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3 UNITED STATES DISTRICT COURT  
4 EASTERN DISTRICT OF CALIFORNIA  
5

6 DOUGAL SAMUELS,

7 Plaintiff,

8 v.

9 PAM AHLIN, et al.,

10 Defendants.

Case No. 1:10-cv-00585-DAD-EPG (PC)

FINDINGS AND RECOMMENDATIONS  
TO DISMISS CLAIMS CONSISTENT  
WITH MAGISTRATE JUDGE'S PRIOR  
ORDER IN LIGHT OF WILLIAMS  
DECISION

(ECF NOS. 40 & 41)

OBJECTIONS, IF ANY, DUE WITHIN  
FOURTEEN (14) DAYS

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13 Dougal Samuels ("Plaintiff") is a civil detainee proceeding *pro se* and *in forma pauperis*  
14 with this civil rights action filed pursuant to 42 U.S.C. § 1983. On April 14, 2010, Plaintiff  
15 consented to magistrate judge jurisdiction. (ECF No. 7).

16 The Court<sup>1</sup> screened Plaintiff's complaint and issued an order on July 26, 2012,  
17 dismissing the complaint for failure to state a claim, with leave to amend. (ECF No. 12). On  
18 November 2, 2012, Plaintiff filed the First Amended Complaint. (ECF No. 15). The Court  
19 screened the First Amended Complaint and issued an order on May 3, 2013, dismissing this  
20 action with prejudice for failure to state a claim. (ECF No. 16). The case was closed and  
21 judgment was entered. (ECF Nos. 16 & 17).

22 On May 20, 2013, Plaintiff filed an appeal to the United States Court of Appeals for the  
23 Ninth Circuit. (ECF No. 18). On August 21, 2014, the Ninth Circuit issued an order, affirming  
24 in part and reversing in part, and remanding the case to the district court for further  
25 proceedings. (ECF No. 22). On September 26, 2014, the Ninth Circuit issued the mandate.  
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28 <sup>1</sup> Magistrate Judge Gary S. Austin was the assigned magistrate judge until October 13, 2015. (ECF No. 33).

1 (ECF No. 23).<sup>2</sup>

2 On October 9, 2015, the Court granted Plaintiff leave to file a Second Amended  
3 Complaint, for the limited purpose of identifying the Doe Defendants. (ECF No. 32). On  
4 December 2, 2015, Plaintiff filed a Second Amended Complaint. (ECF No. 36). On June 14,  
5 2016, Plaintiff was granted leave to file a Third Amended Complaint that included “all of the  
6 defendants he wishes to proceed against in this action, and the claims against them....” (ECF  
7 No. 39, p. 3). On July 15, 2016, Plaintiff filed the Third Amended Complaint. (ECF No. 40).

8 The Court screened the Third Amended Complaint, and found that Plaintiff stated  
9 cognizable claims against defendants Pam Ahlin, Stephen Mayberg, Fresno County Board of  
10 Supervisors,<sup>3</sup> Arnold Schwarzenegger, Audrey King, Brandon Price, Ron Withrow, Karin  
11 Hundal, Ron Howard, and Cynthia Radavasky for violation of Plaintiff’s right to safe  
12 conditions under the Due Process Clause. (ECF No. 41). The Court also dismissed all other  
13 claims and defendants. (*Id.*).

14 As described below, in light of Ninth Circuit authority, this Court is recommending that  
15 the assigned district judge dismiss claims and defendants consistent with the order by the  
16 magistrate judge at the screening stage.

17 **I. WILLIAMS v. KING**

18 On November 9, 2017, the Ninth Circuit held that a magistrate judge lacked jurisdiction  
19 to dismiss a prisoner’s case for failure to state a claim at the screening stage where the Plaintiff  
20 had consented to magistrate judge jurisdiction and defendants had not yet been served.  
21 Williams v. King, 875 F.3d 500 (9th Cir. 2017). Specifically, the Ninth Circuit held that “28  
22 U.S.C. § 636(c)(1) requires the consent of all plaintiffs and defendants named in the  
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24 <sup>2</sup> The Ninth Circuit found that the district court properly dismissed Plaintiff’s ADA claims, equal  
25 protection claim, and medical care claim. (ECF No. 22.) However, the Ninth Circuit found that the dismissal of  
26 Plaintiff’s safe conditions claim was premature, and that Plaintiff’s allegations were sufficient to warrant ordering  
27 Defendants to file an answer. (*Id.*) The Ninth Circuit also found that Plaintiff is not barred from bringing suit  
28 against the members of the Fresno County Board of Supervisors in their official capacity. (*Id.*)

<sup>3</sup> Brian Pacheco (representative of District 1), Sal Quintero (representative of District 3), Andreas  
Borgeas (representative of District 2), Nathan Maqsiq (representative of district 5), and Buddy Mendes  
(representative of District 4) were later substituted into the case in place of defendant Fresno County Board of  
Supervisors. (ECF No. 84).

