

1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF CALIFORNIA
3
4
5

6 MICHAEL TATER-ALEXANDER,

7 Plaintiff,

8 v.

9 LONNIE R. AMERJAN, CITY OF CLOVIS,
10 TINA STIRLING, COMMUNITY REGIONAL
11 MEDICAL CENTER, DR. THOMAS E.
12 MANSFIELD, MARY JO GREENE, and
13 DOES 1 through 100.

14 Defendants.

1:08-cv-00372 OWW SMS

MEMORANDUM DECISION RE CROSS
MOTIONS FOR SUMMARY JUDGMENT
(DOCS. 115, 122, 130).

15 I. INTRODUCTION

16 Plaintiff proceeds with this action for damages and
17 equitable relief under the Americans with Disabilities Act
18 ("ADA"), Unruh Civil Rights Act ("Unruh Act"), Disabled Persons
19 Act ("DPA"), First Amendment, 42 U.S.C. § 1983, and Bane Civil
20 Rights Act. Before the court are cross-motions for summary
21 judgment.

22 II. FACTUAL BACKGROUND

23 A. Procedural History

24 Plaintiff filed a complaint on March 14, 2008, amendments to
25 the complaint were filed, and a third amended complaint ("TAC")
26 was filed on May 27, 2009. The TAC alleges fifteen causes of
27
28

1 action.

2 On December 16, 2010, the parties stipulated to dismiss the
3 first cause of action for violation of the Emergency Medical
4 Treatment and Active Labor Act, eighth cause of action for
5 medical malpractice, ninth cause of action for false arrest,
6 tenth cause of action for assault, and eleventh cause of action
7 for intentional infliction of emotional distress.
8

9 On November 1, 2010, Plaintiff filed a motion for partial
10 summary judgment. Doc. 130. Plaintiff moves for partial summary
11 judgment against Community Regional Medical Center ("Community
12 Medical") on the second cause of action for violation of the ADA,
13 sixth cause of action for violation of the Unruh Act, seventh
14 cause of action for violation of the DPA, and fifteenth cause of
15 action for injunctive relief. Plaintiff also moves for partial
16 summary judgment against Dr. Thomas Mansfield on the sixth cause
17 of action for violation of the Unruh Act and seventh cause of
18 action for violation of the DPA. Doc. 130.¹ Defendants filed
19 oppositions (Docs. 143, 153), to which Plaintiff replied (Docs.
20 180, 185).
21

22 On October 29, 2010, Dr. Mansfield filed a motion for
23 summary judgment, or in the alternative, summary adjudication of
24 the issues on all causes of action asserted against him. Doc.
25 122. Plaintiff filed an opposition (Doc. 159), to which Dr.
26

27 ¹ Plaintiff does not move for summary judgment against Nurse Greene,
28 the City of Clovis, Officer Sterling, or Corporal Amerjan.

1 Mansfield replied (Doc. 172).

2 On October 29, 2010, the City of Clovis, Tina Stirling, and
3 Lonnie R. Amerjan (together, "Clovis Defendants") filed a motion
4 for summary judgment, or in the alternative, summary adjudication
5 of the issues on all the causes of action asserted against Clovis
6 Defendants. Doc. 115. Plaintiff filed an opposition (Doc. 164),
7 to which Clovis Defendants replied (Doc. 173).²

9 B. Factual History

10 1. Undisputed Facts

11 On June 9, 1994, the Department of Health and Human
12 Services, Social Security Administration ("SSA"), Office of
13 Hearing and Appeals held that Plaintiff "has been disabled since
14 October 21, 1992" and "has the following impairments which are
15 considered to be 'severe' under the Social Security Act and
16 Regulations: cervical spine strain, lumbosacral spine strain and
17 bilateral shoulder pain." Doc. 133, Ex. A, Bates No. 150. The SSA
18 letter does not discuss any sensitivity to cold.

19
20 Plaintiff came into the Community Medical Emergency Room
21 ("Emergency Room") on March 17, 2007 complaining of abdominal
22 pain. The triage nurse completed a written report for Plaintiff.
23 A chart was opened for Plaintiff; the face sheet included in
24 capital letters "DISABLED" on all five pages under the word
25 "Employer."
26

27
28 ² Clovis Medical and Nurse Greene did not file a motion for summary judgment and/or summary adjudication.

1 Once Plaintiff was registered and brought into the Emergency
2 Room, he came under the care of Nurse Greene and Dr. Mansfield.
3 When Nurse Greene saw Plaintiff around 7:40 p.m. that evening,
4 she requested Plaintiff put on a hospital gown. Plaintiff
5 refused. Plaintiff was asked repeatedly to undress and wear a
6 hospital gown, but refused repeatedly. The hospital security
7 guard, Charles Mitchell, states that the only reason Plaintiff
8 gave for refusing to wear a gown was that it was a "f-ing dress."
9
10 Doc. 144, 17:1-12

11 Dr. Mansfield is an independent contractor with privileges
12 to practice in Community Medical's Emergency Room. Dr.
13 Mansfield's shift on March 17, 2007 began at 10:00 p.m., and Dr.
14 Mansfield first saw Plaintiff shortly after his shift began that
15 night. Dr. Mansfield ordered medications for the treatment of
16 Plaintiff at 10:15 p.m. Dr. Mansfield also provided for an
17 alternative form of treatment (prescription for oral medication)
18 if Plaintiff did not stay in the Emergency Room.³

19
20 The police were called at 10:24 p.m. after Mr. Mitchell was
21 unsuccessful with Plaintiff. Officer Tina Stirling arrived at
22 Community Medical around 10:30 p.m. Corporal Lonnie R. Amerjan
23 arrived around 10:43 p.m.

24
25 Plaintiff complained about Dr. Mansfield and Nurse Greene,
26 and refused to wear a hospital gown. Officer Stirling asked

27 ³ Plaintiff contends that Dr. Mansfield conditioned the two
28 alternative forms of treatment on whether he would wear a hospital
gown.

1 Plaintiff why he would not wear the hospital gown and explained
2 that the doctor would treat him if he would wear the hospital
3 gown. Plaintiff stated that he did not want to wear the gown and
4 that the doctor could see him as he was. Plaintiff demanded a
5 different doctor and nurse. Corporal Amerjan explained to
6 Plaintiff that if he did not want to be treated at Community
7 Medical, he could have a friend, family or taxi take him to
8 another hospital and that the police could help Plaintiff make
9 arrangements if he wanted to go to another hospital if his
10 resources were lacking.
11

12 Plaintiff exclaimed that he was well aware of his rights as
13 a patient and would sue the hospital, doctor, and nurse for
14 violating those rights. Corporal Amerjan informed Plaintiff that
15 suing the hospital and staff was a civil issue. Corporal Amerjan
16 told Plaintiff that he had heard Plaintiff's Jacoby & Myers
17 routine before and the police were not present to participate in
18 a civil law suit. Corporal Amerjan explained that Officer
19 Stirling and he were present to keep the peace and protect the
20 staff and other patients in the hospital.
21

22 Plaintiff admitted that he is uncivil when he is in pain.
23 Plaintiff admits that his pain level was at least 12 on a scale
24 of 1 to 10 at the time of the incident. Plaintiff admits that he
25 was in too much pain to leave the hospital bed and did not
26 attempt to walk around to help with the pain.
27
28

1 Plaintiff demanded pain medication. Corporal Amerjan went to
2 find Dr. Mansfield and told him Plaintiff wanted pain medication.
3 Dr. Mansfield told Corporal Amerjan that he could not issue pain
4 medication without examining the patient first. Dr. Mansfield
5 requested the officers try to keep Plaintiff calm and help get
6 him to put on his hospital gown so Dr. Mansfield could treat him.
7

8 Plaintiff stated that he knew his rights and demanded a
9 medical advocate. Corporal Amerjan instructed Officer Stirling to
10 get an administrator or medical advocate for Plaintiff. Plaintiff
11 pointed his finger at Corporal Amerjan and exclaimed: "Either get
12 me some pain medication, arrest me, or get the hell out of here!"
13

14 Officer Stirling returned to the room with House Supervisor,
15 Kathryn Kawaguchi. Ms. Kawaguchi closed the privacy curtain
16 around Plaintiff and spoke with Plaintiff. When Ms. Kawaguchi
17 opened the privacy curtain several minutes later, Plaintiff was
18 wearing a hospital gown. Ms. Kawaguchi said the hospital would
19 admit Plaintiff and that it was safe for the officers to leave.
20

21 Corporal Amerjan and Officer Stirling spent 50 minutes or
22 less at Community Medical. Corporal Amerjan never touched
23 Plaintiff or his hospital bed.

