

1 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).
2 “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall
3 dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a
4 claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

5 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a
6 cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at
7 678, quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Plaintiff must set forth
8 “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its face.’” *Iqbal*,
9 556 U.S. at 678, quoting *Twombly*, 550 U.S. at 555. Factual allegations are accepted as true, but
10 legal conclusions are not. *Iqbal* at 678; *see also Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th
11 Cir. 2009); *Twombly*, 550 U.S. at 556–57.

12 The pleadings of pro se prisoners are still construed liberally and are afforded the benefit
13 of any doubt. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). However, “the liberal pleading
14 standard . . . applies only to a plaintiff’s factual allegations,” *Neitze v. Williams*, 490 U.S. 319,
15 330 n.9 (1989), “a liberal interpretation of a civil rights complaint may not supply essential
16 elements of the claim that were not initially pled,” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d
17 1251, 1257 (9th Cir. 1997) quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982), and
18 courts are not required to indulge unwarranted inferences, *Doe I v. Wal-Mart Stores, Inc.*, 572
19 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). The “sheer
20 possibility that a defendant has acted unlawfully” is not sufficient, and “facts that are ‘merely
21 consistent with’ a defendant’s liability” fall short of satisfying the plausibility standard. *Iqbal*,
22 556 U.S. at 678; *Moss*, 572 F.3d at 969.

23 **II. Plaintiff’s Allegations**

24 Plaintiff is currently incarcerated at Lompoc Federal Prison Camp - South in Lompoc,
25 California. The events in the first amended complaint are alleged to have occurred while Plaintiff
26 was incarcerated at Taft Correctional Institution (“Taft”) in Taft, California. Plaintiff names the
27 following defendants in their individual and official capacities: (1) Management & Training
28 Corporation (“MTC”); (2) American Zurich Insurance Company, insurance company for MTC;

1 (3) Scott Marquardt, President and CEO of MTC; (4) Craig Apker, Taft Warden; (5) Dale Patrick,
2 Taft grievance and legal coordinator; (6) J. Bernal, Taft Unit Manager; (7) D. Hunt, Taft
3 Sergeant; (8) R. Dunham, Taft horticulture supervisor; (9) Burnett Rucker, Taft Chief Medical
4 Doctor; (10) F. Luna, Taft Associate Warden; (11) M. Friend, Taft Associate Warden;
5 (12) Georgina Puentes, Taft Associate Warden; (13) J. Letterman, Taft Lieutenant; (14) Lt. Craig,
6 Taft Lieutenant; (15) Lt. Sy, Taft Special Investigative Service Lieutenant; (16) Major Manuz,
7 Taft Major; (17) B. Pait, Taft Counselor; (18) C. Mann, Taft Counselor; (19) Martin, Taft
8 Counselor; (20) D. Lane, Taft Case Manager; (21) A. Jones, Taft case manager; (22) Sgt. Adams,
9 Taft Sergeant; (23) Stephanie Hicks, Taft nurse; (24) Laurie Watts, Taft Health Services
10 Administrator; (25) B. Morseth, Taft Chaplin; (26) Ralph Ehli, Taft Chief Psychologist;
11 (27) Steven Jenkins, Taft Psychologist; (28) M. Swanson, Taft Correctional Officer; (29) J.
12 Bryant, Taft Education Director; (30) Preston Benson, Bureau of Prisons (“BOP”) employee;
13 (31) Richard Nygren, BOP employee; (32) Pamela Jones, BOP employee at Privatization
14 Management Board; (33) Steven Langford, Warden at Lompoc; (34) Mary M. Mitchell, BOP
15 Regional Director; (35) Thomas R. Kane, BOP Director; (36) Logan, MTC employee and
16 disciplinary hearing officer; (37) C. Cruz, BOP employee and disciplinary hearing officer;
17 (38) Loretta Lynch, then U.S. Attorney General; (39) United States BOP; (40) United States
18 Department of Justice; (41) United States of America; and (42) Does 1–99.

