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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

MAXIMO BERREONDO,

Plaintiff,

v.

JONATHAN AKANNO, et al.,

Defendants.

CASE NO. 1:11-CV-00432-LJO-DLB PC

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DISMISSAL OF  
CERTAIN CLAIMS AND DEFENDANTS

(DOCS. 10, 14, 15)

OBJECTIONS, IF ANY, DUE WITHIN  
FOURTEEN DAYS

**FINDINGS AND RECOMMENDATIONS**

**I. BACKGROUND**

Plaintiff Maximo Berreondo (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). Plaintiff is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed his complaint on March 14, 2011. Plaintiff filed his first amended complaint on June 30, 2011. On October 4, 2011, the Court screened Plaintiff’s first amended complaint and found that it stated a cognizable claim against Defendant Akanno for deliberate indifference in violation of the Eighth Amendment, and no other claims. Doc. 14. Plaintiff was provided the opportunity to file a second amended complaint curing the deficiencies identified, or to notify the Court of his willingness to proceed only on the cognizable claim. On October 18, 2011, Plaintiff notified the Court of his willingness to proceed only against Defendant Akanno. The Court thus issues the following Findings and Recommendations.

1 **II. SCREENING REQUIREMENT**

2 The court is required to screen complaints brought by prisoners seeking relief against a  
3 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
4 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally  
5 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek  
6 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).  
7 “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall  
8 dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a  
9 claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

10 A complaint must contain “a short and plain statement of the claim showing that the  
11 pleader is entitled to relief . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
12 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
13 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citing  
14 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual  
15 matter, accepted as true, to ‘state a claim that is plausible on its face.’” *Id.* (quoting *Twombly*,  
16 550 U.S. at 555). While factual allegations are accepted as true, legal conclusions are not. *Id.*

17 **III. SUMMARY OF COMPLAINT**

18 Plaintiff, a paraplegic individual who is currently incarcerated at Kern Valley State Prison  
19 (“KVSP”) in Delano, California, brings this action for adverse conditions of confinement,  
20 deliberate indifference to serious medical needs, law library access, visiting privileges, court  
21 access and violations of the Americans with Disabilities Act. The events at issue occurred  
22 between November 2009 and the filing of the complaint.

23 In his complaint, Plaintiff alleges as follows: On October 30, 2009, Plaintiff was  
24 transferred from Corcoran State Prison’s Acute Care Hospital to a wheelchair cell in the general  
25 population at KVSP. Within two days of his arrival, Plaintiff began to show signs of skin  
26 breakdown on his right hip. He immediately informed a nurse. On November 4, 2009, Plaintiff  
27 saw Defendant Dr. Akanno, who refused to look at the affected area. Plaintiff’s condition began  
28 to worsen and he continued to file medical slips. Dr. Akanno would see Plaintiff, but refuse to

1 examine him. Plaintiff developed three pressure sores, one on each hip and one on the tailbone  
2 area. His sores became infected.

3 On April 30, 2010, Plaintiff was examined by Dr. Sweffler from Sacramento and moved  
4 to KVSP's Correctional Treatment Center on May 1, 2010. Plaintiff's condition deteriorated and  
5 on June 12, 2010, he began to suffer from chills, high fevers and severe muscle and joint pain.  
6 On June 22, 2010, Plaintiff was admitted to Mercy Hospital for severe bone and wound  
7 infections. For the next three months, Plaintiff underwent surgeries to remove necrotic and  
8 infected tissue. On July 4, 2010, Plaintiff suffered from massive blood loss from his left hip. On  
9 September 23, 2010, Plaintiff was discharged from Mercy Hospital to the KVSP's Correctional  
10 Treatment Center to continue treatment of his pressure sores. On December 9, 2010, Plaintiff  
11 was readmitted to Mercy Hospital with chills, high fevers, rapid heart rate and muscle and joint  
12 pain. On February 17, 2011, Plaintiff was discharged from Mercy Hospital to KVSP's  
13 Correctional Treatment Center. He remains bedridden and connected to a wound VAC, which is  
14 treating his open and infected pressure sores.