24 Plaintiff initially refused oral medications needed for the
25 CT because of his nausea, and adjustments were made to provide
26 medications to Plaintiff intravenously to accommodate his
27 condition and request. Dr. Mansfield ordered additional
28

1 medications and testing before midnight. Plaintiff reported
2 feeling better and his symptoms being somewhat relieved around
3 midnight.

4 An IV was placed in Plaintiff, and Dr. Mansfield ordered a
5 CT scan of Plaintiff's abdomen. Plaintiff did not drink the oral
6 contrast fluid necessary for a CT scan. Ms. Kawaguchi was called
7 a second time to assist with Plaintiff. Dr. Mansfield prescribed
8 medication to calm Plaintiff to facilitate the CT scan. The CT
9 scan was completed around 5:30 a.m. and Plaintiff was returned to
10 his room. Plaintiff's chart reflects that he was resting quietly
11 at that point.
12

13 After reviewing the results of the CT scan, Dr. Mansfield
14 diagnosed Plaintiff with a pseudo cyst on March 18, 2007. Dr.
15 Mansfield contacted the on-call internist, Dr. Gurcharan Sidhu,
16 to admit Plaintiff into Community Medical. At 6:08 a.m., Dr.
17 Mansfield ordered Plaintiff's pseudo cyst drained. Dr. Sidhu
18 performed a CT guided pseudo cyst drainage on Plaintiff on March
19 18, 2007.
20

21 Community Medical has specific written policies for allowing
22 service animals in patient care areas for persons with
23 disabilities (Doc. 134, Ex. H, Bates Nos. FCH 00015-00017), a
24 policy to assist patients with limited English proficiency (*Id.*
25 at Bates No. FCH00047-FCH00054), and a policy for "special needs"
26 patients ("i.e., interpreter, deaf") (*Id.* at Bates No. FCH00098-
27
28

1 FCH000999). Community Medical's patient's rights policy permits
2 psychiatric patients to wear his or her own clothes. *Id.* at Bates
3 No. FCH00089.

4 Plaintiff has used Community Medical's facilities many times
5 since March 17, 2007.

6
7 2. Disputed Facts

8 Dr. Mansfield contends that it is standard practice not to
9 include face sheets in a patient's medical chart, but that they
10 are purely administrative and not used or relied upon by
11 physicians at Community Medical to treat patients. Dr. Mansfield
12 contends that he did not access or see Plaintiff's face sheets at
13 any time during his treatment of Plaintiff March 17-18, 2007.

14 Dr. Mansfield and Community Medical contend that it is
15 customary practice for emergency nurses and doctors to require
16 patients to submit to a physical examination and put on a
17 hospital gown. Plaintiff asserts that Community Medical does not
18 have a policy requiring patients to wear hospital gowns and
19 points out that Community Medical policy explicitly permits
20 psychiatric patients to wear their own clothes.

21
22 Plaintiff contends that he was denied treatment for several
23 hours because of his refusal to wear a hospital gown and because
24 Defendants failed to ask him if they could make a reasonable
25 accommodation for his disability. Plaintiff claims that he
26 refused to wear a gown because of his disability and sensitivity
27
28

1 to cold weather. Defendants contend that Plaintiff never stated
2 this reason for his refusal to wear a hospital gown.

3 Defendants contend that Plaintiff never told them of his
4 disability. Plaintiff argues that he described his disability and
5 aversion to cold to various medical personnel on the evening of
6 March 17, 2007.
7

8 Officer Defendants assert that they had probable cause to
9 arrest Plaintiff under Cal. Penal Code § 415⁴ based on
10 Plaintiff's yelling, cursing, and refusal to cooperate with
11 hospital staff. It is undisputed that Officer Defendants did not
12 arrest Plaintiff.

13 III. LEGAL STANDARD

14 Summary judgment is proper if "the pleadings, the discovery
15 and disclosure materials on file, and any affidavits show that
16 there is no genuine issue as to any material fact and that the
17 movant is entitled to judgment as a matter of law." Fed.R.Civ.P.
18 56.
19

20 The moving party bears the initial burden of "informing the
21 district court of the basis for its motion, and identifying those
22

23 ⁴ Cal. Penal Code § 415 provides:

24 Any of the following persons shall be punished by imprisonment in
25 the county jail for a period of not more than 90 days, a fine of
26 not more than four hundred dollars (\$400), or both such
27 imprisonment and fine:

28 (1) Any person who unlawfully fights in a public place or
challenges another person in a public place to fight.

(2) Any person who maliciously and willfully disturbs another
person by loud and unreasonable noise.

(3) Any person who uses offensive words in a public place which
are inherently likely to provoke an immediate violent reaction.

1 portions of the pleadings, depositions, answers to
2 interrogatories, and admissions on file, together with the
3 affidavits, if any, which it believes demonstrate the absence of
4 a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477
5 U.S. 317, 323, 106 S.Ct. 2548 (1986) (internal quotation marks
6 omitted). A fact is material if it could affect the outcome of
7 the suit under the governing substantive law. *Anderson v. Liberty*
8 *Lobby, Inc.*, 477 U.S. 242, 256, 106 S.Ct. 2505 (1986).

10 If the moving party would bear the burden of proof on an
11 issue at trial, it must "affirmatively demonstrate that no
12 reasonable trier of fact could find other than for the moving
13 party." *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th
14 Cir. 2007). In contrast, if the non-moving party bears the burden
15 of proof on an issue, the moving party can prevail by "merely
16 pointing out that there is an absence of evidence" to support the
17 non-moving party's case. *Id.*

19 When the moving party meets its burden, the "adverse party
20 may not rest upon the mere allegations or denials of the adverse
21 party's pleadings, but the adverse party's response, by
22 affidavits or as otherwise provided in this rule, must set forth
23 specific facts showing that there is a genuine issue for trial."
24 Fed.R.Civ.P. 56(e).

26 In ruling on a motion for summary judgment, a court does not
27 make credibility determinations or weigh evidence. See *Anderson*,

1 477 U.S. at 255. Rather, "[t]he evidence of the non-movant is to
2 be believed, and all justifiable inferences are to be drawn in
3 his favor." *Id.* Only admissible evidence may be considered in
4 deciding a motion for summary judgment. Fed.R.Civ.P. 56(e).
5 "Conclusory, speculative testimony in affidavits and moving
6 papers is insufficient to raise genuine issues of fact and defeat
7 summary judgment." *Soremekun*, 509 F.3d at 984.

9 IV. DISCUSSION

10 A. Plaintiff's Motion for Partial Summary Judgment

11 1. Second Cause of Action: Violations of the Americans 12 with Disabilities Act, 42 U.S.C. § 12182

13 Plaintiff moves for summary judgment against Community
14 Medical for violations of the ADA.

15 Title III of the ADA prohibits discrimination in public
16 accommodations, providing that:

17 No individual shall be discriminated against on the basis of
18 disability in the full and equal enjoyment of the goods,
19 services, facilities, privileges, advantages, or
20 accommodations of any place of public accommodation by any
person who owns, leases (or leases to), or operates a place
of public accommodation.

21 42 U.S.C. § 12182(a). Discrimination under the ADA includes:

22 a failure to make reasonable modifications in policies,
23 practices, or procedures, when such modifications are
24 necessary to afford such goods, services, facilities,
25 privileges, advantages, or accommodations to individuals
with disabilities, unless the entity can demonstrate that
26 making such modifications would fundamentally alter the
nature of such goods, services, facilities, privileges,
27 advantages, or accommodations.