19 Plaintiff alleges that he is an Arab-American and practicing member of the Asatru faith.
20 On February 25, 2016, he was issued a disciplinary incident report, a.k.a. “shot,” by Defendant J.
21 Bernal for refusing to work. The shot was issued during work hours that were not Plaintiff’s
22 regularly assigned hours. The shot was issued for failing to be in the dorm during inspection.
23 Plaintiff contends that the shot was issued in retaliation for him having lodged a formal staff
24 complaint against several of the unit-team staff.

25 On February 29, 2016, Plaintiff was subjected to a Unit Disciplinary Committee (“UDC”),
26 comprised of entirely of MTC employees, Defendants D. Lane and A. Jones, and no BOP staff
27 were present. Plaintiff allegedly informed the UDC of its lack of authority, and BOP did not
28 apply or issue certification of the UDC’s findings. Plaintiff was sanctioned with the loss of his

1 job as a night-time orderly and fired.

2 On February 29, after the UDC concluded, Plaintiff was reassigned to horticulture
3 supervisor Defendant R. Dunham, who allegedly was known for arbitrary discipline, racist
4 statements and rude behavior toward the inmate population. Plaintiff objected, but was given no
5 opportunity to appeal the transfer.

6 On November 19, 2015, Plaintiff had applied to work in the MTC before he knew of
7 Defendant Dunham's reputation. Plaintiff thought that work in the herb garden would be within
8 his medical restrictions and capabilities. Defendant Dunham stated to Plaintiff that he had no use
9 for people with bad backs, but cited institutional needs and food service as the reasons for
10 denying Plaintiff's horticulture application. Defendant Dunham knew about Plaintiff's medical
11 conditions.

12 On March 1, 2016, Plaintiff underwent his orientation with Defendant Dunham. Plaintiff
13 advised Defendant Dunham of his intention to appeal the UDC decision and also advised him of
14 his medical restrictions. Plaintiff participated in the orientation in good faith, but refused to sign
15 the job description paperwork due to his upcoming UDC appeal. Later that same day, Defendant
16 Dunham summoned Plaintiff into his office and threatened that he would issue a disciplinary shot
17 for violation No. 306, refusing to work. Plaintiff signed the papers under duress and under threat
18 of sanction. Plaintiff filed a Sensitive BP-10 staff complaint about Defendant Dunham with Mary
19 M. Mitchell, the regional director of the BOP Western Region.

20 On March 2, 2016, Plaintiff was assigned to stand and dig out weeds form the MTC
21 parking lot in 90 degree weather. Plaintiff had medical restrictions against prolonged standing
22 and chronic pain issues. Defendant Dunham insisted that Plaintiff work a seven-hour shift
23 standing and digging weeds. Plaintiff was the only inmate assigned to this duty, and it was not a
24 normal task for any inmate. Plaintiff worked for several hours until his lower back was even
25 worse. Plaintiff reported to a correctional officer who told Plaintiff to report to the MTC medical
26 department. Plaintiff reported to camp control before reporting to MTC medical. Plaintiff was
27 met by Sgt. Hunt. Plaintiff explained the situation and was told to report to the MTC medical
28 department after reporting to Defendant Dunham.

1 As Plaintiff sat in the MTC medical department waiting room, D. Hunt entered and spent
2 about fifteen minutes discussing Plaintiff's situation with the nurse, Stephanie Hicks. Defendant
3 Dunham also entered MTC medical and spoke with medical staff before Plaintiff was seen or
4 evaluated. Plaintiff could see the participants and hear them when the door opened and closed.
5 Plaintiff could hear that MTC staff were discussing and disclosing his medical information
6 without authorization.

7 Plaintiff was placed on temporary medical unassignment. When Plaintiff was asked to
8 sign the medical report, he saw that Defendant Dunham had made a notation on the report stating
9 that he had not been informed of Plaintiff's medical restrictions. Before Plaintiff was placed on
10 medical unassignment, Defendant Dunham was verbally abusive and told Plaintiff that he was
11 lying about his medical restrictions.

12 On March 3, 2016, Plaintiff submitted his administrative appeal of the UDC's pre-
13 determined outcome and lack of legal authority to issue sanctions.

