

1 jurisdiction existed under 28 U.S.C. § 636(c) based on the fact that Plaintiff had consented to
2 Magistrate Judge jurisdiction and no other parties had yet appeared. (Id.)

3 On November 9, 2017, the Ninth Circuit Court of Appeals ruled that 28 U.S.C. § 636(c)(1)
4 requires the consent of all named plaintiffs and defendants, even those not served with process, before
5 jurisdiction may vest in a Magistrate Judge to dispose of a civil case. Williams v. King, __ F.3d __,
6 Case No. 15-15259, 2017 WL 5180205, *3 (9th Cir. Nov. 9, 2017). Accordingly, the Court did not
7 have jurisdiction to dismiss Defendants R. Chavez, S. Torres, C. Guerrero, N. Gonzalez, K. Toor and
8 K.J. Allen in its April 19, 2017 order.

9 Based upon the foregoing, the undersigned will now recommend to the District Judge that this
10 case continue to proceed only on Plaintiff’s cognizable claim against Defendants R. Fisher, Jr. and
11 California Department of Corrections and Rehabilitation, and that Defendants R. Chavez, S. Torres, C.
12 Guerrero, N. Gonzalez, K. Toor, and K.J. Allen be dismissed, for the reasons explained herein.

13 **I.**

14 **SCREENING REQUIREMENT**

15 The Court is required to screen complaints brought by prisoners seeking relief against a
16 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
17 Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
18 “frivolous or malicious,” that “fails to state a claim on which relief may be granted,” or that “seeks
19 monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B).

20 A complaint must contain “a short and plain statement of the claim showing that the pleader is
21 entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but
22 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,
23 do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly,
24 550 U.S. 544, 555 (2007)). Plaintiff must demonstrate that each named defendant personally
25 participated in the deprivation of his rights. Iqbal, 556 U.S. at 676-677; Simmons v. Navajo County,
26 Ariz., 609 F.3d 1011, 1020-1021 (9th Cir. 2010).

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1 Prisoners proceeding pro se in civil rights actions are still entitled to have their pleadings
2 liberally construed and to have any doubt resolved in their favor, but the pleading standard is now
3 higher, Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted), and to survive
4 screening, Plaintiff’s claims must be facially plausible, which requires sufficient factual detail to allow
5 the Court to reasonably infer that each named defendant is liable for the misconduct alleged. Iqbal,
6 556 U.S. at 678-79; Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009). The “sheer
7 possibility that a defendant has acted unlawfully” is not sufficient, and “facts that are ‘merely
8 consistent with’ a defendant’s liability” falls short of satisfying the plausibility standard. Iqbal, 556
9 U.S. at 678; Moss, 572 F.3d at 969.

10 II.

11 COMPLAINT ALLEGATIONS

12 Plaintiff names R. Chavez, ADA Coordinator at Valley State Prison (VSP), S Torres, Custody
13 Appeals Coordinator at VSP, C. Guerrero, Health Care Appeals at VSP, N. Gonzalez, Health Care
14 Compliance at VSP, Doctor K. Toor, Health Care Representative at VSP, R. Fisher, Warden at VSP,
15 and the California Department of Corrections and Rehabilitations (CDCR), as Defendants.

16 Plaintiff is an ADA recipient because of his developmental disability and is housed in an
17 enhanced outpatient program at VSP. Plaintiff is being denied the ability to obtain a higher
18 functioning job assignment even though he is qualified solely because he is an ADA recipient.

19 Plaintiff submitted a reasonable accommodation request form on June 14, 2016, which was
20 denied based on medical data that was ten years old. Plaintiff requests monetary damages and a court
21 order.

22 III.

23 DISCUSSION

24 A. Americans with Disabilities Act

25 Title II of the ADA provides that “no qualified individual with a disability shall, by reason of
26 such disability, be excluded from participation in or be denied the benefits of the services, programs,
27 or activities of a public entity, or be subject to discrimination by such entity.” 42 U.S.C. § 12132.
28 Title II applies to the services, programs, and activities provided for inmates by jails and prisons.