1 complaint—irrespective of service of process—before jurisdiction may vest in a magistrate  
2 judge to hear and decide a civil case that a district court would otherwise hear.” Id. at 501.

3 Here, the defendants were not served at the time the Court issued its order dismissing  
4 claims and defendants, and therefore had not appeared or consented to magistrate judge  
5 jurisdiction. Accordingly, the magistrate judge lacked jurisdiction to dismiss claims and  
6 defendants based solely on Plaintiff’s consent.

7 In light of the holding in Williams, this Court will recommend to the assigned district  
8 judge that he dismiss the claims and defendants previously dismissed by this Court, for the  
9 reasons provided in the Court’s screening order.

## 10 **II. SCREENING REQUIREMENT**

11 When a plaintiff seeks permission to pursue a civil case *in forma pauperis*, courts will  
12 screen the complaint pursuant to 28 U.S.C. § 1915(e)(2). In particular, 28 U.S.C. § 1915(e)(2)  
13 provides that a court shall dismiss a case at any time if it determines that, *inter alia*, the action  
14 is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks  
15 monetary relief against a defendant who is immune from such relief. A central function of this  
16 screening process is to “discourage the filing of, and waste of judicial and private resources  
17 upon, baseless lawsuits that paying litigants generally do not initiate because of the cost of  
18 bringing suit.” Neitzke v. Williams, 490 U.S. 319, 327 (1989).

19 A complaint is required to contain “a short and plain statement of the claim showing  
20 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are  
21 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
22 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell  
23 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient  
24 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Id.  
25 (quoting Twombly, 550 U.S. at 570). The mere possibility of misconduct falls short of meeting  
26 this plausibility standard. Id. at 679. While a plaintiff’s allegations are taken as true, courts  
27 “are not required to indulge unwarranted inferences.” Doe I v. Wal-Mart Stores, Inc., 572 F.3d  
28 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). Additionally, a

1 plaintiff's legal conclusions are not accepted as true. Iqbal, 556 U.S. at 678.

2 Pleadings of *pro se* plaintiffs "must be held to less stringent standards than formal  
3 pleadings drafted by lawyers." Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) (holding that  
4 *pro se* complaints should continue to be liberally construed after Iqbal).

### 5 **III. SUMMARY OF THIRD AMENDED COMPLAINT**

6 Plaintiff is an African-American male, currently civilly detained at Coalinga State  
7 Hospital (CSH) in Coalinga, California, where the events at issue in the Third Amended  
8 Complaint allegedly occurred. Plaintiff names as defendants Pam Ahlin (ex-Executive Director  
9 of CSH), Stephen Mayberg (ex-Director of the California Department of States Hospitals),  
10 Fresno County Board of Supervisors, Arnold Schwarzenegger (ex-Governor of California),  
11 Audrey King (Executive Director of CSH), Brandon Price (interim Director of CSH), Robert  
12 Withrow (Medical Director of CSH), Karin Hundal (Nursing Administrator), Ron Howard  
13 (Plant Operations Manager), Dr. Peter Bresler (Medical Doctor at CSH), California Department  
14 of Corrections and Rehabilitation ("CDCR"), Cynthia A. Radavsky (Deputy Director of Long  
15 Term Care Services at CSH), Orange County Public Defenders' Office, and Office of Patients'  
16 Rights (collectively "Defendants").

17 Plaintiff alleges that all of the defendants were aware of dangerous conditions at CSH  
18 but took no protective measures for his health and safety to prevent Plaintiff's infection by the  
19 disease known as Valley Fever. Plaintiff alleges that on February 16, 2006, he was transferred  
20 to CSH. There were rumors and scientific information that the area surrounding CSH was  
21 extremely lethal because Valley Fever spores were known to be in the soil. Plaintiff and other  
22 detainees were assured by employees that the environment was not life threatening, and  
23 because the hospital was a hermetically sealed environment, the chance of contracting an  
24 infection was a million to one.

