli, 566 F.3d 1177, 1181 (9th Cir.2009); Hearn v. 3 Terhune, 413 F.3d 1036, 1040 (9th Cir. 2005). However, prison officials are liable under the 4 Eighth Amendment only if they demonstrate deliberate indifference to conditions posing a 5 substantial risk of serious harm to an inmate; and it is well settled that deliberate indifference 6 occurs when an official acted or failed to act despite his knowledge of a substantial risk of serious 7 harm.

Farmer, 511 U.S. at 834, 841; Clem, 566 F.3d at 1181; Hearn, 413 F.3d at 1040. 8 Plaintiff states a cognizable failure to protect claim against Defendants Vang, Giannini, 9 and Baker. 10 Plaintiff is informed that any claim premised on the failure to house Plaintiff at a 11 particular institution or

in particular housing fails because Plaintiff is not entitled to be housed in any particular institution.

See *Olim v. Wakinekona*, 461 U.S. 238, 245 (1983); *Meachum v. Fano*, 427 U.S. 215, 225 (1976). In general, prison officials' housing and classification decisions do not give rise to federal constitutional claims encompassed by the protection of liberty and property guaranteed by the Fifth and Fourteenth Amendments. *Montayne v. Haymes*, 427 U.S. 236, 242 (1976) (It is well settled that prisoners have no constitutional right to placement in any particular prison, to any particular security classification, or to any particular housing assignment); accord *King v. Lemos*, No. 1:20-CV-01837-NONE-BAM (PC), 2021 WL 2038187, at *6 (E.D.

Cal. May 19 21, 2021). D. First Amendment – Retaliation Allegations of retaliation against a prisoner's First Amendment rights to speech or to petition the government may support a section 1983 claim. *Rizzo v. Dawson*, 778 F.2d 527, 532 (9th Cir. 1985); see also *Valandingham v. Bojorquez*, 866 F.2d 1135 (9th Cir. 1989); *Pratt v. Rowland*, 65 F.3d 802, 807 (9th Cir.

1995). "Within the prison context, a viable claim of First Amendment retaliation entails five basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2) because of (3) that prisoner's protected conduct, and that (4) such action (5) chilled the inmate's exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal." *Rhodes v. Robinson*, 408 F.3d 559, 567–68 (9th Cir.

2005); accord *Watson v. Carter*, 668 F.3d 1108, 1114-15 (9th Cir. 2012); *Silva*, 658 F.3d at 1104; *Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir. 2009). 3 Adverse action taken against a prisoner "need not be an independent constitutional 4 violation.

The mere threat of harm can be an adverse action." *Watson*, 668 F.3d at 1114 (internal citations omitted). A causal connection between the adverse action and the protected 6 conduct can be alleged by an allegation of a chronology of events from which retaliation can be 7 inferred. *Id.* The filing of grievances and the pursuit of civil rights litigation against prison 8 officials are both protected activities.

Rhodes, 408 F.3d at 567–68. The plaintiff must allege 9 either a chilling effect on future First Amendment activities, or that he suffered some other harm 10 that is "more than minimal." *Watson*, 668 F.3d at 1114. A plaintiff successfully pleads that the 11 action did not reasonably advance a legitimate correctional goal by alleging, in addition to a 12 retaliatory motive, that the defendant's actions were "arbitrary and capricious" or that they were 13 "unnecessary to the maintenance of order in the institution." *Id.* 14 Liberally construing the allegations in the fourth amended complaint, the Court finds that 15 Plaintiff states a cognizable claim against Defendant Mix for retaliation in violation of the First 16 Amendment.

17 E. State Law Claims 18 California's Government Claims Act¹ requires that a claim against the State² or its 19 employees "relating to a cause of action for death or for injury to person" be presented to the 20 Department of General Services' Government Claims Program no more than six months after the 21 cause of action accrues. Cal. Gov't Code §§ 905.2, 910, 911.2, 945.4, 950–950.2.

Presentation 22 of a written claim, and action on or rejection of the claim, are conditions precedent to suit. State 23 v. Super. Ct. of Kings Cty. (Bodde), 32 Cal. 4th 1234, 1245 (Cal. 2004); Mangold v. Cal. Pub. 24 Utils. Comm'n, 67 F.3d 1470, 1477 (9th Cir. 1995).

To state a tort claim against a public entity 25 1 This Act was formerly known as the California Tort Claims Act. City of Stockton v. Superior Court, 42 Cal. 4th 26 730, 741–42 (Cal. 2007) (adopting the practice of using Government Claims Act rather than California Tort Claims Act). 27 2 " 'State' means the State and any office, officer, department, division, bureau, board, commission or agency of the 28 State claims against which are paid by warrants drawn by the Controller." Cal. Gov't Code § 900.6.