14 On March 7, 2016, Plaintiff submitted a combined complaint about J. Bernal and R.
15 Dunham. MTC purportedly opened an official investigation against J. Bernal and R. Dunham,
16 but promptly closed it, stating that no further information would be provided. Plaintiff was
17 effectively barred by MTC from filing any higher level remedies and MTC confiscated all of the
18 documents submitted with the complaint.

19 Plaintiff was reassigned back to R. Dunham after he was taken off of medical
20 unassignment. By this time, Plaintiff had been threatened, sworn at and called a liar by R.
21 Dunham. Plaintiff refused to work for an abusive supervisor who had ignored his pre-existing
22 medical conditions.

23 On March 9, 2016, the same day Plaintiff refused to report to R. Dunham, Plaintiff was
24 thrown out of camp and into the SHU segregation unit. No BOP staff members were involved in
25 the SHU placement or in the investigation or issuance of the disciplinary actions that preceded the
26 SHU placement. MTC private employee, Defendant J. Letternam, signed the SHU detention
27 order.

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1 Plaintiff objected to the SHU placement when presented with the discipline shot and only
2 signed the papers under duress. A second UDC was convened to rule on the second refusal to
3 work shot. The UDC panel was made up of two people, one of whom was J Bernal. Plaintiff had
4 an active staff complaint pending against J. Bernal. Plaintiff pointed out that J. Bernal's presence
5 on the UDC panel was improper and that without the presence of actual BOP staff, any
6 disciplinary actions taken by MTC were invalid.

7 From the time Plaintiff was placed in SHU segregation on March 9, 2016, he was denied
8 legal access, law library access and access to his private attorney. Plaintiff's private attorney also
9 was blocked from calling in to the MTC institution. When Plaintiff entered SHU custody, he was
10 given a printed handout of the SHU rules. The first handout stated that legal materials would be
11 delivered each weekday. The handout was altered after Plaintiff began complaining about the
12 lack of legal access. Plaintiff repeatedly requested specific legal materials that were never
13 provided. Staff correspondence was often not returned and no case law or research was ever
14 provided.

15 On March 18, 2016, the Ninth Circuit issued an order for Plaintiff to respond in his civil
16 litigation against Heritage Financial, which had been ongoing for several years. Plaintiff was
17 prevented from contacting the outside world and was not allowed to use the phone or make legal
18 calls. After thirty days, the Court dismissed Plaintiff's case for lack of prosecution, which caused
19 the loss of assets and potential damages. Plaintiff made MTC staff aware of his pending court
20 action and deadlines at every opportunity.

21 On April 11, 2016, Plaintiff was brought before Hearing Officer C. Cruz, an authorized
22 BOP Disciplinary Hearing Officer. Plaintiff made sure that the officer was aware that the
23 previous two disciplinary shots did not have BOP oversight or involvement and were unlawful.
24 Plaintiff told Officer Cruz about the retaliation occurring at MTC and why it was occurring.
25 Plaintiff was given enhanced discipline by Officer Cruz based on MTC's first two disciplinary
26 sanctions. Plaintiff alleges that this rendered Officer Cruz's findings invalid. Officer Cruz placed
27 Plaintiff into disciplinary segregation for seven days and took away 27 days of good-time credit.
28 Officer Cruz made no allowance for any of the segregation already served by Plaintiff.

1 On April 18, 2016, Plaintiff was summoned by J. Bernal after he had finished his
2 disciplinary segregation. Plaintiff was told that he was being refused camp status and was being
3 transferred to a higher security facility as punishment. Plaintiff was kept in segregation an
4 additional seven days because Plaintiff allegedly was a threat to institutional security.

5 At all times while in the SHU, Plaintiff alleges that he was engaged in active civil
6 litigation and was trying to file motions in his criminal case. Defendants' refusal to allow legal
7 access, legal material deliveries or attorney phone calls was a factor in Plaintiff's inability to
8 conduct legal research, respond to the court, or seek replacement counsel in his Ninth Circuit
9 appeal.