25 Before Plaintiff was transferred, he asked his attorneys from the Orange County Public  
26 Defenders' Office about the risk of infection. They shrugged off the notion as a minor issue  
27 about which little was known. When Plaintiff became infected a year or so later, the attorneys  
28 did not take any responsibility and also failed to present evidence of his medical condition at

1 his jury trial to make a difference in his confinement.

2 Plaintiff met with defendant Dr. Peter Bresler at CSH when Plaintiff experienced  
3 painful symptoms. Dr. Bresler diagnosed him with a severe case of the flu and failed to  
4 prescribe any effective medication, allowing Valley Fever disease to spread to Plaintiff's spinal  
5 cord, requiring surgery.

6 Defendant Brandon Price, Hospital Administrator when Plaintiff contracted the disease,  
7 knew or should have known that the area where CSH was built had been declared hazardous  
8 and life-threatening because of Valley Fever. Defendant Price intentionally concealed the  
9 medical and scientific facts, in spite of the number of patients infected at CSH and Pleasant  
10 Valley State Prison (PVSP) next door.

11 Defendant Karin Hundal, Nursing Administrator at CSH, knew of the risk that Valley  
12 Fever posed to patients of color, but deliberately hid all information about the disease.

13 Defendant Robert Withrow, Medical Director, breached his duty to inform patients and  
14 employees of the danger of the disease, in violation of the Health and Safety Code. Plaintiff  
15 asserts that if Plaintiff had known about the dangers, he might have avoided the infection.

16 Defendant Ron Howard, Plant Operations Manager, knows or knew about the lethal  
17 nature of the Valley Fever disease, but he insisted that the ventilation system does not need an  
18 upgrade to prevent entry of the windblown spores into the housing area. Plaintiff assumes he  
19 contracted the disease through the ventilation system, which is defective and unable to provide  
20 sufficient clean air circulation.

21 Defendant Cynthia A. Radavsky, Deputy Director of Long Term Care Services at CSH,  
22 was responsible for making decisions about complaints by patients at CSH. Defendant  
23 Radavsky brushed off the dangers of Valley Fever at CSH, in spite of scientific evidence.

24 Defendant Office of Patients' Rights is a group of state workers who are the final level  
25 of review of a patient's complaint to the Executive Director at CSH. The employees there were  
26 deliberately indifferent to Plaintiff's rights under the Due Process Clause. They knew or  
27 should have known about the danger of Valley Fever at CSH, but they intentionally disregarded  
28 the risk to Plaintiff.

1 Defendant Audrey King, Executive Director at CSH, was the Hospital Administrator  
2 when Plaintiff became infected. She had the opportunity to inform patients and employees  
3 about methods to avoid infection, but she concealed scientific and medical information and  
4 failed to implement safety measures.

5 Defendant Pam Ahlin was Executive Director of CSH at the relevant time. She was in  
6 charge of the facility when Plaintiff was infected with Valley Fever. Plaintiff holds her  
7 personally and officially liable for negligent and reckless actions that caused his medical injury.

8 Defendant Stephen Mayberg was Director of the California Department of States  
9 Hospitals at the relevant time. He was in charge of the five mental health institutions located in  
10 California. During the time CSH was being constructed, he was aware of the life-threatening  
11 danger of building next to PVSP but allowed individuals to be housed at CSH after its opening.

12 Defendant Fresno County Board of Supervisors was told of the future dangers of Valley  
13 Fever before the ground was broken to build CSH, but did not relent to stop construction of the  
14 hospital.

15 Arnold Schwarzenegger, the Governor of the State of California during the relevant  
16 time, was aware of the dangers of building next to PVSP but gave his written approval to go  
17 ahead with the construction.

18 Plaintiff seeks monetary damages and declaratory relief.

19 **IV. PLAINTIFF'S CLAIMS**

20 The Civil Rights Act under which this action was filed provides:

21 Every person who, under color of any statute, ordinance, regulation, custom, or  
22 usage, of any State or Territory or the District of Columbia, subjects, or causes  
23 to be subjected, any citizen of the United States or other person within the  
24 jurisdiction thereof to the deprivation of any rights, privileges, or immunities  
secured by the Constitution and laws, shall be liable to the party injured in an  
action at law, suit in equity, or other proper proceeding for redress . . . .