15 Plaintiff contends that Dr. Akanno failed to provide him adequate medical care and was  
16 deliberately indifferent to his medical needs. Plaintiff also claims that he filed multiple  
17 complaints, which were deliberately ignored by Defendant Sherry Lopez, Chief Medical Officer  
18 at KVSP.

19 Plaintiff alleges that other denials contributed to his pressure sores and severe infections.  
20 Plaintiff alleges that while at KVSP, Dr. Akanno denied him a proper mattress and daily  
21 showers. Plaintiff further alleges that he was deprived of outside yard time due to prolonged  
22 lockdowns and could not perform range of motion exercises to prevent muscle atrophy. Plaintiff  
23 alleges that he either was denied showers or was exposed to dirty water in backed-up showers.  
24 He was unable to properly clean himself after unintended bowel movements or condom catheter  
25 leaks, which resulted in irritation and infection. On more than one occasion, he fell onto the dirty  
26 floor in the shower, exposing his wound to germs and bacteria. Plaintiff alleges that while at  
27 KVSP, he was exposed to extreme temperatures, dust in the ventilation system, arsenic in the  
28 water and poor nutrition.

1            **Court and Law Library Access**

2            Plaintiff alleges that he is currently being denied access to the law library, to persons  
3 learned in law and to the court.

4            **Visiting Privileges**

5            Plaintiff alleges that while hospitalized he was denied the right to communicate with his  
6 family through correspondence, phone calls and/or visits.

7            **Plaintiff's Request for Relief**

8            Plaintiff requests money damages and injunctive relief.

9            **IV. PLAINTIFF'S CLAIMS**

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

11                    Every person who, under color of [state law] . . . subjects, or causes  
12                    to be subjected, any citizen of the United States . . . to the  
13                    deprivation of any rights, privileges, or immunities secured by the  
14                    Constitution . . . shall be liable to the party injured in an action at  
15                    law, suit in equity, or other proper proceeding for redress.

16           42 U.S.C. § 1983. "Section 1983 . . . creates a cause of action for violations of the federal  
17 Constitution and laws." *Sweaney v. Ada County, Idaho*, 119 F.3d 1385, 1391 (9th Cir. 1997)  
18 (internal quotations omitted). "To the extent that the violation of a state law amounts to the  
19 deprivation of a state-created interest that reaches beyond that guaranteed by the federal  
20 Constitution, Section 1983 offers no redress." *Id.*

21            **1.        Deficiencies of the Complaint**

22            **A.        Rule 8(a)**

23            Under federal pleading requirements, a complaint must contain "a short and plain  
24 statement of the claim showing that the pleader is entitled to relief . . ." Fed.R.Civ.P. 8(a)(2).  
25 Detailed factual allegations are not required, but "[t]hreadbare recitals of the elements of a cause  
26 of action, supported by mere conclusory statements, do not suffice," *Iqbal*, 129 S.Ct. at 1949  
27 (citing *Twombly*, 550 U.S. at 555), and courts "are not required to indulge unwarranted  
28 inferences," *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation  
marks and citation omitted). Factual allegations are accepted as true but legal conclusions are  
not, and Plaintiff is required to present factual allegations sufficient to state a plausible claim for

1 relief. *Iqbal*, 129 S.Ct at 1949-50; *Moss. v. United States Secret Service*, 572 F.3d 962, 969 (9th  
2 Cir. 2009). The mere possibility of misconduct falls short of meeting this plausibility standard.  
3 *Id.*