28 42 U.S.C. § 12182(b) (2) (A) (ii). It is also discriminatory "to

1 subject an individual or class of individuals on the basis of a
2 disability or disabilities . . . to a denial of the opportunity
3 of the individual or class to participate in or benefit from the
4 goods, services, facilities, privileges, advantages, or
5 accommodations of an entity." 42 U.S.C. § 12182(b)(1)(A)(i).

6
7 An individual alleging discrimination under the ADA must
8 show:

9 (1) he is disabled as that term is defined by the ADA; (2)
10 the defendant is a private entity that owns, leases, or
11 operates a place of public accommodation; (3) the defendant
12 employed a discriminatory policy or practice; and (4) the
13 defendant discriminated against the plaintiff based upon the
14 plaintiff's disability by (a) failing to make a requested
15 reasonable modification that was (b) necessary to
16 accommodate the plaintiff's disability.

17 *Fortyune v. Amer. Multi-Cinema, Inc.*, 364 F.3d 1075, 1082 (9th
18 Cir. 2004).

19
20 a. Plaintiff's Disability

21 The ADA defines "disability" as: "(A) a physical or mental
22 impairment that substantially limits one or more major life
23 activities of such individual; (B) a record of such an
24 impairment; or (C) being regarded as having such an impairment."
25 42 U.S.C. § 12102(1). "Physical or mental impairment" means:

26 (A) Any physiological disorder or condition, cosmetic
27 disfigurement, or anatomical loss affecting one or more of
28 the following body systems: Neurological, musculoskeletal,
special sense organs, respiratory (including speech organs),
cardiovascular, reproductive, digestive, genitourinary,
hemic and lymphatic, skin, and endocrine;

1 (B) Any mental or psychological disorder such as mental
2 retardation, organic brain syndrome, emotional or mental
3 illness, and specific learning disabilities.

4 28 C.F.R. § 35.104. Physical and mental impairments include:

5 such contagious and noncontagious diseases and conditions as
6 orthopedic, visual, speech and hearing impairments, cerebral
7 palsy, epilepsy, muscular dystrophy, multiple sclerosis,
8 cancer, heart disease, diabetes, mental retardation,
9 emotional illness, specific learning disabilities, HIV
10 disease (whether symptomatic or asymptomatic), tuberculosis,
11 drug addiction, and alcoholism.

12 *Id.* "Major life activities means functions such as caring for
13 one's self, performing manual tasks, walking, seeing, hearing,
14 speaking, breathing, learning, and working." *Id.*

15 The definition of disability is "construed in favor of broad
16 coverage of individuals under [the ADA], to the maximum extent
17 permitted by the terms of [the ADA]." 42 U.S.C. § 12102(4)(A).
18 However, "[t]he ADA defines 'disability' with specificity as a
19 term of art. Hence, a person may be 'disabled' in the ordinary
20 usage sense, or even for purposes of receiving disability
21 benefits from the government, yet still not be 'disabled' under
22 the ADA. The converse may sometimes be true as well." *Sanders v.*
23 *Arneson Prod., Inc.*, 91 F.3d 1351, 1354 n.2 (9th Cir. 1996); see
24 also *Thornton v. Fed. Express Corp.*, 530 F.3d 451, 455 (6th Cir.
25 2008) (holding that a disability determination by the SSA, even if
26 substantiated, would not be controlling to prove that an
27 individual is disabled within the meaning of the ADA).

28 As evidence of his disability, Plaintiff offers a June 8,

1 1994 decision rendered by an Administrative Law Judge in the
2 Department of Health and Human Services, Social Security
3 Administration ("SSA"). Doc. 133, Ex. A. The decision concludes
4 that Plaintiff "has been disabled since October 21, 1992" and
5 "has the following impairments which are considered to be
6 'severe' under the Social Security Act and Regulations: cervical
7 spine strain, lumbosacral spine strain and bilateral shoulder
8 pain. These impairments prevent the claimant from engaging in
9 even a significant range of sedentary exertion. This conclusion
10 is supported by the medical records of the Valley Medical Center
11 of Fresno." *Id.* at Bates No. 150. The SSA decision states that
12 "there are no jobs existing in significant numbers which he can
13 perform." *Id.* at Bates No. 153.

14
15
16 Plaintiff also declares the following:

17 For approximately two decades I have suffered from a
18 debilitating condition known as degenerative disc disease.
19 Because of the disease, I have severe joint pains and it is
20 difficult for me to stand, sit, walk, or remain in any
21 position for sustained periods of time. Because of my joint
22 pains, it is difficult for me to shower, perform household
23 chores, or exert myself in any other way physically. When I
24 walk, I usually use an assistive device such as a cane,
25 walker or wheelchair. If I walk without a cane, I am very
26 unstable and risk falling. Cold temperatures bring about
27 "stingers" which feel like electric current running
28 throughout my body, causing me to twitch and exacerbate my
joint pains. Since 1994 to present I have continued to
receive SSI benefits based upon my disability, and periodic
review by the Social Security Administration.

26 Doc. 188 ¶ 2.

27 The SSA determination together with Plaintiff's declaration,
28

1 if found to be true, satisfy the ADA definition of disability.
2 Plaintiff has a physical or mental impairment (degenerative disc
3 disease) that substantially limits (for approximately two
4 decades) one or more major life activities (ability to work,
5 standing, sitting, walking or exerting himself in any way
6 physically).

7
8 Community Medical has offered evidence that raises doubt
9 about Plaintiff's disability. Plaintiff's ex-fiancé and
10 housemate, Jill Potter, states that Plaintiff drives with the car
11 window down when he is smoking and owns and rides a motorcycle.
12 Doc. 144, 23:6-10, 22-24. Nurse Greene declares that she has seen
13 Plaintiff since March 17, 2007, when he was an inpatient at
14 Community Medical. "He was outside the hospital in the cool
15 evening/night with his IV pole, smoking. He was wearing a
16 hospital gown only on the top portion of his body." Doc. 146 ¶ 7.
17 These assertions contradict Plaintiff's declarations. Viewing the
18 evidence in favor of the non-moving party and drawing all
19 inferences in its favor raises issues regarding the credibility
20 of Plaintiff's declaration as to the nature and extent of his
21 disability. The SSA determination letter from June 8, 1994 is not
22 determinative in deciding whether Plaintiff is disabled under the
23 ADA. See *Sanders v. Arneson Prod., Inc.*, 91 F.3d at 1354 n.2.
24 Whether Plaintiff is disabled within the meaning of the ADA is a
25 material factual issue.
26
27
28

1 b. Public Accommodation

2 The ADA defines "public accommodation" to include
3 "professional office of a health care provider [and] hospital."
4 42 U.S.C. § 12181(7) (F). It is undisputed that Community Medical
5 is a private entity that operates a place of public
6 accommodation.
7

8 c. Discriminatory Policy or Practice

9 Plaintiff challenges Community Medical's policy or practice
10 of requiring patients in the Emergency Room to wear hospital
11 gowns. Plaintiff alleges that he was refused full and equal
12 treatment until he put on the hospital gown and that such refusal
13 delayed his treatment for several hours. Plaintiff asserts that
14 wearing a gown is not necessary for treatment, and that Community
15 Medical's Patient's Rights Policy provides that "all psychiatric
16 patients shall have rights which include, but are not limited to
17 the following: A. To wear his/her own clothes." Doc. 134, Ex. H,
18 Bates Nos. at FCH00089. Plaintiff also alleges that Dr. Mansfield
19 set forth in his notes two separate courses of treatment based on
20 whether Plaintiff would wear a hospital gown, and that the two
21 separate courses of treatment are prima facie evidence of
22 disparate treatment.
23
24

25 Plaintiff also challenges Community Medical's general
26 disability policies. Community Medical has specific written
27 policies for allowing service animals in patient care areas for
28