1 or employee, a plaintiff must allege compliance with the Government Claims Act. Bodde, 32 Cal. 2 4th at 1245; Mangold, 67 F.3d at 1477; Karim-Panahi v. Los Angeles Police Dep't, 839 F.2d 621, 3 627 (9th Cir. 1988). 4 Plaintiff alleges that he complied with the California Government Claims Act. 5 1. Assault and Battery 6 Plaintiff alleges a state law claim for assault and battery.

For a civil battery claim in 7 California, a plaintiff must prove "(1) defendant intentionally performed an act that resulted in a 8 harmful or offensive contact with the plaintiff's person; (2) plaintiff did not consent to the 9 contact; and (3) the harmful or offensive contact caused injury, damage, loss or harm to plaintiff." 10 Brown v. Ransweiler, 171 Cal. App.

4th 516, 526 (2009). Where the defendant is a peace officer, 11 the plaintiff must also prove that the use of force was unreasonable. Ransweiler, 171 Cal. App. 12 4th at 526. 13 For an assault claim under California law, a plaintiff must show that (1) the defendant 14 threatened to touch him in a harmful or offensive manner; (2) it reasonably appeared to the 15 plaintiff that the defendant was about to carry out the threat; (3) the plaintiff did not consent to the 16 conduct; (4) the plaintiff was harmed; and (5) the defendant's conduct was a substantial factor in 17 causing the harm.

Tekle v. U.S., 511 F.3d 839, 855 (9th Cir. 2007) (citation omitted). 18 At the pleading stage, Plaintiff's fourth amended complaint states cognizable state law 19 claims against Defendants Mix and Giannini for assault and battery. 20 2. Intentional Infliction of Emotional Distress 21 Under California law, the elements of intentional infliction of emotional distress are: 22 (1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless 23 disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or 24 extreme

emotional distress; and (3) actual and proximate causation of the emotional distress by 25 the defendant's outrageous conduct.

Corales v. Bennett, 567 F.3d 554, 571 (9th Cir. 2009) 26 (quotation marks omitted); *Tekle v. United States*, 567 F.3d 554, 855 (9th Cir. 2007). Conduct is 27 outrageous if it is so extreme as to exceed all bounds of that usually tolerated in a civilized 28 community. *Corales*, 567 F.3d at 571; *Tekle*, 511 F.3d at 855. 1 Liberally construing the allegations, Plaintiff states a cognizable claim for intentional 2 infliction of emotional distress against Defendant Mix.

Plaintiff alleges he was strangled and 3 beaten while yelling he could not breathe and while handcuffed. 4 3. Malicious Prosecution 5 A claim for malicious prosecution or abuse of process is not generally cognizable under 6 Section 1983 if a process is available within the state judicial system to provide a remedy. *Usher 7 v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir.

1987) (citations omitted). The exception is 8 "when a malicious prosecution is conducted with the intent to deprive a person of equal 9 protection of the laws or is otherwise intended to subject a person to denial of constitutional 10 rights." *Id.* (citations omitted).

In order to prevail on a Section 1983 claim of malicious 11 prosecution, a plaintiff "must show that the defendants prosecuted [him] with malice and without 12 probable cause, and that they did so for the purpose of denying [him] equal protection or another 13 specific constitutional right." *Freeman v. City of Santa Ana*, 68 F.3d 1180, 1189 (9th Cir. 1995) 14 (citations omitted); see also *Awabdy v. City of Adelanto*, 368 F.3d 1062, 1066 (9th Cir.

2004); 15 *Lacey v. Maricopa County*, 693 F.3d 896, 919 (9th Cir. 2012). Malicious prosecution actions are 16 not limited to suits against prosecutors but may be brought, as here, against other persons who 17 have wrongfully caused the charges to be filed. *Galbraith v. Cty. of Santa Clara*, 307 F.3d 1119, 18 1126–27 (9th Cir. 2002). Probable cause is an absolute defense to malicious prosecution.

19 *Lassiter v. City of Bremerton*, 556 F.3d 1049, 1054 (9th Cir. 2009). 20 In California, the elements of malicious prosecution are (1) the initiation of criminal 21 prosecution, (2) malicious motivation, and (3) lack of probable cause. *Usher*, 828 F.2d at 562 22 (citing *Singleton v. Perry*, 45 Cal. 2d 489, 494 (1955).) 23 Plaintiff does not allege he was subject to criminal prosecution.