#### 4 **B. Eleventh Amendment Immunity**

5 Plaintiff names Kern Valley State Prison as a defendant. Plaintiff may not sustain an  
6 action against a state prison. The Eleventh Amendment prohibits federal courts from hearing  
7 suits brought against an unconsenting state. *Brooks v. Sulphur Springs Valley Elec. Co-op.*, 951  
8 F.2d 1050, 1053 (9th Cir.1991) (citation omitted); *Seminole Tribe of Fla. v. Florida*, 517 U.S.  
9 44, 54 (1996); *Puerto Rico Aqueduct Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144  
10 (1993); *Austin v. State Indus. Ins. Sys.*, 939 F.2d 676, 677 (9th Cir.1991). The Eleventh  
11 Amendment bars suits against state agencies as well as those where the state itself is named as a  
12 defendant. *See Natural Resources Defense Council v. California Dep't of Transp.*, 96 F.3d 420,  
13 421 (9th Cir.1996); *Brook*, 951 F.2d at 1053; *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir.1989)  
14 (concluding that Nevada Department of Prisons was a state agency entitled to Eleventh  
15 Amendment immunity); *Mitchell v. L.A. Community College Dist.*, 861 F.2d 198, 201 (9th  
16 Cir.1989). Kern Valley State Prison is part of the California Department of Corrections, a state  
17 agency, and it is entitled to Eleventh Amendment immunity from suit.

#### 18 **C. Official Capacity**

19 Plaintiff may not bring suit against defendants in their official capacities. “The Eleventh  
20 Amendment bars suits for money damages in federal court against a state, its agencies, and state  
21 officials in their official capacities.” *Aholelei v. Dept. of Public Safety*, 488 F.3d 1144, 1147 (9th  
22 Cir. 2007) (citations omitted). However, the Eleventh Amendment does not bar suits seeking  
23 damages against state officials in their personal capacities. *Hafer v. Melo*, 502 U.S. 21, 30  
24 (1991); *Porter v. Jones*, 319 F.3d 483, 491 (9th Cir. 2003).

25 “Personal-capacity suits . . . seek to impose individual liability upon a government officer  
26 for actions taken under color of state law.” *Hafer*, 502 U.S. at 25; *Suever v. Connell*, 579 F.3d  
27 1047, 1060 (9th Cir. 2009). Where a plaintiff is seeking damages against a state official and the  
28 complaint is silent as to capacity, a personal capacity suit is presumed given the bar against an

1 official capacity suit. *Shoshone-Bannock Tribes v. Fish & Game Comm'n*, 42 F.3d 1278, 1284  
2 (9th Cir. 1994); *Price v. Akaka*, 928 F.2d 824, 828 (9th Cir. 1991).

### 3 **D. Supervisory Liability**

4 Although not named in the caption, Plaintiff appears to attribute supervisory liability to  
5 the Warden. Plaintiff fails to state a claim. The term “supervisory liability,” loosely and  
6 commonly used by both courts and litigants alike, is a misnomer. *Iqbal*, 129 S. Ct. at 1949.  
7 “Government officials may not be held liable for the unconstitutional conduct of their  
8 subordinates under a theory of *respondeat superior*.” *Id.* at 1948. Rather, each government  
9 official, regardless of his or her title, is only liable for his or her own misconduct.

10 When the named defendant holds a supervisory position, the causal link between the  
11 defendant and the claimed constitutional violation must be specifically alleged. *See Fayle v.*  
12 *Stapley*, 607 F.2d 858, 862 (9th Cir. 1979); *Mosher v. Saalfeld*, 589 F.2d 438, 441 (9th Cir.  
13 1978). To state a claim for relief under § 1983 for supervisory liability, plaintiff must allege  
14 some facts indicating that the defendant either: personally participated in the alleged deprivation  
15 of constitutional rights; knew of the violations and failed to act to prevent them; or promulgated  
16 or “implemented a policy so deficient that the policy ‘itself is a repudiation of constitutional  
17 rights’ and is ‘the moving force of the constitutional violation.’” *Hansen v. Black*, 885 F.2d 642,  
18 646 (9th Cir. 1989) (internal citations omitted); *Taylor*, 880 F.2d at 1045. Plaintiff alleges no  
19 facts that demonstrate that the Warden personally deprived Plaintiff of his constitutional rights,  
20 knew of constitutional violations and failed to act, or promulgated a policy that violated  
21 Plaintiff’s constitutional rights.

### 22 **2. Legal Standards**

23 In the paragraphs that follow, the court will provide Plaintiff with the legal standards that  
24 appear to apply to his claims. Plaintiff should carefully review the standards and amend only  
25 those claims that he believes, in good faith, are cognizable.