1 persons with disabilities (Doc. 134, Ex. H, Bates Nos. FCH 00015-
2 00017), a policy regarding patients with limited English
3 proficiency (*Id.* at Bates No. FCH00047-FCH00054), and a policy
4 for "special needs" patients ("i.e., interpreter, deaf) (*Id.* at
5 Bates No. FCH00098-FCH000999). Plaintiff contends that Community
6 Medical's policies are deficient under the ADA.
7

8 Community Medical offers evidence that raises issues of
9 whether its policies are discriminatory. In his deposition, Dr.
10 Mansfield states: "It's the customary thing to take off your
11 shirt for an IV. Because they have a bottle and a tube attached
12 to it and you can't take off your shirt afterwards easily unless
13 you have that off. So it's customary to take your shirt off . . .
14 It's customary if you need to do a full examination to have a
15 gown on, clothes off and gown on so you can examine the patient
16 properly." Doc. 144, Ex. B. Nurse Greene declares: "In accordance
17 with the procedure at Community Medical Center-Clovis and that at
18 every other Emergency Department in which I have worked, Mr.
19 Tater-Alexander, who was complaining of abdominal pain and needed
20 that area examined, was asked to put on a gown." Doc. 146 ¶ 5.
21
22 Community Medical explains that an exception is made for
23 psychiatric patients to wear a hospital gown because California
24 regulations specifically provide for the right of a patient in an
25 acute psychiatric hospital to wear their own clothes. 22 Cal.
26 Admin. Code § 71507(a)(1). In her deposition, Nurse Green
27
28

1 describes Community Medical's policy for how to deal with people
2 that claim they have a disability: "With any disability we would
3 accommodate whatever we could for that disability." Doc. 144,
4 5:12-13.

5 Plaintiff has not affirmatively demonstrated that no
6 reasonable trier of fact would conclude that Community Medical's
7 policy was not discriminatory. This presents a genuine issue of
8 material fact.
9

10 d. Failure to make Necessary Reasonable Accommodation

11 Plaintiff contends that he requested a reasonable
12 modification (i.e., to receive medical treatment without wearing
13 a hospital gown) that was necessary to accommodate his
14 disability.
15

16 Community Medical offers sufficient evidence to create a
17 genuine issue whether it discriminated against Plaintiff by "(a)
18 failing to make a requested reasonable modification that was (b)
19 necessary to accommodate the plaintiff's disability." *Fortyune*,
20 364 F.3d at 1082. In their depositions, Nurse Green and Dr.
21 Mansfield state that Plaintiff did not inform them that he did
22 not want to take his clothes off because of a disability or
23 nervous disorder. Doc. 144, 5:14-21, 11:17-12:10. Nurse Green
24 states:
25

26 He never told me that he couldn't put on a gown, or that he
27 did not want to, because he had a susceptibility to cold
28 which caused him pain, or that he had a disability that
precluded a gown. If he had done so, I would have

1 accommodated his concern by offering heated blankets. Heated
2 blankets are kept in the Emergency Department for that
purpose.

3 Doc. 146 ¶ 5. In his deposition, Dr. Mansfield states that
4 Plaintiff never told him he was disabled and that he had adverse
5 reactions to the cold; rather, Plaintiff's stated reason for why
6 he didn't want to put on a gown to Mr. Mitchell was because "it
7 was a F-ing dress." Doc. 144, 17:1-12.

8
9 There are genuine issues of material fact implicating
10 credibility of these explanations, whether Community Medical
11 violated Plaintiff's rights under the ADA by requiring he wear a
12 gown. Plaintiff's motion for summary judgment on the First Cause
13 of Action is DENIED.

14
15 2. Sixth Cause of Action: Violations of Unruh Civil Rights
Act, Cal. Civ. Code §§ 51, 52

16 Plaintiff moves for summary judgment against Community
17 Medical and Dr. Mansfield for violations of the Unruh Civil
18 Rights Act.

19 The Unruh Civil Rights Act provides:

20
21 All persons within the jurisdiction of this state are free
22 and equal, and no matter what their sex, race, color,
23 religion, ancestry, national origin, disability, medical
24 condition, marital status, or sexual orientation are
entitled to the full and equal accommodations, advantages,
facilities, privileges, or services in all business
establishments of every kind whatsoever.

25 Cal. Civ. Code § 51(b). A violation of the ADA constitutes a
26 violation of the Unruh Civil Rights Act. Cal. Civ. Code § 51(f).

27 This claim is derivative of the ADA claims. Plaintiff
28

1 relies on the same facts supporting alleged violation of the ADA
2 for its Unruh Civil Rights Act claim. Because there are genuine
3 issues of material fact that Plaintiff's ADA rights were
4 violated, Plaintiff's motion on summary judgment on the sixth
5 cause of action is DENIED.
6

7 3. Seventh Cause of Action: Violations of Disabled Persons
8 Act, Cal. Civ. Code §§ 54.1, 54.3

9 Plaintiff moves for summary judgment against Community
10 Medical and Dr. Mansfield for violations of the DPA.

11 The DPA guarantees that "[i]ndividuals with disabilities
12 shall be entitled to full and equal access, as other members of
13 the general public, to accommodations, advantages, facilities,
14 medical facilities, including hospitals, clinics, and physicians'
15 offices." Cal. Civ. Code § 54.1(a)(1). "Full and equal access"
16 means access that meets the standards of the ADA. Cal. Civ. Code
17 § 54.1(a)(3). The focus of the DPA is "physical access" to public
18 spaces. *Turner v. Ass'n of Amer. Med. Coll.*, 167 Cal.App.4th 1401,
19 1412 (2009) (emphasis in original). A violation of the ADA also
20 constitutes a violation of the DPA. Cal. Civ. Code § 54.1(d).

21 Plaintiff contends that Community Medical and Dr. Mansfield
22 interfered with his enjoyment of Community Medical's facilities
23 because: (1) Dr. Mansfield ordered two separate treatments,
24 depending on whether Plaintiff wore a hospital gown, and (2)
25 Nurse Greene denied Plaintiff treatment until he wore a hospital
26 gown.
27
28

1 The focus of the DPA is physical access. There are genuine
2 issues of material fact whether Plaintiff was denied physical
3 access to Community Medical. As stated above, there are genuine
4 issues of material fact whether Plaintiff's ADA rights were
5 violated, and summary judgment under the DPA cannot be granted by
6 virtue of the ADA.
7

8 Plaintiff's motion for summary judgment on the seventh cause
9 of action is DENIED.

10 4. Fifteenth Cause of Action: Injunctive Relief

11 Plaintiff moves for summary judgment on his fifteenth cause
12 of action for injunctive relief against Community Medical.

13 Plaintiff moves for injunctive relief solely on the basis of
14 violation of the ADA. Plaintiff is not entitled to judgment as a
15 matter of law on his ADA claim against Community Medical.
16

17 Plaintiff's motion for summary judgment for injunctive
18 relief against Community Medical is DENIED.

19 B. Dr. Mansfield's Motion for Summary Judgment or, in the
20 Alternative, Summary Adjudication

21 1. Sixth Cause of Action: Violations of Unruh Civil Rights
22 Act, Cal. Civ. Code §§ 51, 52

23 Dr. Mansfield moves for summary judgment on Plaintiff's
24 Sixth Cause of Action for Violations of the Unruh Act.

25 The Unruh Act provides:

26 All persons within the jurisdiction of this state are free
27 and equal, and no matter what their sex, race, color,
28 religion, ancestry, national origin, disability, medical
condition, marital status, or sexual orientation are
entitled to the full and equal accommodations, advantages,

1 facilities, privileges, or services in all business
2 establishments of every kind whatsoever.

3 Cal. Civ. Code § 51(b). To make a successful claim under the
4 Unruh Act, a plaintiff can either show a violation of the Unruh
5 Act or a violation of the ADA. An ADA violation is a *per se*
6 violation of the Unruh Act. Cal. Civ. Code § 51(f). When an Unruh
7 Act violation is premised on an ADA violation, no showing of
8 intent is required. *Lentini v. Cal. Ctr. for the Arts, Escondido*,
9 370 F.3d 837, 847 (9th Cir. 2004).