While Plaintiff alleges 24 that he was subject to disciplinary proceedings based on false evidence, which was done for the 25 purpose of denying Plaintiff his rights under the First Amendment, the Ninth Circuit has not held 26 that such prison disciplinary proceedings are sufficient for a malicious prosecution claim. Indeed, 27 the Supreme Court has held that "[p]rison disciplinary proceedings are not part of a criminal 28 prosecution, and the full panoply of rights due a defendant in such proceedings does not apply." 1 *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974).

2 4. Negligence 3 “The elements of a negligence cause of action are: (1) a legal duty to use due care; (2) a 4 breach of that duty; (3) the breach was the proximate or legal cause of the resulting injury; and 5 (4) actual loss or damage resulting from the breach of the duty of care.” *Brown v. Ransweiler*, 6 171 Cal. App. 4th 516, 534 (2009) (citing *Ladd v. County of San Mateo*, 12 Cal. 4th 913, 917 7 (1996)).

As California does not recognize a separate tort for negligent infliction of emotional 8 distress, a plaintiff may seek damages for emotional injury caused by a defendant’s negligence. 9 See *Flores v. EMC Mortg. Co.*, 997 F. Supp. 2d 1088, 1125 (E.D. Cal. 2014); *Fiorito v. 10 Anderson*, No. 5:18-CV-00506 JFW KES, 2019 WL 1602176, at *4 (C.D. Cal. Apr. 10, 2019), 11 report and recommendation adopted, No. 5:18-CV-00506 JFW KES, 2019 WL 1596653 (C.D.

12 Cal. Apr. 15, 2019). 13 Liberally construing the allegations, Plaintiff states a cognizable claim for negligence 14 against Defendants Mix, Vang, Giannini, and Baker. 15 F. False Reports 16 The creation of false evidence, standing alone, is not actionable under § 1983. See 17 *Hernandez v. Johnston*, 833 F.2d 1316, 1319 (9th Cir. 1987) (independent right to accurate prison 18 record has not been recognized); *Johnson v. Felker*, No. 1:12-cv-02719 GEB KJN (PC), 2013 19 WL 6243280, at *6 (E.D.

Cal. Dec. 3, 2013) (“Prisoners have no constitutionally guaranteed right 20 to be free from false accusations of misconduct, so the mere falsification of a report does not give 21 rise to a claim under section 1983.”) (citations omitted).

Moreover, “plaintiff cannot state a 22 cognizable Eighth Amendment violation based on an allegation that defendant[] issued a false 23 rule violation against plaintiff.” *Jones v. Prater*, No. 2:10-cv-01381 JAM KJN P, 2012 WL 24 1979225, at *2 (E.D. Cal. Jun. 1, 2012); see also *Youngs v. Barretto*, No. 2:16-cv-0276 JAM AC 25 P, 2018 WL 2198707, at *3 (E.D. Cal. May 14, 2019) (noting that issuance of false rules violation 26 report does not rise to the level of cruel and unusual punishment) (citations omitted).

27 Accordingly, Plaintiff’s complaint does not state a cognizable claim against any defendant 28 for an allegedly falsified statement. 1 Deliberately providing false evidence that results in criminal charges or certain 2 administrative penalties can give rise to a due process claim where there was a resulting 3 deprivation of liberty. *Devereaux v Abbey*, 263 F.3d 1070, 1074–75 (9th Cir.

2001) (en banc) 4 (“[T]here is a clearly established constitutional due process right not to be subjected to criminal 5 charges on the basis of false evidence that was deliberately fabricated by the government.”). “To 6 prevail on a § 1983 claim of deliberate fabrication, a plaintiff must prove that (1) the defendant 7 official deliberately fabricated evidence and (2) the deliberate fabrication caused the plaintiff’s 8 deprivation of liberty.” *Spencer v. Peters*, 857 F.3d 789, 798 (9th Cir.

2017) (citations omitted). 9 To establish the second element of causation, the plaintiff must show “that (a) the act was the 10 cause in fact of the deprivation of liberty, meaning that the injury would not have occurred in the 11 absence of the conduct; and (b) the act was the ‘proximate cause’ or ‘legal cause’ of the injury, 12 meaning that the injury is of a type that a reasonable person would see as a likely result of the 13 conduct in question.” Spencer, 857 F.3d at 798 (citations omitted).

14 The premise of a Devereaux claim is that Plaintiff was subject to a criminal prosecution 15 and deprived of liberty. Plaintiff does not allege he was subject to criminal prosecution. While 16 Plaintiff alleges that he was subject to disciplinary proceedings based on false evidence, and 17 placed in administrative segregation as a result of fabricated evidence, the Ninth Circuit has not 18 held that such prison disciplinary proceedings are sufficient for a Devereaux claim.