25 42 U.S.C. § 1983

26 “[Section] 1983 ‘is not itself a source of substantive rights,’ but merely provides ‘a  
27 method for vindicating federal rights elsewhere conferred.’” Graham v. Connor, 490 U.S. 386,  
28 393-94 (1989) (quoting Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)); see also Chapman

1 v. Houston Welfare Rights Org., 441 U.S. 600, 618 (1979); Hall v. City of Los Angeles, 697  
2 F.3d 1059, 1068 (9th Cir. 2012); Crowley v. Nevada, 678 F.3d 730, 734 (9th Cir. 2012);  
3 Anderson v. Warner, 451 F.3d 1063, 1067 (9th Cir. 2006).

4 To state a claim under section 1983, a plaintiff must allege that (1) the defendant acted  
5 under color of state law and (2) the defendant deprived him of rights secured by the  
6 Constitution or federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir.  
7 2006); see also Marsh v. Cnty. of San Diego, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing  
8 “under color of state law”). A person deprives another of a constitutional right, “within the  
9 meaning of § 1983, ‘if he does an affirmative act, participates in another’s affirmative act, or  
10 omits to perform an act which he is legally required to do that causes the deprivation of which  
11 complaint is made.’” Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1183 (9th  
12 Cir. 2007) (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)); “The requisite causal  
13 connection may be established when an official sets in motion a ‘series of acts by others which  
14 the actor knows or reasonably should know would cause others to inflict’ constitutional harms.”  
15 Preschooler II, 479 F.3d at 1183 (quoting Johnson, 588 F.2d at 743). This standard of  
16 causation “closely resembles the standard ‘foreseeability’ formulation of proximate cause.”  
17 Arnold v. Int’l Bus. Mach. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981); see also Harper v. City  
18 of Los Angeles, 533 F.3d 1010, 1026 (9th Cir. 2008).

19 **A. Eleventh Amendment Immunity – CDCR and Office of Patients’ Rights**

20 Plaintiff names the CDCR and the Office of Patients’ Rights as defendants.

21 The Eleventh Amendment prohibits federal courts from hearing suits brought against an  
22 unconsenting state. Brooks v. Sulphur Springs Valley Elec. Co., 951 F.2d 1050, 1053 (9th Cir.  
23 1991) (internal citations omitted); see also Tennessee v. Lane, 541 U.S. 509, 517 (2004); Idaho  
24 v. Coeur d’Alene Tribe of Idaho, 521 U.S. 261, 267-68 (1997); Clark v. California, 123 F.3d  
25 1267, 1269 (9th Cir. 1997).

26 The Eleventh Amendment bars suits against state agencies as well as those where the  
27 state itself is named as a defendant. See Puerto Rico Aqueduct & Sewer Auth. v. Metcalf &  
28 Eddy, Inc., 506 U.S. 139, 144 (1993); Beentjes v. Placer Cnty. Air Pollution Control Dist., 397

1 F.3d 775, 777 (9th Cir. 2005); Savage v. Glendale Union High Sch., 343 F.3d 1036, 1040 (9th  
2 Cir. 2003); see also Lucas v. Dep't of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per curiam)  
3 (stating that Board of Corrections is agency entitled to immunity); Taylor v. List, 880 F.2d  
4 1040, 1045 (9th Cir. 1989) (concluding that Nevada Department of Prisons was a state agency  
5 entitled to Eleventh Amendment immunity).

6 Because the CDCR and the Office of Patients' Rights are state agencies, they are  
7 entitled to Eleventh Amendment immunity from suit. Therefore, Plaintiff fails to state a claim  
8 against defendants CDCR and the Office of Patients' Rights.

9 **B. Medical Claim – Defendant Dr. Bresler**

10 A civilly committed person's claim that his medical care violated constitutional  
11 standards is governed by the "professional judgment" standard set forth in Youngberg v.  
12 Romeo, 457 U.S. 307 (1982). "[T]he decision, if made by a professional, is presumptively  
13 valid; liability may be imposed only when the decision is such a substantial departure from  
14 accepted professional judgment, practice, or standards as to demonstrate that the person  
15 responsible actually did not base the decision on such a judgment." Id. at 323. Under this  
16 "professional judgment" standard, mere negligence or medical malpractice does not violate the  
17 Constitution. See Patten v. Nichols, 274 F.3d 829, 852-43 (4th Cir. 2001) (applying  
18 Youngberg "professional judgment" standard to a denial of medical care claim by a civilly  
19 committed psychiatric patient and holding that more than negligence is required).