10 It is undisputed that Dr. Mansfield is an independent
11 contractor who had medical privileges to provide emergency
12 medical services at Community Medical. Doc. 124 ¶ 1. An earlier
13 Order in this case held that Dr. Mansfield is not a proper
14 defendant under the ADA. *Tater-Alexander v. Amerjan*, 2008 WL
15 961233, *8 (E.D. Cal. 2008). Plaintiff can therefore only assert
16 an Unruh Act claim against Dr. Mansfield.
17

18 Dr. Mansfield cites *Turner v. Association of American*
19 *Medical Colleges*, 167 Cal.App.4th 1401, 1408 (2008), for its
20 holding that:
21

22 The Unruh Act does not extend to practices and policies that
23 apply equally to all persons: "This section shall not be
24 construed to confer any right or privilege on a person that
25 is conditioned or limited by law or that is applicable alike
26 to persons of every sex, color, race, religion, ancestry,
27 national origin, disability, medical condition, marital
28 status, or sexual orientation." A policy that is neutral on
its face is not actionable under the Unruh Act, even when it
has a disproportionate impact on a protected class.

Id. (citations omitted). Dr. Mansfield also cites *Wynn v.*

1 *Monterey Club*, 111 Cal.App.3d 789, 796-797 (1980), for its
2 holding that a business may adopt reasonable restrictions on its
3 customers when those restrictions are rationally related to the
4 business being conducted or the facilities and services being
5 provided.

6
7 Here, it is undisputed that Community Medical has a policy
8 which permits psychiatric patients the right to wear their own
9 clothes. Doc. 134, Ex. H, Bates Nos. at FCH00089. Community
10 Medical's purported policy of requiring all Emergency Room
11 patients to wear hospital gowns is not applicable alike to
12 persons of every medical condition. The policy is therefore not
13 immune from the Unruh Act as a matter of law. Whether requiring
14 all patients other than psychiatric patients is reasonable and
15 rationally related to the provision of medical services is a
16 question of material fact.

17
18 Dr. Mansfield contends that he was not aware of Plaintiff's
19 disability and therefore did not have the requisite intent to
20 discriminate against Plaintiff. Plaintiff contends that he
21 described the parameters of his disability to various medical
22 personnel at Community Medical the evening of March 17, 2007. It
23 is undisputed that the five face sheets on Plaintiff's medical
24 chart state "DISABLED." It is a material question of fact whether
25 Dr. Mansfield had knowledge of Plaintiff's disability and the
26 requisite intent to discriminate against him.
27
28

1 Dr. Mansfield also asserts that the record shows that
2 Plaintiff was not denied medical treatment due to his undisclosed
3 disability. However, there are factual disputes regarding whether
4 treatment was conditioned on Plaintiff wearing a hospital gown
5 and the reasonableness of this requirement. Hospital records
6 reveal that Plaintiff was documented as "disabled."
7

8 There are genuine issues of material fact of Plaintiff's
9 Unruh Act claim against Dr. Mansfield. Dr. Mansfield's motion for
10 summary judgment on the Sixth Cause of Action is DENIED.

11 2. Seventh Cause of Action: Violations of Disabled Persons
12 Act, Cal. Civ. Code §§ 54.1, 54.3

13 The DPA guarantees that "[i]ndividuals with disabilities
14 shall be entitled to full and equal access, as other members of
15 the general public, to accommodations, advantages, facilities,
16 medical facilities, including hospitals, clinics, and physicians'
17 offices." Cal. Civ. Code § 54.1(a)(1). "Full and equal access"
18 means access that meets the standards of the ADA. Cal. Civ. Code
19 § 54.1(a)(3). A violation of the ADA also constitutes a violation
20 of the DPA. Cal. Civ. Code § 54.1(d).
21

22 In *Turner v. Association of American Medical Colleges*, 167
23 Cal.App.4th at 1413, the California Court of Appeal rejected DPA
24 claims from individuals with learning and reading-related
25 disabilities asking for reasonable accommodations to take the
26 MCAT. The *Turner* court stressed that the focus of the DPA is
27 "physical access" to public spaces. *Id.* at 1412 (emphasis in
28

1 original). "The DPA is intended to secure to disabled persons the
2 same right as the general public to the full and free use of
3 facilities open to the public. *Id.* (quotations omitted) (quoting
4 *Urhausen v. Longs Drug Stores Cal., Inc.*, 155 Cal.App.4th 254, 261
5 (2007)).

6
7 There is a genuine issue of material fact whether Dr.
8 Mansfield denied Plaintiff full and equal access to Clovis
9 Medical.

10 Dr. Mansfield's motion for summary judgment on the seventh
11 cause of action is DENIED.

12 3. Thirteenth Cause of Action: Civil Conspiracy to Violate
13 Civil Rights and Commit Torts

14 Dr. Mansfield moves for summary judgment on Plaintiff's
15 thirteenth cause of action for civil conspiracy.

16 "Conspiracy is not a cause of action, but a legal doctrine
17 that imposes liability on persons who, although not actually
18 committing a tort themselves, share with the immediate
19 tortfeasors a common plan or design in its perpetration." *Applied*
20 *Equip. Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal.4th 503, 510-511
21 (1994). By participating in a civil conspiracy, a coconspirator
22 adopts as his or her own the torts of coconspirators. *Id.* "The
23 elements of an action for civil conspiracy are the formation and
24 operation of the conspiracy and damage resulting to the plaintiff
25 from an act or acts done in furtherance of the common design."
26 *Id.* at 510.
27
28

1 Plaintiff has not offered any evidence supporting the
2 allegation of conspiracy against Dr. Mansfield. Plaintiff's
3 claim is based on speculation. Plaintiff's opposition to this
4 motion provides: "Although Mr. Tater-Alexander was unable to hear
5 the parties enter into an agreement, a jury could reasonably
6 find, based upon the evidence, that Defendants discussed issues
7 about Mr. Tater-Alexander outside of his room at the hospital,
8 and thereafter each took the same position with regard to Mr.
9 Tater-Alexander - "put on the gown and you will be provided
10 medical treatment." Doc. 159, 11:25-12:1. Considering the
11 evidence in the light most favorable to Plaintiff, Plaintiff's
12 speculation does not raise a genuine issue of material fact.
13
14

15 Dr. Mansfield's motion for summary judgment on the
16 thirteenth cause of action is GRANTED.

17 4. Fourteenth Cause of Action: Aiding and Abetting
18 Violations of Civil Rights and Commission of Torts

19 Dr. Mansfield moves for summary judgment on Plaintiff's
20 fourteenth cause of action for aiding and abetting violations of
21 civil rights and commission of torts.

22 Aiding and abetting requires: "(1) the party whom the
23 defendant aids must perform a wrongful act that causes an injury;
24 (2) the defendant must be generally aware of his role as part of
25 an overall illegal or tortious activity at the time that he
26 provides the assistance; and (3) the defendant must knowingly and
27 substantially assist the principal violation." *Howard v. Superior*
28

1 Court, 2 Cal.App.4th 745, 748-49 (quoting *Halberstam v. Welch*, 705
2 F.2d 472, 477 (D.C. Cir. 1983). Aiding and abetting does not
3 require a defendant to agree to join the wrongful conduct, but it
4 "necessarily requires a defendant to reach a conscious decision
5 to participate in tortious activity for the purpose of assisting
6 another in performing a wrongful act." *Howard*, 2 Cal.App.4th at
7 749.
8

9 Plaintiff does not provide an opposition to this motion,
10 and there is an absence of evidence to support this claim against
11 Dr. Mansfield.

12 Dr. Mansfield's motion for summary judgment on the
13 fourteenth cause of action is GRANTED.

14
15 5. Fifteenth Cause of Action: Injunctive Relief

16 Dr. Mansfield moves for summary judgment on Plaintiff's
17 Fifteenth Cause of Action for Injunctive Relief.

18 "A permanent injunction is a determination on the merits
19 that a plaintiff has prevailed on a cause of action for tort or
20 other wrongful act against a defendant and that equitable relief
21 is appropriate. A permanent injunction is not issued to maintain
22 the status quo but is a final judgment on the merits." *Benasra v.*
23 *Mitchell Silberberg & Knupp*, 96 Cal.App.4th 96, 110 (2002). It
24 does not present a jury issue. The sixth cause of action for
25 violation of the Unruh Act against Dr. Mansfield has not been
26 resolved. It is premature to summarily adjudicate this cause of
27
28

1 action.