Indeed, the 19 Supreme Court has held that “[p]rison disciplinary proceedings are not part of a criminal 20 prosecution, and the full panoply of rights due a defendant in such proceedings does not apply.” 21 Wolff v. McDonnell, 418 U.S. 539, 556 (1974).

The minimum Due Process procedural 22 requirements that must be met in such proceedings are: (1) written notice of the charges; (2) at 23 least 24 hours between the time the prisoner receives written notice and the time of the hearing, 24 so that the prisoner may prepare his defense; (3) a written statement by the fact finders of the 25 evidence they rely on and reasons for taking disciplinary action; (4) the right of the prisoner to 26 call witnesses in his defense, when permitting him to do so would not be unduly hazardous to 27 institutional safety or correctional goals; and (5) legal assistance to the prisoner where the 28 prisoner is illiterate or the issues presented are legally complex.

Id. at 563–71. 1 G. Doe Defendants 2 Plaintiff names Warden John Doe as a defendant. “As a general rule, the use of ‘John 3 Doe’ to identify a defendant is not favored.” Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 4 1980). Plaintiff is advised that John Doe or Jane Doe defendants (i.e., unknown defendants) 5 cannot be served by the United States Marshal until Plaintiff has identified them as actual 6 individuals and amended his complaint to substitute names for John Doe or Jane Doe.

7 VI. Order and Recommendations 8 Based on the foregoing, the Court finds that Plaintiff’s fourth amended complaint states 9 cognizable claims against: (1) Defendants Mix and Giannini for excessive force in violation of 10 the Eighth Amendment; (2) Defendants Vang, Giannini, and Baker for failure to protect in 11 violation of the Eighth Amendment; (3) Defendant Mix for retaliation in violation of the First 12 Amendment; (4) Defendants Mix and Vang for state law assault and battery; (5) Defendant Mix 13 for state law intentional infliction of emotional distress; and (6) Defendants Mix, Vang, Giannini, 14 and Baker for state law negligence.

15 Plaintiff's fourth amended complaint fails to state any other cognizable claims for relief 16
against any other defendant. Despite being provided with the relevant pleading and legal 17
standards, Plaintiff has been unable to cure the identified deficiencies and further leave to amend
18 is not warranted. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000).

19 Accordingly, the Clerk of the Court is HEREBY DIRECTED to file the fourth amended 20
complaint lodged on May 30, 2025, (ECF No. 25), as the operative complaint in this action. 21
Furthermore, IT IS HEREBY RECOMMENDED as follows: 22 1. Plaintiff's motion for
permission to assert additional claims, (ECF No. 24), be granted in 23 part, as discussed above; 24
2.

This action proceed on Plaintiff's fourth amended complaint against: (1) Defendants Mix 25 and
Giannini for excessive force in violation of the Eighth Amendment; (2) Defendants 26 Vang,
Giannini, and Baker for failure to protect in violation of the Eighth Amendment; (3) 27 Defendant
Mix for retaliation in violation of the First Amendment; (4) Defendants Mix 28 and Vang for state
law assault and battery; (5) Defendant Mix for state law intentional 1 infliction of emotional
distress; and (6) Defendants Mix, Vang, Giannini, and Baker for 2 state law negligence; and 3 3.

All other claims and defendants be dismissed based on Plaintiff's failure to state claims 4 upon
which relief may be granted. 5 * * * 6 These Findings and Recommendation will be submitted to
the United States District Judge 7 assigned to the case, pursuant to the provisions of Title 28
U.S.C. § 636(b)(1). Within fourteen 8 (14) days after being served with these Findings and
Recommendation, Plaintiff may file written 9 objections with the Court.

The document should be captioned "Objections to Magistrate Judge's 10 Findings and
Recommendation." Objections, if any, shall not exceed fifteen (15) pages or 11 include exhibits.
Exhibits may be referenced by document and page number if already in 12 the record before the
Court. Any pages filed in excess of the 15-page limit may not be 13 considered.

The parties are advised that failure to file objections within the specified time may 14 result in the
waiver of the "right to challenge the magistrate's factual findings" on 15 appeal. *Wilkerson v.*
Wheeler, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 16 923 F.2d 1391, 1394
(9th Cir. 1991)). 17 IT IS SO ORDERED. 18 19 Dated: June 3, 2025 /s/ Barbara A. McAuliffe _
UNITED STATES MAGISTRATE JUDGE 20 21 22 23 24 25 26 27 28