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2 **UNITED STATES DISTRICT COURT**

3 EASTERN DISTRICT OF CALIFORNIA

4 NORMAN GERALD DANIELS III,

Case No. 1:13-cv-00202-AWI-SKO PC

5 Plaintiff,

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS IN FULL,
DISMISSING CERTAIN DEFENDANTS,
AND REFERRING MATTER BACK TO
MAGISTRATE JUDGE FOR SERVICE OF
PROCESS

6 v.

7 R. TOLSON, et al.,

8 Defendants.

(Docs. 19 and 20)

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10 _____/

11 Plaintiff Norman Gerald Daniels III, a state prisoner proceeding pro se and in forma
12 pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on February 8, 2013. The
13 matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and
14 Local Rule 302.

15 On November 12, 2013, the Court dismissed Plaintiff's complaint, with leave to amend,
16 for failure to state any claims; and on May 21, 2014, Plaintiff filed an amended complaint alleging
17 a violation of 42 U.S.C. § 12132, the Americans with Disabilities Act ("ADA"). On January 6,
18 2015, the Magistrate Judge screened Plaintiff's amended complaint and recommended it proceed
19 on Plaintiff's ADA claim against the Warden of California Substance Abuse Treatment Facility
20 and State Prison ("CSATF") in his official capacity. After obtaining two extensions of time,
21 Plaintiff filed a timely Objection on April 20, 2015. Local Rule 304(b).

22 Plaintiff's objections are perplexing given that his factual allegations implicate the ADA,
23 and the Magistrate Judge determined he stated a cognizable claim. While Plaintiff disagrees with
24 the inclusion of Warden Sherman as a defendant and the dismissal of the individual defendants
25 who were involved in addressing his inmate appeals seeking a magnifier to accommodate his
26 vision impairment, his disagreements appear to arise from his misunderstanding of the law. Title
27 II of the ADA prohibits discrimination by *public entities*; it does not provide Plaintiff with a cause
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1 of action against individual prison employees in their personal capacities. Fortyune v. City of
2 Lomita, 766 F.3d 1098, 1101 (9th Cir. 2014) (“Title II of the ADA ... applies to state and local
3 governments); Abbott v. Rosenthal, 2 F.Supp.3d 1139, 1144 (D.Idaho 2014) (no individual
4 capacity claims exist under the statute). As such, the proper defendant in this ADA action was, at
5 one time, Defendant Kathleen Allison. However, Acting Warden Allison has been replaced by
6 Warden Stu Sherman and he is now the proper defendant, in his *official* capacity. See Rounds v.
7 Oregon State Bd. of Higher Educ., 166 F.3d 1032, 1036 n.2 (9th Cir. 1999) (no official capacity
8 claims against former state officials). Plaintiff’s arguments concerning the inapplicability of
9 *respondeat superior* are entirely misplaced in this context. See Duvall v. Cnty. of Kitsap, 260
10 F.3d 1124, 1141 (9th Cir. 2001) (public entity vicariously liable for actions of its employees under
11 ADA).

12 Given that Plaintiff’s claim arises from the failure to accommodate his vision impairment
13 by providing him with a personal magnifier so he can read and write in his cell, the Magistrate
14 Judge did not err in finding that Plaintiff’s dissatisfaction with the inmate appeals process provides
15 no basis for a due process claim, Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (no
16 protected liberty interest in the processing of appeals), or in finding no indication of an Eighth
17 Amendment medical care claim, Simmons v. Navajo Cnty., 609 F.3d 1011, 1022 (9th Cir. 2010)
18 (“The ADA prohibits discrimination because of disability, not inadequate treatment for
19 disability.”). In his Objection, Plaintiff asserts that the lack of an advocate and the oppressive
20 system violate his right to due process, but his position lacks merit. Plaintiff has no protected
21 liberty interest at stake with respect to his inmate appeals, and his dissatisfaction with the process
22 and his disagreement with the decisions rendered are not redressable under the Due Process Clause
23 of the Fourteenth Amendment. Ramirez, 334 F.3d at 860.

24 Plaintiff also asserts that his rights under the Eighth Amendment are being violated
25 through his inability to enjoy the same privileges as other inmates. However, there are no
26 allegations in Plaintiff’s amended complaint or objections which support the existence of a viable
27 Eighth Amendment claim. Farmer v. Brennan, 511 U.S. 825, 847, 114 S.Ct. 1970 (1994) (Eighth
28 Amendment claims require showing of deliberate indifference to substantial risk of harm);

1 *Simmons*, 609 F.3d at 1022.

2 Similarly, Plaintiff's amended complaint is devoid of any facts supporting the existence of
3 a First Amendment claim or a conspiracy claim, or indicating any attempt to pursue such claims,
4 and Plaintiff's objections set forth no facts supporting any viable claims under those legal theories.
5 See Litmon v. Harris, 768 F.3d 1237, 1241 (9th Cir. 2014) (liberal interpretation of a pro se civil
6 rights complaint may not supply essential elements not initially pled); Doe I v. Wal-Mart Stores,
7 Inc., 572 F.3d 677, 681 (9th Cir. 2009) (courts need not indulge unwarranted inferences).

8 In sum, in accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has
9 conducted a *de novo* review of this case. Having carefully reviewed the entire file, the Court finds
10 the Findings and Recommendations to be supported by the record and by proper analysis.
11 Plaintiff's operative pleading states a claim for violation of the ADA, as the Magistrate Judge
12 found, and she correctly determined that the claim must proceed against the Warden in his official
13 capacity.

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. The Findings and Recommendations, filed on January 6, 2015, is adopted in full;
- 16 2. CSATF Warden Stu Sherman is substituted for former Acting Warden Kathleen
17 Allison, and this action shall proceed against Mr. Sherman in his official capacity
18 for violation of the ADA;
- 19 3. Defendants Tolson, Santoro, Perdome, Byers, Smith, Beeler, and Hammond are
20 dismissed based on Plaintiff's failure to state a claim upon which relief may be
21 granted against them under the ADA; and
- 22 4. This matter is referred back to the Magistrate Judge to initiate service of process.

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24 IT IS SO ORDERED.

25 Dated: July 10, 2015



SENIOR DISTRICT JUDGE

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