### 26 **A. Inmate Appeals Process**

27 Plaintiff alleges that Defendant Lopez and the Warden failed to respond properly to his  
28 inmate appeals. Defendants’ actions in responding to Plaintiff’s appeals, alone, cannot give rise

1 to any claims for relief under section 1983 for violation of due process. “[A prison] grievance  
2 procedure is a procedural right only, it does not confer any substantive right upon the inmates.”  
3 *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993) (citing *Azeez v. DeRobertis*, 568 F. Supp.  
4 8, 10 (N.D. Ill. 1982)); *see also Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003) (no liberty  
5 interest in processing of appeals because no entitlement to a specific grievance procedure);  
6 *Massey v. Helman*, 259 F.3d 641, 647 (7th Cir. 2001) (existence of grievance procedure confers  
7 no liberty interest on prisoner); *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988). “Hence, it  
8 does not give rise to a protected liberty interest requiring the procedural protections envisioned  
9 by the Fourteenth Amendment.” *Azeez*, 568 F. Supp. at 10; *Spencer v. Moore*, 638 F. Supp. 315,  
10 316 (E.D. Mo. 1986). Actions in reviewing a prisoner’s administrative appeal cannot serve as  
11 the basis for liability under a section 1983 action. *Buckley*, 997 F.2d at 495.

12 **B. Conditions of Confinement**

13 Plaintiff alleges that defendants deprived him of yard time, meals, and showers. The  
14 Eighth Amendment protects prisoners from inhumane methods of punishment and from  
15 inhumane conditions of confinement. *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir.  
16 2006). Extreme deprivations are required to make out a conditions of confinement claim, and  
17 only those deprivations denying the minimal civilized measure of life’s necessities are  
18 sufficiently grave to form the basis of an Eighth Amendment violation. *Hudson v. McMillian*,  
19 503 U.S. 1, 9 (1992) (citations and quotations omitted). In order to state a claim for violation of  
20 the Eighth Amendment, the plaintiff must allege facts sufficient to support a claim that prison  
21 officials knew of and disregarded a substantial risk of serious harm to the plaintiff. *E.g.*, *Farmer*  
22 *v. Brennan*, 511 U.S. 825, 847 (1994); *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998).  
23 Plaintiff fails to demonstrate that any of the defendants knew of and disregarded a substantial risk  
24 of serious harm to Plaintiff when depriving him of yard time, proper nutrition, arsenic-free  
25 water, dust-free ventilation and showers. Plaintiff must set forth facts identifying which  
26 defendant, whether named or unknown, and his/her alleged acts or omissions that resulted in the  
27 alleged violation of Plaintiff’s federal rights.

28 Further, Plaintiff complains of prolonged lockdowns. There is no outright constitutional

1 prohibition against “mass punishment” or “lockdown.” *See, e.g., Pepperling v. Crist*, 678 F.2d  
2 787, 789 (9th Cir.1982) (lockdown “*may* constitute a due process violation, as well as a violation  
3 of the Eighth Amendment, if [it] persist[s] too long.”) (emphasis added); *Hayward v. Proconier*,  
4 629 F.2d 599, 600-03 (9th Cir.1980) (five-month lockdown did not violate Due Process Clause  
5 or Eighth Amendment).

6 The extent of the lockdowns experienced by Plaintiff is not clear. Plaintiff has failed to  
7 provide sufficient facts to state a cognizable claim.

### 8 C. Eighth Amendment Medical Care Claim

9 Plaintiff alleges that defendants failed to afford him adequate medical care at KVSP.  
10 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate must  
11 show ‘deliberate indifference to serious medical needs.’” *Jett v. Penner*, 439 F.3d 1091, 1096  
12 (9th Cir. 2006) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). The two part test for  
13 deliberate indifference requires the plaintiff to show (1) “‘a serious medical need’ by  
14 demonstrating that ‘failure to treat a prisoner’s condition could result in further significant injury  
15 or the unnecessary and wanton infliction of pain,’” and (2) “‘the defendant’s response to the need  
16 was deliberately indifferent.” *Jett*, 439 F.3d at 1096 (quoting *McGuckin v. Smith*, 974 F.2d 1050,  
17 1059 (9th Cir. 1992), *overruled on other grounds, WMX Techs., Inc. v. Miller*, 104 F.3d 1133,  
18 1136 (9th Cir. 1997) (en banc) (internal quotations omitted)). Deliberate indifference is shown  
19 by “a purposeful act or failure to respond to a prisoner’s pain or possible medical need, and harm  
20 caused by the indifference.” *Id.* (citing *McGuckin*, 974 F.2d at 1060). In order to state a claim  
21 for violation of the Eighth Amendment, Plaintiff must allege sufficient facts to support a claim  
22 that the named defendants “[knew] of and disregard[ed] an excessive risk to [Plaintiff’s] health . .  
23 . .” *Farmer*, 511 U.S. at 837.