10 Plaintiff alleges that he is now housed in a federal prison with much more dangerous
11 prisoners.

12 Plaintiff also alleges that during his stay at Taft, Defendant Dunham violated Plaintiff's
13 religious garden and stole the Asatru group's firewood, which was a scarce item at Taft. The
14 incident allegedly was covered by D. Hunt's refusal to respond to staff correspondence and
15 Plaintiff was blocked from pursuing a grievance. Plaintiff also was refused proper bedding for
16 his medical conditions. After months of pain, the SHU supervisor, Sgt. Yoder, gave Plaintiff a
17 new mattress. Plaintiff alleges that MTC medical staff acted with deliberate indifference to his
18 known condition and actively blocked any request for therapeutic bedding.

19 Plaintiff further alleges that he was denied religious access to smoking tobacco, his
20 religious garden was uprooted, and Defendant Dunham refused to allow Plaintiff to observe his
21 designated religious worship day. Plaintiff was not allowed religious items that were a part of his
22 faith and not allowed any opportunity to utilize existing BOP policy to introduce unfamiliar
23 religious practices. Plaintiff was denied a remedy and told that his issues did not concern the
24 BOP.

25 Plaintiff forwards the following causes of action: (1) a *Bivens* action for denial of his
26 constitutional rights to access the courts, legal materials, library access and legal calls;
27 (2) conspiracy to interfere with his civil rights in violation of 42 U.S.C. §§ 1985 and 1986;
28 (3) violation of the Religious Land Use and Institutionalized Persons Act and First Amendment

1 freedom of religion; (4) violation of his medical privacy and HIPAA; (5) intentional infliction of
2 emotional distress); (6) a violation of the Racketeer Influenced and Corrupt Organizations Act
3 (“RICO”); (7) tortious interference with business expectancy; (8) violation of the First and Eighth
4 Amendments and intentional infliction of emotional distress; (9) unlawful detention, false
5 imprisonment, and/or kidnapping; (10) retaliation in violation of the First Amendment;
6 (11) denial of equal protection and equal access to medical care; (12) retaliatory forced labor in
7 violation of the Thirteenth Amendment; and (13) common law fraud.

8 **III. Discussion**

9 **A. Federal Claims Against MTC and Its Employees**

10 In *Bivens*, the Supreme Court recognized an implied cause of action for damages against
11 federal officers for alleged violation of a citizen’s rights under the Fourth Amendment. 403 U.S.
12 at 397. To date, the Supreme Court has only recognized a *Bivens* remedy in the context of the
13 Fourth, Fifth, and Eighth Amendments. See *Bivens*, 403 U.S. 388 (Fourth Amendment
14 prohibition against unreasonable searches and seizures); *Davis v. Passman*, 442 U.S. 228 (1979)
15 (Fifth Amendment gender-discrimination); *Carlson v. Green*, 446 U.S. 14 (1980) (Eighth
16 Amendment Cruel and Unusual Punishments Clause). However, the Court has refused to extend
17 liability for constitutional violations to federal agencies or private corporations operating federal
18 prisons. *Correctional Services Corp. v. Malesko*, 534 U.S. 61, 69, 74, 122 S. Ct. 515, 151 L. Ed.
19 2d 456 (2001). In other words, the Supreme Court has determined that the implied right of action
20 recognized in *Bivens* does not extend to allow recovery against a private corporation operating
21 under contract with the Bureau of Prisons. See *Minneci v. Pollard*, 565 U.S. 118, 132 S. Ct. 617,
22 181 L. Ed. 2d 606 (2012).

23 This deficiency cannot be cured by amendment, and thus the Court will recommend that
24 Plaintiff’s federal constitutional claims against Defendants MTC, American Zurich Insurance
25 Company, Scott Marquardt, Craig Apker, Dale Patrick, J. Bernal, D. Hunt, R. Dunham, Burnett
26 Rucker, F. Luna, M. Friend, Georgina Puentes, J. Letterman, Lt. Craig, Lt. Sy, Major Manuz, B.
27 Pait, C. Mann, Martin, D. Lane, A. Jones, Sgt. Adams, Stephanie Hicks, Laurie Watts, B.
28 Morseth, Ralph Ehli, Steven Jenkins, M. Swanson, J. Bryant and Logan be dismissed without

1 leave to amend. This includes Plaintiff's constitutional claims for denial of access to the courts
2 and legal materials, *Bivens* conspiracy, violation of the First and Eighth Amendments, violation
3 of the Thirteenth Amendment and denial of equal protection.