20 Plaintiff's factual allegations show, at most, negligence in Plaintiff's medical treatment.  
21 The only named defendant personally involved in Plaintiff's medical treatment was Dr. Bresler.  
22 Plaintiff alleges that Dr. Bresler misdiagnosed his Valley Fever disease and then administered  
23 medications ineffective against Valley Fever. These allegations fail to demonstrate that Dr.  
24 Bresler was not using his professional judgment in treating Plaintiff's illness. A misdiagnosis  
25 indicates at most medical malpractice, which is not sufficient to state a claim under § 1983.  
26 None of the other named defendants were personally involved in Plaintiff's medical treatment.  
27 Therefore, Plaintiff fails to state a medical claim under § 1983.

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1           **C.     Violation of Right to Safe Conditions – Due Process Clause**

2           The Due Process Clause protects against the deprivation of liberty without due process  
3 of law. Wilkinson v. Austin, 545 U.S. 209, 221 (2005). In order to invoke the protection of the  
4 Due Process Clause, a plaintiff must first establish the existence of a liberty interest for which  
5 the protection is sought. Id. The Supreme Court “has noted that the right to personal security  
6 constitutes a ‘historic liberty interest’ protected substantively by the Due Process Clause.”  
7 Youngberg v. Romeo, 457 U.S. 307, 315 (1982), quoting Ingraham v. Wright, 430 U.S. 651,  
8 673 (1977). “And that right is not extinguished by lawful confinement, even for penal  
9 purposes.” Youngberg, 457 U.S. at 315, citing see Hutto v. Finney, 437 U.S. 678 (1978). “If it  
10 is cruel and unusual punishment to hold convicted criminals in unsafe conditions, it must be  
11 unconstitutional to confine the involuntarily committed—who may not be punished at all—in  
12 unsafe conditions.” Youngberg, 457 U.S. at 315-16. “In determining whether a substantive  
13 right protected by the Due Process Clause has been violated, it is necessary to balance ‘the  
14 liberty of the individual’ and ‘the demands of an organized society.’” Id. at 320.

15                   **1.     Orange County Public Defenders’ Office**

16           Plaintiff alleges that the Orange County Public Defenders’ Office is liable in this case  
17 because Plaintiff’s attorneys from that office, when questioned about the risk of Valley Fever  
18 before Plaintiff was transferred to CSH, shrugged off the notion of infections as if it were a  
19 minor issue Plaintiff need not be concerned about. Plaintiff also alleges that after he was  
20 infected with Valley Fever, his attorneys failed to take responsibility.

21           Plaintiff fails to allege facts showing that any of his attorneys knew of a serious risk to  
22 his health or safety and yet personally and knowingly acted to violate Plaintiff’s rights to safe  
23 conditions. Therefore, Plaintiff fails to state a claim against the Orange County Public  
24 Defenders’ Office, or any of the individual attorneys working there, for violating his rights to  
25 safe conditions pursuant to the Due Process Clause under § 1983.

26           Plaintiff also alleges that his Sixth Amendment rights were violated. Plaintiff alleges  
27 that the attorney representing him at his civil commitment trial failed to present any sound  
28 evidence of his medical condition to the jury to make a difference in the outcome of his

1 confinement. Here, Plaintiff cannot state a claim for violation of his Sixth Amendment right to  
2 the effective assistance of counsel, because the Sixth Amendment is not applicable to a civil  
3 commitment proceeding. The protections provided by the Sixth Amendment are explicitly  
4 confined to “criminal prosecutions.” United States v. \$292,888.04 in U.S Currency, 54 F.3d  
5 564, 569 (9th Cir. 1995), quoting Austin v. United States, 509 U.S. 602, 607 (1993) (internal  
6 quotation marks omitted). Therefore, Plaintiff fails to state a claim for violation of the Sixth  
7 Amendment.