2 Dr. Mansfield's motion for summary judgment on the fifteenth
3 cause of action is DENIED WITHOUT PREJUDICE.

4 C. Clovis Defendants' Motion for Summary Judgment

5 1. Claims Against the City of Clovis

6 Clovis Defendants move for summary judgment as to all causes
7 of action against the City of Clovis. Plaintiff does not oppose
8 this motion.
9

10 Clovis Defendants' motion for summary judgment as to all
11 causes of action against the City of Clovis is GRANTED.

12 2. Claims Against Officer Defendants

13 i. Third Cause of Action: First Amendment Violations

14 Corporal Amerjan and Officer Stirling (together, "Officer
15 Defendants") move for summary judgment on Plaintiff's third cause
16 of action for violations of the First Amendment.
17

18 a. First Amendment Violations

19 The First Amendment to the Constitution provides that
20 "Congress shall make no law . . . abridging the freedom of
21 speech." U.S. Const. amend. I. Officer Defendants and Plaintiff
22 agree that Plaintiff has limited free speech rights in a hospital
23 emergency room.

24 The First Amendment also protects the right to "petition the
25 Government for a redress of grievances." *Id.* The right to
26 petition extends beyond the right to access courts and includes
27 other administrative arms and units of government. *Bradley v.*
28

1 *Hall*, 64 F.3d 1276, 1279 (9th Cir. 1995). Police officers,
2 however, do not have an "affirmative obligation to investigate a
3 crime in a particular way or to protect one citizen from another
4 even when one citizen deprives the other of liberty of property."
5 *Gina v. Las Vegas Metro. Police Dep't.*, 40 F.3d 1041, 1045 (9th
6 Cir. 1994); *DeShaney v. Winnebago County Dep't. of Soc. Serv.*,
7 489 U.S. 189, 195, 109 S.Ct. 998 (1989) ("The Due Process Clause
8 generally confers no affirmative right to governmental aid, even
9 where such aid may be necessary to secure life, liberty, or
10 property interests of which the government itself may not deprive
11 the individual.")

12
13 Plaintiff alleges that Officer Defendants violated his First
14 Amendment right to petition. Plaintiff contends that he requested
15 Corporal Amerjan take a complaint against Dr. Mansfield, Nurse
16 Greene, and Community Medical based on disability discrimination.
17 Plaintiff alleges that Corporal Amerjan rejected his request and
18 stated that he would not take it unless Plaintiff wore a hospital
19 gown. Plaintiff also argues that Corporal Amerjan's statement,
20 "We know who you are Mr. Jacoby and Meyers, you sue everybody,"
21 was designed to stop Plaintiff from continuing to exercise his
22 right to request equal treatment.
23
24

25 It is undisputed that in response to Plaintiff's complaints,
26 Officer Defendants (1) sought Dr. Mansfield and told him that
27 Plaintiff requested pain medication and (2) obtained a medical
28

1 advocate for Plaintiff. Nonetheless, Officer Defendants did not
2 have an affirmative duty to intervene or assist Plaintiff in his
3 civil dispute with Dr. Mansfield. See *Gina v. Las Vegas Metro.*
4 *Police Dep't.*, 40 F.3d at 1045; *DeShaney v. Winnebago County*
5 *Dep't. of Soc. Serv.*, 489 U.S. at 195. Corporal Amerjan's
6 statement, "We know who you are Mr. Jacoby and Meyers, you sue
7 everybody," does not raise genuine issue of material fact that
8 Plaintiff's First Amendment rights were violated.
9

10 b. Qualified Immunity

11 Qualified immunity shields government officials "from
12 liability for civil damages insofar as their conduct does not
13 violate clearly established statutory or constitutional rights of
14 which a reasonable person would have known." *Harlow v.*
15 *Fitzgerald*, 457 U.S. 800, 818 (1982). The protection of qualified
16 immunity applies regardless of whether the government official's
17 error is "a mistake of law, a mistake of fact, or a mistake based
18 on mixed questions of law and fact." *Pearson v. Callahan*, 555
19 U.S. 223, 129 S.Ct. 808, 818, 172 L.Ed.2d 565 (2009) (quoting *Groh*
20 *v. Ramirez*, 540 U.S. 551, 567, 124 S.Ct. 1284 (2004) (KENNEDY, J.,
21 dissenting)). The doctrine of qualified immunity protects "all
22 but the plainly incompetent or those who knowingly violate the
23 law" *Malley v. Briggs*, 475 U.S. 335, 341, 106 S.Ct. 1092
24 (1986). Because qualified immunity is "an immunity from suit
25 rather than a mere defense to liability ... it is effectively
26
27
28

1 lost if a case is erroneously permitted to go to trial." *Mitchell*
2 *v. Forsyth*, 472 U.S. 511, 526, 105 S.Ct. 2806 (1985) (emphasis
3 deleted).

4 In analyzing a claim of qualified immunity, there are two
5 inquiries: First, "taken in the light most favorable to the party
6 asserting the injury, do the facts alleged show the officers'
7 conduct violated a constitutional right?" *Saucier v. Katz*, 533
8 U.S. 194, 201 (2001). If the conduct did not violate a
9 constitutional right, the inquiry is over and the officer is
10 entitled to qualified immunity. *Id.* However, if the conduct did
11 violate a constitutional right, the next question is whether the
12 constitutional right was "clearly established." *Id.* "The
13 relevant, dispositive inquiry in determining whether a right is
14 clearly established is whether it would be clear to a reasonable
15 officer that his conduct was unlawful in the situation he
16 confronted." *Id.* at 202. This inquiry is wholly objective and is
17 undertaken in light of the specific factual circumstances of the
18 case. *Id.* at 201. Principles of qualified immunity shield an
19 officer from personal liability when an officer reasonably
20 believes that his or her conduct complies with the law. *Pearson*
21 *v. Callahan*, 129 S.Ct. at 823. While the two-step *Saucier*
22 sequence is "often appropriate, it should no longer be regarded
23 as mandatory." *Id.* at 818.

24
25
26
27 Officer Defendants contend that they did not violate
28

1 Plaintiff's First Amendment rights. Even if Plaintiff's First
2 Amendment rights were violated, Officer Defendants argue that
3 they believed that they were acting within the law and their
4 authority and in fact were acting within the law. Plaintiff
5 argues that Officer Defendants are not entitled to qualified
6 immunity because the defense is not available where the conduct
7 violates constitutional rights and those rights were clearly
8 established at the time of the alleged violation. Plaintiff
9 argues that Officer Defendants violated his clearly established
10 First Amendment rights.
11

12 Here, Officer Defendants did not violate Plaintiff's First
13 Amendment rights. Officer Defendants sought to obtain medication
14 and treatment for Plaintiff. They were not expected to know
15 Clovis Medical's rules or procedure or the intricacies of civil
16 law and state law. Even if Plaintiff's First Amendment rights had
17 been violated, it would not have been clear to a reasonable
18 officer that the Officer Defendants' conduct was unlawful.
19 Officer Defendants are entitled to qualified immunity. They did
20 not arrest, did not touch, and endeavored to facilitate
21 Plaintiff's treatment.
22

23
24 Officer Defendants' motion for summary judgment on the third
25 cause of action is GRANTED.

26 ii. Fourth Cause of Action: Supervisory Liability
27 based on Misconduct of Officer Stirling under 42
28 U.S.C. § 1983

1 Officer Defendants move for summary judgment on
2 Plaintiff's fourth cause of action against Corporal
3 Amerjan for supervisory liability.