4 **B. Constitutional Claims Against the Bureau of Prisons or Department of Justice**

5 Plaintiff names the Bureau of Prisons and Department of Justice as defendants. Plaintiff
6 may not pursue a claim against a federal agency under *Bivens*. *FDIC v. Meyer*, 510 U.S. 471, 486
7 (1994); *see also Ibrahim v. Dep't of Homeland Sec.*, 538 F.3d 1250, 1257 (9th Cir. 2008) ("no
8 *Bivens*-like cause of action is available against federal agencies or federal agents sued in their
9 official capacities").

10 **C. Constitutional Claims Against Bureau of Prisons Personnel**

11 As indicated above, the Supreme Court has only recognized a *Bivens* remedy in the
12 context of the Fourth, Fifth, and Eighth Amendments. *See Bivens*, 403 U.S. 388 (Fourth
13 Amendment prohibition against unreasonable searches and seizures); *Davis*, 442 U.S. 228 (Fifth
14 Amendment gender-discrimination); *Carlson*, 446 U.S. 14 (Eighth Amendment Cruel and
15 Unusual Punishments Clause). The Supreme Court also has recently made clear that "expanding
16 the *Bivens* remedy is now a disfavored judicial activity," and it has therefore "consistently refused
17 to extend *Bivens* to any new context or new category of defendants." *Ziglar v. Abbasi*, 137 S.Ct.
18 1843, 1857 (2017) (citations omitted). Because the Court finds that Plaintiff's remaining
19 constitutional claims, if any, against BOP personnel may not proceed in this *Bivens* action,
20 including claims against supervisory personnel and Plaintiff's habeas claims, it is not necessary
21 for the Court to engage in an extended analysis as to whether to extend a *Bivens* remedy in this
22 case to Plaintiff's claims against BOP personnel.

23 **1. Supervisory Liability**

24 To the extent Plaintiff seeks to impose supervisory liability against BOP employees,
25 including Defendants Benson, Nygren, Jones, Mitchell, Kane and Lynch, he may not do so.
26 Government officials may not be held liable for the unconstitutional conduct of their subordinates
27 under a theory of respondeat superior. *Iqbal*, 556 U.S. at 676. Because vicarious liability is
28 inapplicable to *Bivens* suits, a plaintiff must plead that each Government-official defendant,

1 through the official's own individual actions has violated the Constitution. *Id.* Plaintiff has not
2 adequately alleged that any of these supervisory officials engaged in individual actions that
3 violated the Constitution.

4 **2. Disciplinary Proceedings - Habeas**

5 The crux of Plaintiff's complaint appears to be the disciplinary "shots" and SHU
6 placement by MTC employees, along with the disciplinary findings of the BOP Hearing Officer,
7 Defendant Cruz, all of which resulted in a loss of good-time credits. Plaintiff's claim for relief, if
8 any, lies in habeas, not a civil rights action.