24 In applying this standard, the Ninth Circuit has held that before it can be said that a  
25 prisoner’s civil rights have been abridged, “the indifference to his medical needs must be  
26 substantial. Mere ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not support this  
27 cause of action.” *Broughton v. Cutter Laboratories*, 622 F.2d 458, 460 (9th Cir. 1980) (citing  
28 *Estelle*, 429 U.S. at 105-06). “[A] complaint that a physician has been negligent in diagnosing or



1 treating a medical condition does not state a valid claim of medical mistreatment under the  
2 Eighth Amendment. Medical malpractice does not become a constitutional violation merely  
3 because the victim is a prisoner.” *Estelle*, 429 U.S. at 106. Even gross negligence is insufficient  
4 to establish deliberate indifference to serious medical needs. *See Wood v. Housewright*, 900 F.2d  
5 1332, 1334 (9th Cir. 1990).

6 Also, “[A] difference of opinion between a prisoner-patient and prison medical  
7 authorities regarding treatment does not give rise to a § 1983 claim.” *Franklin v. Oregon*, 662  
8 F.2d 1337, 1344 (9th Cir. 1981) (internal citation omitted). To prevail, Plaintiff “must show that  
9 the course of treatment the doctors chose was medically unacceptable under the circumstances . .  
10 . and . . . that they chose this course in conscious disregard of an excessive risk to plaintiff’s  
11 health.” *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1986) (internal citations omitted). A  
12 prisoner’s mere disagreement with diagnosis or treatment does not support a claim of deliberate  
13 indifference. *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989).

14 The court finds that Plaintiff’s allegations state a cognizable claim for deliberate  
15 indifference to Plaintiff’s serious medical need against Defendant Akanno. However, Plaintiff  
16 has not alleged facts showing that Defendant Lopez or the Warden were deliberately indifferent  
17 to Plaintiff’s serious medical need, or that the course of treatment given to him was medically  
18 unacceptable under the circumstances.

#### 19 **D. Americans with Disabilities Act**

20 Title II of the Americans with Disabilities Act (ADA) provides that “no qualified  
21 individual with a disability shall, by reason of such disability, be excluded from participation in  
22 or be denied the benefits of the services, programs, or activities of a public entity, or be subject to  
23 discrimination by such entity.” 42 U.S.C. § 12132. Title II of the ADA applies to inmates within  
24 state prisons. *Pennsylvania Dept. of Corrections v. Yeskey*, 524 U.S. 206, 210(1998); *see also*  
25 *Armstrong v. Wilson*, 124 F.3d 1019, 1023 (9th Cir. 1997); *Duffy v. Riveland*, 98 F.3d 447, 453-  
26 56 (9th Cir. 1996).

27 In order to state a claim under the ADA, plaintiff must have been “improperly excluded  
28 from participation in, and denied the benefits of, a prison service, program, or activity on the

1 basis of his physical handicap.” *Armstrong*, 124 F.3d at 1023. Further, the treatment or lack of  
2 medical treatment for plaintiff’s condition does not provide a basis upon which to impose  
3 liability. *Burger v. Bloomberg*, 418 F.3d 882, 883 (8th Cir. 2005) (medical treatment decisions  
4 not basis for ADA claims); *Fitzgerald v. Corr. Corp. of Am.*, 403 F.3d 1134, 1144 (10th Cir.  
5 2005) (medical decisions not ordinarily within the scope of the ADA); *Bryant v. Madigan*, 84  
6 F.3d 246, 249 (7th Cir. 1996) (“The ADA does not create a remedy for medical malpractice.”).  
7 Aside from the medical treatment decisions, which are not an appropriate basis upon which to  
8 predicate an ADA claim, Plaintiff alleges no facts to show that any defendant participated in, or  
9 was otherwise responsible for, excluding him from numerous activities, programs, and benefits  
10 otherwise available to him.