4 1. Constitutional Violations

5 In a section 1983 action, there is no such thing as
6 "supervisory liability," because "[e]ach Government official, his
7 or her title notwithstanding, is only liable for his or her own
8 misconduct." *Ashcroft v. Iqbal*, --- U.S. ---, 129 S.Ct. 1937,
9 1949 (2009). A supervisor may be individually liable under
10 Section 1983 "if there exists either (1) his or her personal
11 involvement in the constitutional deprivation, or (2) a
12 sufficient causal connection between the supervisor's wrongful
13 conduct and the constitutional violation." *Jeffers v. Gomez*, 267
14 F.3d 895, 915 (9th Cir. 2001).

15 The TAC originally alleged violations of the First, Fourth,
16 Eighth, Ninth and Fourteenth Amendments. However, Plaintiff does
17 not contest the absence of allegations or evidence supporting
18 violations of the Fourth, Eighth, Ninth and Fourteenth
19 Amendments. Plaintiff opposes summary judgment solely on the
20 First Amendment violation. Officer Defendants and Plaintiff
21 reassert the same arguments on the third cause of action. For the
22 reasons stated above, there is no issue of material fact that
23 Plaintiff's First Amendment rights were violated. Corporal
24 Amerjan does not have supervisory liability.

1 contest the lack of allegations or evidence to support any
2 Constitutional violation except the First Amendment. For the
3 reasons stated above, there is no issue of material fact that
4 Plaintiff's First Amendment rights were violated.

5
6 1. Qualified Immunity

7 For the same reasons discussed in the third cause of action,
8 Officer Defendants have qualified immunity from suit on the fifth
9 cause of action.

10 Officer Defendant's motion for summary judgment on the fifth
11 cause of action is GRANTED.

12 iv. Sixth Cause of Action: Violations of Unruh Civil
13 Rights Act, Cal. Civ. Code §§ 51, 52

14 Officer Defendants move for summary judgment on
15 Plaintiff's sixth cause of action for violation of the
16 Unruh Act.

17 1. Unruh Act Violations

18 Section 51(b) of the Unruh Act provides:

19 All persons within the jurisdiction of this state are free
20 and equal, and no matter what their sex, race, color,
21 religion, ancestry, national origin, disability, medical
22 condition, marital status, or sexual orientation are
23 entitled to the full and equal accommodations, advantages,
facilities, privileges, or services in all business
establishments of every kind whatsoever.

24 Cal. Civ. Code § 51(b). To prevail under the Unruh Act, a
25 plaintiff can either show a violation of the Unruh Act or a
26 violation of the ADA. An ADA violation is a *per se* violation of
27 the Unruh Act. Cal. Civ. Code § 51(f); *Lentini v. Cal. Ctr. for*
28

1 *the Arts, Escondido*, 370 F.3d 837, 847 (9th Cir. 2004). When an
2 Unruh Act violation is premised on an ADA violation, no showing
3 of intent is required. *Id.* Section 52(a) provides Unruh Act
4 liability for "[w]hoever denies, aids or incites a denial, or
5 makes any discrimination or distinction contrary to" the Unruh
6 Act. Cal. Civ. Code § 52(a).
7

8 Plaintiff contends that Officer Defendants interfered with
9 his ability to obtain emergency medical services by repeatedly
10 informing Plaintiff that he would not receive medical treatment
11 unless he complied with the hospital's request to wear a hospital
12 gown, and that this amounts to denial of accommodations of
13 medical services.
14

15 Title III of the ADA prohibits discrimination by "any place
16 of public accommodation by any person who owns, leases (or leases
17 to), or operates a place of public accommodation." 42 U.S.C. §
18 12182(a). As stated above, it is undisputed that Community
19 Medical is a place of public accommodation for purposes of the
20 ADA. However, there has been no allegation that Officer
21 Defendants own, lease, or operate Community Medical, and
22 Plaintiff has no evidence that supports such allegation. Officer
23 Defendants are therefore not proper defendants under the ADA.
24 Plaintiff can only assert an Unruh Act claim against Officer
25 Defendants, which requires a showing of intent. *See Lentini*, 370
26 F.3d at 847.
27
28

1 The Unruh Act applies to "business establishments." The
2 Unruh Act does not define business establishments, but Plaintiff
3 has not alleged or provided any evidence that Officer Defendants
4 would be "business establishments" subject to the Unruh Act.
5 Officer Defendants could only potentially be liable for aiding
6 and inciting any violation of the Unruh Act under Section 52(a).
7

8 It is undisputed that Officer Defendants told Dr. Mansfield
9 that Plaintiff was requesting pain medication. It is also
10 undisputed that Officer Defendants obtained a medical advocate
11 for Plaintiff at his request. It is undisputed that Officer
12 Defendants told Plaintiff that he needed to put on a hospital
13 gown. It is also undisputed that Corporal Amerjan told Plaintiff
14 that if he didn't want to be treated at Community Medical, he
15 could have a friend, family or taxi take him to another hospital
16 and that the police could help Plaintiff make arrangements if he
17 wanted to go to another hospital if his resources were lacking.
18 The latter two undisputed facts show that Officers were
19 attempting to facilitate Plaintiff's medical treatment, not deny
20 his access. No party has argued whether the law governing Clovis
21 Medical and any requirement applicable to providing medical
22 services to a patient without a hospital gown was clearly
23 established. Whether Community Medical violated the ADA and
24 whether Dr. Mansfield violated the Unruh Act has not been
25 resolved. There are genuine issues of material fact as to Officer
26
27
28

1 Defendants' violation of Section 52(a).

2 2. Qualified Immunity: Cal. Gov't Code § 820.6

3 Officer Defendants assert qualified immunity under Section
4 820.6 of the California Government Code, which provides:

5 If a public employee acts in good faith, without malice, and
6 under the apparent authority of an enactment that is
7 unconstitutional, invalid or inapplicable, he is not liable
8 for an injury caused thereby except to the extent that he
9 would have been liable had the enactment been
10 constitutional, valid and applicable.

11 Cal. Gov. Code § 820.6. Section 820.4 is also applicable:

12 A public employee is not liable for his act or omission,
13 exercising due care, in the execution or enforcement of any
14 law. Nothing in this section exonerates a public employee
15 from liability for false arrest or false imprisonment.

16 Cal. Gov. Code § 820.4.

17 It is undisputed that Officer Defendants came to Community
18 Medical in response to a call for services. Officer Defendants
19 assert that they had probable cause to arrest Plaintiff under
20 Cal. Penal Code § 415 based on Plaintiff's yelling, cursing, and
21 refusal to cooperate with hospital staff. It is undisputed that
22 Officer Defendants did not arrest Plaintiff. It is also
23 undisputed that Corporal Amerjan did not touch Plaintiff or his
24 hospital bed. It is undisputed that Officer Defendants obtained a
25 medical advocate for Plaintiff and asked Dr. Mansfield for pain
26 medication for Plaintiff.

27 Plaintiff has not offered any evidence or argument that
28 calls into question Officer Defendants' exercise of due care on

1 March 17 or their entitlement to qualified immunity. Officer
2 Defendants have qualified immunity from suit on the sixth cause
3 of action.

4 Officer Defendant's motion for summary judgment on the sixth
5 cause of action is GRANTED.

6
7 v. Seventh Cause of Action: Violations of Disabled
Persons Act, Cal. Civ. Code §§ 54.1, 54.3

8 1. Violations of DPA

9 The DPA guarantees that "[i]ndividuals with disabilities
10 shall be entitled to full and equal access, as other members of
11 the general public, to accommodations, advantages, facilities,
12 medical facilities, including hospitals, clinics, and physicians'
13 offices." Cal. Civ. Code § 54.1(a)(1). The focus of the DPA is
14 "physical access" to public spaces. *Turner v. Ass'n of Amer. Med.*
15 *Coll.*, 167 Cal.App.4th at 1412. "Full and equal access" means
16 access that meets the standards of the ADA. Cal. Civ. Code §
17 54.1(a)(3). A violation of the ADA also constitutes a violation
18 of the DPA. Cal. Civ. Code § 54.1(d).