9 Generally, prisoners may not challenge the fact or duration of their confinement in a
10 § 1983 action or under *Bivens*, and their sole remedy lies in habeas corpus relief. *Wilkinson v.*
11 *Dotson*, 544 U.S. 74, 78 (2005). Often referred to as the favorable termination rule or the *Heck*
12 bar, this exception bars suits by prisoners that "seek to invalidate the duration of their
13 confinement—either *directly* through an injunction compelling speedier release or *indirectly*
14 through a judicial determination that necessarily implies the unlawfulness of . . . custody." *Wilkinson*,
15 544 U.S. at 81 (emphasis in original); *Heck v. Humphrey*, 512 U.S. 477, 486–87
16 (1994) (precluding § 1983 claims which, if successful, "would necessarily imply the invalidity"
17 of an inmate's conviction or sentence). The *Heck* bar applies not only to claims under section
18 1983, but also to *Bivens* and FTCA claims. *See Martin v. Sias*, 88 F.3d 774, 775 (9th Cir. 1996);
19 *Erlin v. United States*, 364 F.3d 1127, 1132 (9th Cir. 2004). As such, a prisoner's § 1983 action
20 or claim under *Bivens* "is barred (absent prior invalidation)—no matter the relief sought (damages
21 or equitable relief), no matter the target of the prisoner's suit (state conduct leading to conviction
22 or internal prison proceedings)—*if* success in that action would necessarily demonstrate the
23 invalidity of confinement or its duration." *Wilkinson*, 544 U.S. at 81–82 (emphasis in original).
24 The favorable termination rule applies to prison disciplinary proceedings if those proceedings
25 resulted in the loss of good-time or behavior credits. *Edwards v. Balisok*, 520 U.S. 641, 646–48
26 (1997).

27 **D. Conspiracy – 42 U.S.C. §§ 1985, 1986**

28 A claim under section 1985 must allege specific facts to support the allegation that

1 defendants conspired together. *Karim–Panahi v. Los Angeles Police Dep’t.*, 839 F.2d 621, 626
2 (9th Cir. 1988). A mere allegation of conspiracy without factual specificity is insufficient to state
3 a claim under 42 U.S.C. § 1985. *Id.*; *Sanchez v. City of Santa Ana*, 936 F.2d 1027, 1039 (9th Cir.
4 1991). “A claim can be stated under section 1986 only if the complaint contains a valid claim
5 under section 1985.” *Karim-Panahi*, 839 F. 2d at 626.

6 Plaintiff’s amended complaint contains only conclusory allegations that any BOP
7 defendants, including the Warden at Lompoc, engaged in a conspiracy. Plaintiff fails to allege
8 any specific facts to support a conspiracy claim or any agreement of the alleged conspirators to
9 deprive him of his rights. Accordingly, Plaintiff fails to state a section 1985 claim. In the
10 absence of any such claim, Plaintiff also fails to state a section 1986 claim.

11 **E. Religious Land Use and Institutionalized Persons Act (“RLUIPA”)**

12 Although the provisions of RLUIPA, which “provides that ‘[n]o government shall impose
13 a substantial burden on the religious exercise of a person residing in or confined to an
14 institution . . .’ ” *Hartmann v. Cal. Dep’t of Corrs. & Rehab.*, 707 F.3d 1114, 1124 (9th Cir.
15 2013), may permit a claim for injunctive relief, any such request by Plaintiff is now moot upon
16 his transfer from Taft Correctional Institute. Transfer to another prison renders a request for
17 injunctive relief moot absent some evidence of an expectation of being transferred back. *Pinson*
18 *v. Prieto*, No. ED CV 10-811-PSG (SP), 2012 WL 7006131, at *6 (C.D. Cal. July 2, 2012) (citing
19 *Preiser v. Newkirk*, 422 U.S. 395, 402–03, 95 S. Ct. 2330, 45 L. Ed. 2d 272 (1975); *Johnson v.*
20 *Moore*, 948 F.2d 517, 519 (9th Cir. 1991)), report and recommendation adopted, No. ED CV 10-
21 811-PSG SP, 2013 WL 427108 (C.D. Cal. Feb. 1, 2013). Further, RLUIPA does not authorize an
22 award of damages against government officials in their official or individual capacities.
23 *Sossamon v. Texas*, 563 U.S. 277, 131 S. Ct. 1651, 1663, 179 L. Ed. 2d 700 (2011). Accordingly,
24 Plaintiff may not maintain a claim for injunctive relief or damages under RLUIPA.

25 **F. Federal Tort Claims Act (“FTCA”)**

26 The United States is the only proper defendant in a FTCA action. *Lance v. United States*,
27 70 F.3d 1093, 1095 (9th Cir. 1995) (citing *Woods v. United States*, 720 F.2d 1451, 1452 n.1 (9th
28 Cir. 1983)). However, a suit may not be instituted against the United States under the FTCA

1 unless the claim is first presented to the appropriate federal agency and one of the following
2 conditions is met: the claim is finally denied, or six months have passed without a final resolution
3 having been made. 28 U.S.C. § 2675(a). The claim presentation requirement is a jurisdictional
4 prerequisite to bringing suit and must be affirmatively alleged in the complaint. *Gillespie v.*
5 *Civiletti*, 629 F.2d 637, 640 (9th Cir. 1980). Plaintiff has not alleged compliance with the FTCA.