8           2.       **Defendants Ahlin, Mayberg, Fresno County Board of Supervisors,**  
9                   **Schwarzenegger, King, Price, Withrow, Hundal, Howard, and**  
10                   **Radavsky**

11           Plaintiff alleges that defendants Pam Ahlin, Stephen Mayberg, Fresno County Board of  
12 Supervisors, Arnold Schwarzenegger, Audrey King, Brandon Price, Ron Withrow, Karin  
13 Hundal, Ron Howard, and Cynthia Radavasky knew or should have known about the risks to  
14 patients contracting Valley Fever at CSH, but failed to stop construction of CSH or implement  
15 measures to lessen the risk of infection by Valley Fever at CSH.

16           The Ninth Circuit found that Plaintiff’s allegations in the Original Complaint, that his  
17 rights to safe conditions were violated, “liberally construed, are ‘sufficient to warrant ordering  
18 [defendants] to file an answer.’” (ECF No. 22 at 3, quoting Wilhelm v. Rotman, 680 F.3d  
19 1113, 1116 (9th Cir. 2012), citing see also Youngberg v. Romeo, 457 U.S. 307, 315 (1982) (a  
20 civil detainee’s right to safe conditions is protected by the Due Process Clause), and citing  
21 Ammons v. Wash. Dep’t of Soc. & Health Servs., 648 F.3d 1020, 1029-30 (9th Cir. 2011)  
22 (setting forth objective test, which does not require subjective awareness of risk; thus, “in the  
23 face of known threats to patient safety, state officials may not act (or fail to act) with conscious  
24 indifference, but must take adequate steps in accordance with professional standards to prevent  
25 harm from occurring” (citation and internal quotation marks omitted)). The Ninth Circuit also  
26 advised this Court that “Samuels is not barred from bringing suit against the members of the  
27 Fresno County Board of Supervisors in their official capacity.” (ECF No. 22 at 3, citing See  
28 Greater L.A. Council on Deafness, Inc. v. Zolin, 812 F.2d 1103, 1110 (9th Cir. 1987) (“The  
[E]leventh [A]mendment does not bar actions against cities and counties.”). Plaintiff brings

1 largely the same allegations concerning safe conditions in the Third Amended Complaint.  
2 Therefore, in accordance with the Ninth Circuit’s decision, this Court now finds that liberally  
3 construed, Plaintiff states cognizable claims for violation of his safe conditions rights under the  
4 Due Process Clause against defendants Pam Ahlin, Stephen Mayberg, Fresno County Board of  
5 Supervisors,<sup>4</sup> Arnold Schwarzenegger, Audrey King, Brandon Price, Ron Withrow, Karin  
6 Hundal, Ron Howard, and Cynthia Radavasky.

7 **V. CONCLUSION AND RECOMMENDATIONS**

8 For the foregoing reasons, IT IS HEREBY RECOMMENDED that all claims and  
9 defendants be DISMISSED, except for Plaintiff’s claims against defendants Pam Ahlin,  
10 Stephen Mayberg, Brian Pacheco, Sal Quintero, Andreas Borgeas, Nathan Maqsiq, Buddy  
11 Mendes, Arnold Schwarzenegger, Audrey King, Brandon Price, Ron Withrow, Karin Hundal,  
12 Ron Howard, and Cynthia Radavasky for violation of Plaintiff’s right to safe conditions under  
13 the Due Process Clause.

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26 <sup>4</sup> Brian Pacheco (representative of District 1), Sal Quintero (representative of District 3), Andreas  
27 Borgeas (representative of District 2), Nathan Maqsiq (representative of district 5), and Buddy Mendes  
28 (representative of District 4) were substituted into the case in place of defendant Fresno County Board of  
Supervisors. (ECF No. 84).

1           These findings and recommendations are submitted to the United States District Judge  
2 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen  
3 (14) days after being served with these findings and recommendations, any party may file  
4 written objections with the court. Such a document should be captioned “Objections to  
5 Magistrate Judge's Findings and Recommendations.” Any reply to the objections shall be  
6 served and filed within seven (7) days after service of the objections. The parties are advised  
7 that failure to file objections within the specified time may result in the waiver of rights on  
8 appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan,  
9 923 F.2d 1391, 1394 (9th Cir. 1991)).

10 IT IS SO ORDERED.

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12 Dated: December 26, 2017

13 /s/ Eric P. Gray  
14 UNITED STATES MAGISTRATE JUDGE  
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