19
20 Plaintiff has not offered any evidence that Officer
21 Defendants denied Plaintiff's physical access to Community
22 Medical. The evidence is they sought to facilitate his access.
23 Plaintiff's DPA claim against Officer Defendants is based on
24 Officer Defendants' allegedly repeatedly informing Plaintiff that
25 he would not receive medical treatment unless he put on a
26 hospital gown and their purported failure to take steps to
27
28

1 determine if Community Medical would modify its stance. As
2 explained in *Turner*, the DPA is focused on *physical* access to
3 public spaces. *Turner*, 167 Cal.App.4th at 1412. There is no
4 genuine issue of material fact whether Officer Defendants
5 violated the DPA.

6
7 2. Qualified Immunity: Cal. Gov't Code § 820.6

8 For the same reasons discussed in the sixth cause of action,
9 Officer Defendants have qualified immunity from suit on the
10 seventh cause of action.

11 Officer Defendant's motion for summary judgment on the
12 seventh cause of action is GRANTED.

13 vi. Twelfth Cause of Action: Violations of the Bane
14 Act, Cal. Civ. Code § 52.1

15 1. Bane Act Violations

16 The Bane Act establishes a private right of action against a
17 person who "interferes by threats, intimidation, or coercion, or
18 attempts to interfere by threats, intimidation, or coercion, with
19 the exercise or enjoyment by any individual or individuals of
20 rights secured by the Constitution or laws of the United States,
21 or of the rights secured by the Constitution or laws of this
22 state." Cal. Civ. Code § 52.1(a).

23
24 Speech alone is not sufficient to support an action [under
25 Section 52.1(a)], except upon a showing that the speech
26 itself threatens violence against a specific person or group
27 of persons; and the person or group of persons against whom
28 the threat is directed reasonably fears that, because of the
speech, violence will be committed against them or their
property and that the person threatening violence had the
apparent ability to carry out the threat.

1 Cal. Civ. Code § 52.1(j). "The essence of a Bane Act claim is
2 that the defendant, by the specified improper means (i.e.,
3 'threats, intimidation or coercion'), tried to or did prevent the
4 plaintiff from doing something he or she had the right to do
5 under the law or to force the plaintiff to do something that he
6 or she was not required to do under the law." *Austin B. v.*
7 *Escondido Union. School Dist.*, 149 Cal.App.4th 860, 883 (2007).
8

9 It is undisputed that Plaintiff was at Community Medical
10 seeking emergency medical treatment and that he was in severe
11 pain when Officer Defendants arrived. It is also undisputed that
12 Corporal Amerjan said that if Plaintiff did not want to be
13 treated at Community Medical, he could go to another hospital. It
14 is undisputed that Corporal Amerjan offered to help Plaintiff
15 make police arrangements if he wanted to go to another hospital
16 and did not have the resources to do so.
17

18 Citing *Cole v. Doe 1 thru 2 Officers of City of Emeryville*
19 *Police Dep't.*, 387 F.Supp.2d 1084, 1103-1104 (N.D. Cal. 2005),
20 Plaintiff argues that Officer Defendants' threat of ejecting
21 Plaintiff from Community Medical is sufficient to demonstrate
22 coercion. In *Cole*, the district court held that "use of law
23 enforcement authority to effectuate a stop, detention (including
24 use of handcuffs), and search can constitute interference by
25 'threat[], intimidation, or coercion' if the officer lacks
26 probable cause to initiate the stop, maintain the detention, and
27
28

1 continue a search." *Id.*

2 Plaintiff has not stated he was in fear or apprehension
3 based on anything the Officer Defendants sought to do. There were
4 no express threats, intimidation or coercion. Officer Defendants
5 sought to keep the peace and to facilitate Plaintiff receiving
6 medical care based on Clovis Medical's request and offer
7 Plaintiff a medical alternative.
8

9 2. Qualified Immunity: Cal. Gov't Code § 820.6

10 For the same reasons discussed in the sixth cause of action,
11 Officer Defendants have qualified immunity from suit on the
12 twelfth cause of action.

13 Officer Defendant's motion for summary judgment on the
14 twelfth cause of action is GRANTED.

15
16 vii. Thirteenth Cause of Action: Civil Conspiracy to
17 Violate Civil Rights and Commit Torts

18 1. Conspiracy

19 "The elements of an action for civil conspiracy are the
20 formation and operation of the conspiracy and damage resulting to
21 the plaintiff from an act or acts done in furtherance of the
22 common design." *Applied Equip. Corp. v. Litton Saudi Arabia Ltd.*,
23 7 Cal.4th 503, 511 (1994) (quoting *Doctors' Co. v. Superior Court*,
24 49 Cal.3d 39, 44 (1989)).

25 Plaintiff has not offered evidence to support a claim of
26 civil conspiracy. Plaintiff contends that a conspiracy can be
27 inferred because there was a change in Officer Defendants'
28

1 "behavior" from when they first arrived at Community Medical and
2 after they spoke with medical staff. Viewing this evidence and
3 the absence of evidence in the light most favorable to Plaintiff,
4 Plaintiff's civil conspiracy claim is unsupported. There is no
5 evidence Officer Defendants knew anyone at the hospital or that
6 they acted in concert with any hospital defendant.
7

8 2. Qualified Immunity: Cal. Gov't Code § 820.6

9 For the same reasons discussed in the sixth cause of action,
10 Officer Defendants have qualified immunity from suit on the
11 thirteenth cause of action.

12 Officer Defendant's motion for summary judgment on the
13 thirteenth cause of action is GRANTED.

14 viii. Fourteenth Cause of Action: Aiding and Abetting
15 Violations of Civil Rights and Commission of Torts

16 Officer Defendants move for summary judgment on Plaintiff's
17 fourteenth cause of action for aiding and abetting violations of
18 civil rights and commission of torts.
19
20
21
22
23
24
25
26
27
28

1 1. Aiding and Abetting

2 Aiding and abetting requires: "(1) the party whom the
3 defendant aids must perform a wrongful act that causes an injury;
4 (2) the defendant must be generally aware of his role as part of
5 an overall illegal or tortious activity at the time that he
6 provides the assistance; and (3) the defendant must knowingly and
7 substantially assist the principal violation." *Howard v. Superior*
8 *Court*, 2 Cal.App.4th 745, 748-49 (1992) (quoting *Halberstam v.*
9 *Welch*, 705 F.2d 472, 477 (D.C. Cir. 1983). Aiding and abetting
10 does not require a defendant to agree to join the wrongful
11 conduct, but it "necessarily requires a defendant to reach a
12 conscious decision to participate in tortious activity for the
13 purpose of assisting another in performing a wrongful act."
14 *Howard*, 2 Cal.App.4th at 749.

15
16
17 The main issue here is whether Officer Defendants knew that
18 they were participating in an overall illegal course of conduct
19 in denying Plaintiff access to medical care and tortious
20 activity. Officer Defendants contend that they were simply
21 carrying out their duties as police officers. Plaintiff claims
22 that he informed everyone he spoke to at the Emergency Room that
23 he was disabled, including Officer Defendants. Whether Officer
24 Defendants knew that Plaintiff was disabled and whether they were
25 aware of their role as part of an overall violation of laws
26 protecting the disabled is a question of fact.
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. Qualified Immunity: Cal. Gov't Code § 820.6

For the same reasons discussed in the sixth cause of action, Officer Defendants have qualified immunity from suit on the fourteenth cause of action.

Officer Defendant's motion for summary judgment on the fourteenth cause of action is GRANTED.

ix. Fifteenth Cause of Action: Injunctive Relief

Plaintiff does not oppose Officer Defendants' motion for summary judgment on the fifteenth cause of action.

Officer Defendants' motion for summary judgment on the fifteenth cause of action is GRANTED.

V. CONCLUSION

For the reasons stated:

- 1. Plaintiff's motion for partial summary judgment is DENIED.
- 2. Dr. Mansfield's motion for summary judgment, or in the alternative, summary adjudication, is DENIED.
- 3. Clovis Police Officer Defendants' motion for summary judgment, or in the alternative, summary adjudication, is GRANTED.

SO ORDERED.

DATED: January 28, 2011.

/s/ Oliver W. Wanger
Oliver W. Wanger
United States District Judge