6 **G. Racketeer Influenced and Corrupt Organizations Act (“RICO”)**

7 Plaintiff also appears to assert claims against defendants under RICO. “To state a civil
8 RICO claim, plaintiff[] must allege (1) conduct (2) of an enterprise (3) through a pattern (4) of
9 racketeering activity (5) causing injury to plaintiffs’ ‘business or property.’ ” *Ove v. Gwinn*, 264
10 F.3d 817, 825 (9th Cir. 2001) (quoting 18 U.S.C. § 1964(c)). To demonstrate injury for RICO
11 purposes, plaintiffs must show proof of concrete financial loss, and not mere injury to a valuable
12 intangible property interest. *Id.* Plaintiff has not adequately alleged a violation of RICO against
13 private prison staff, and he has not demonstrated proof of concrete financial loss. That Plaintiff’s
14 civil action against Heritage Financial was dismissed on appeal is not sufficient as there is no
15 indication that Plaintiff would have prevailed in that action.

16 **H. Health Insurance Portability and Accountability Act (“HIPAA”)**

17 “HIPAA itself does not provide for a private right of action.” *Webb v. Smart Document*
18 *Solutions, LLC*, 499 F.3d 1078, 1082 (9th Cir. 2007). Accordingly, Plaintiff cannot state a claim
19 against any defendant based on an asserted violation of HIPAA.

20 **I. State Law Claims**

21 To the extent Plaintiff is attempting to assert state law claims against the private prison
22 staff, the Court will recommend that supplemental jurisdiction be declined and that these claims
23 be dismissed.

24 Under 28 U.S.C. § 1367(a), in any civil action in which the district court has original
25 jurisdiction, the “district courts shall have supplemental jurisdiction over all other claims that are
26 so related to claims in the action within such original jurisdiction that they form part of the same
27 case or controversy under Article III of the United States Constitution,” except as provided in
28 subsections (b) and (c). The Supreme Court has stated that “if the federal claims are dismissed

1 before trial, . . . the state claims should be dismissed as well.” *United Mine Workers of Am. v.*
2 *Gibbs*, 383 U.S. 715, 726 (1966).

3 Although the Court may exercise supplemental jurisdiction over state law claims, Plaintiff
4 must first have a cognizable claim for relief under federal law. 28 U.S.C. § 1367. As discussed
5 above, Plaintiff has not stated a cognizable claim for relief under federal law. Thus, Plaintiff’s
6 state law claims should be dismissed from this action.

7 **IV. Conclusion and Recommendation**

8 Plaintiff’s complaint fails to state a cognizable claim for relief under federal law. Despite
9 being provided with the relevant pleading and legal standards, Plaintiff has been unable to cure
10 the deficiencies of his complaint, and further leave to amend is not warranted. *Lopez v. Smith*,
11 203 F.3d 1122, 1130 (9th Cir. 2000).

12 Accordingly, the Court HEREBY RECOMMENDS that:

- 13 1. Plaintiff’s federal claims be dismissed for failure to state a claim upon which relief
14 may be granted; and
15 2. Plaintiff’s state law claims, if any, be dismissed.

16
17 These Findings and Recommendation will be submitted to the United States District Judge
18 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
19 **(14) days** after being served with these Findings and Recommendation, Plaintiff may file written
20 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s
21 Findings and Recommendation.” Plaintiff is advised that failure to file objections within the
22 specified time may result in the waiver of the “right to challenge the magistrate’s factual
23 findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v.*
24 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).
25 IT IS SO ORDERED.

26 Dated: April 17, 2018

27 /s/ Barbara A. McAuliffe
28 UNITED STATES MAGISTRATE JUDGE

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