11 **E. Court and Law Library Access**

12 Plaintiff alleges that he is currently being denied access to the law library, persons learned  
13 in law and the court. Inmates have a fundamental constitutional right of access to the courts.  
14 *Lewis v. Casey*, 518 U.S. 343, 346 (1996). The right of access is merely the right to bring to  
15 court a grievance the inmate wishes to present, and is limited to direct criminal appeals, habeas  
16 petitions, and civil rights actions. *Id.* at 354. The State is not required to enable the inmate to  
17 discover grievances or to litigate effectively once in court. *Id.*

18 Inmates do not have the right to a law library or legal assistance. *Id.* at 351. Law  
19 libraries and legal assistance programs are only the means of ensuring access to the courts. *Id.*  
20 Because inmates do not have "an abstract, freestanding right to a law library or legal assistance,  
21 an inmate cannot establish relevant actual injury by establishing that his prison's law library or  
22 legal assistance program is subpar in some theoretical sense." *Id.* Rather, an inmate claiming  
23 interference with or denial of access to the courts must show that he suffered an actual injury. *Id.*

24 Plaintiff has not alleged an actual injury.

25 **E. Visitor & Communication Privileges**

26 The Due Process Clause protects prisoners from being deprived of liberty without due  
27 process of law. *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974). In order to state a cause of action  
28 for deprivation of procedural due process, a plaintiff must first establish the existence of a liberty

1 interest for which the protection is sought. *Id.* Liberty interests may arise from the Due Process  
2 Clause itself or from state law. *Hewitt v. Helms*, 459 U.S. 460, 466-68 (1983). With respect to  
3 liberty interests arising from state law, the existence of a liberty interest created by prison  
4 regulations is determined by focusing on the nature of the deprivation. *Sandin v. Conner*, 515  
5 U.S. 472, 481-84 (1995). Liberty interests created by prison regulations are limited to freedom  
6 from restraint which “imposes atypical and significant hardship on the inmate in relation to the  
7 ordinary incidents of prison life.” *Id.* at 484. The Due Process Clause does not guarantee a right  
8 to unfettered visitation. *Ky. Dep’t of Corr. v. Thompson*, 490 U.S. 454, 460-61 (1989). It is  
9 unclear to what extent Plaintiff was denied visitation during his hospitalizations. It also is  
10 unclear whether the alleged denial resulted from prison regulations or hospital regulations.

11 Similarly, Plaintiff has made assertions regarding denial of telephone contact and  
12 correspondence with his family while hospitalized. Inmates have a First Amendment right to  
13 telephone access, subject to reasonable security limitations, and a First Amendment right to send  
14 and receive mail. *See Keenan v. Hall*, 83 F.3d 1083, 1092 (9th Cir. 1996); *Witherow v. Paff*, 52  
15 F.3d 264, 265 (9th Cir. 1995). It is unclear to what extent Plaintiff was denied telephone access  
16 and correspondence with his family during his hospitalizations and whether prison or hospital  
17 regulations resulted in the alleged denial.

## 18 **V. CONCLUSION AND RECOMMENDATION**

19 The Court finds that Plaintiff’s complaint states a cognizable claim for deliberate  
20 indifference against Defendant Akanno. However, Plaintiff fails to state any other claims upon  
21 which relief can be granted under § 1983 against Defendants. Plaintiff was provided the  
22 opportunity to amend his first amended complaint to cure the deficiencies identified or to  
23 proceed only against Defendant Akanno. Plaintiff chose the latter.

24 Accordingly, it is HEREBY RECOMMENDED that:

- 25 1. This action proceed on Plaintiff’s first amended complaint against Defendant  
26 Jonathan Akanno for deliberate indifference in violation of the Eighth  
27 Amendment;
- 28 2. All other claims be dismissed with prejudice for failure to state a claim; and

