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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION**

SAMUEL ANTHONY ACINELLI, Jr.,  
Plaintiff,  
v.  
KIRK ANTHONY TORRES,  
Defendant.

No. ED CV 13-1371-AB (PLA)  
**ORDER ACCEPTING MAGISTRATE  
JUDGE’S INTERIM REPORT AND  
RECOMMENDATION**

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Fourth Amended Complaint, all the records and files herein, and the magistrate judge’s interim report and recommendation. The Court accepts the recommendations of the magistrate judge.

ACCORDINGLY, IT IS ORDERED:

1. The Interim Report and Recommendation is approved and accepted.
2. Defendant’s motion to dismiss is granted.
3. Plaintiff’s Eighth Amendment claim for inadequate medical care is dismissed without leave to amend and with prejudice.
4. Plaintiff’s state law claims are dismissed with leave to amend.
5. Plaintiff is **ordered**, if he **desires to pursue his state law claims, to file a Fifth Amended Complaint no later than thirty (30) days of the date of service of this Order accepting this Report and Recommendation.** The Fifth Amended Complaint must bear the

1 docket number assigned in this case, be labeled "Fifth Amended Complaint," and be complete in  
2 and of itself without reference to any other pleading or document (plaintiff is advised that he **must**  
3 include his sexual assault claim against Dr. Torres if he chooses to file a Fifth Amended  
4 Complaint).

5 6. Defendant is **ordered**, if plaintiff fails to timely file a Fifth Amended Complaint, to file  
6 an answer to plaintiff's sexual assault claim as alleged in the Fourth Amended Complaint no later  
7 than thirty (30) days after plaintiff's date for filing a Fifth Amended Complaint has passed.

8 7. The clerk shall serve this order on all counsel or parties of record.

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10 DATED: July 16, 2015



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HONORABLE ANDRÉ BIROTTE JR.  
UNITED STATES DISTRICT JUDGE

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