1 Pennsylvania Dep't of Corr. v. Yeskey, 524 U.S. 206, 208-13 (1998); Simmons v. Navajo Cnty., 609
2 F.3d 1011, 1021-22 (9th Cir. 2010); Pierce v. Cnty. of Orange, 526 F.3d 1190, 1214-15 (9th Cir.
3 2008). “To establish a violation of Title II of the ADA, a plaintiff must show that (1) [he] is a
4 qualified individual with a disability; (2) [he] was excluded from participation in or otherwise
5 discriminated against with regard to a public entity’s services, programs, or activities; and (3) such
6 exclusion or discrimination was by reason of [his] disability.” Lovell v. Chandler, 303 F.3d 1039,
7 1052 (9th Cir. 2002); accord Simmons, 609 F.3d at 1021; McGary v. City of Portland, 386 F.3d 1259,
8 1265 (9th Cir. 2004); see also Lee v. City of Los Angeles, 250 F.3d 668, 691 (9th Cir. 2001) (“If a
9 public entity denies an otherwise ‘qualified individual’ ‘meaningful access’ to its ‘services, programs,
10 or activities’ ‘solely by reason of’ his or her disability, that individual may have an ADA claim against
11 the public entity.”) “The ADA prohibits discrimination because of disability, not inadequate treatment
12 for disability.” Simmons v. Navajo Cnty., 609 F.3d at 1022.

13 The ADA authorizes suits by private citizens for money damages against public entities,
14 United States v. Georgia, 546 U.S. 151, 153 (2006), and state prisons “fall squarely within the
15 statutory definition of ‘public entity.’” Pennsylvania Dep't of Corr., 524 U.S. at 210. “To recover
16 monetary damages under Title II of the ADA ..., a plaintiff must prove intentional discrimination on
17 the part of the defendant.” Duvall v. County of Kitsap, 260 F.3d 1124, 1138 (9th Cir. 2001). The
18 standard for intentional discrimination is deliberate indifference, which “requires both knowledge that
19 a harm to a federally protected right is substantially likely, and a failure to act upon that likelihood.”
20 Id. at 1139.

21 “In suits under Title II of the ADA ... the proper defendant usually is an organization rather
22 than a natural person.... Thus, as a rule, there is no personal liability under Title II.” Roundtree v.
23 Adams, No. 1:01-cv-06502-OWW-LJO, 2005 WL 3284405 (E.D. Cal. 1, 2005) (quotations and
24 citations omitted). Indeed, a plaintiff cannot bring an action under 42 U.S.C. § 1983 against a State
25 official in his individual capacity to vindicate rights created by Title II of the ADA. Vinson v.
26 Thomas, 288 F.3d 1145, 1156 (9th Cir. 2002). Thus, an ADA plaintiff may seek injunctive relief
27 against an individual defendant only if the defendant is sued in his or her official capacity. Miranda B.
28 v. Kitzhaber, 328 F.3d 1181, 1187-88 (9th Cir. 2003).

1 Plaintiff must name the appropriate entity or state officials in their official capacities, but he
2 may not name individual prison employees in their personal capacities. Shaughnessy v. Hawaii, No.
3 09-00569 JMS/BMK, 2010 WL 2573355, at *8 (D.Haw. Jun. 24, 2010); Anaya v. Campbell, No. CIV
4 S-07-0029 GEB GGH P, 2009 WL 3763798, at *5-6 (E.D. Cal. Nov. 9, 2009); Roundtree v. Adams,
5 No. 1:01-CV-06502 OWW LJO, 2005 WL 3284405, at *8 (E.D.Cal. Dec. 1, 2005). Individual
6 liability is precluded under the ADA. Shaughnessy, 2010 WL 2573355, at *8; Anaya, 2009 WL
7 3763798, at *5-6; Roundtree, 2005 WL 3284405, at *5.

8 At the pleading stage, Plaintiff's allegation that he was excluded from a job position he was
9 otherwise qualified for solely because of his disability supports a cognizable claim under the ADA.
10 Under the circumstances alleged, the proper Defendants are the California Department of Corrections
11 and Warden R. Fisher at VSP in his official capacity only. All other individual Defendants must be
12 dismissed from the action as they are all individuals employed at VSP.

13 IV.

14 RECOMMENDATIONS

15 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 16 1. This action proceed on Plaintiff's Americans with Disabilities Act claim against
17 Defendants R. Fisher, Jr. and the California Department of Corrections and Rehabilitation;
- 18 2. Defendants R. Chavez, S. Torres, C. Guerrero, N. Gonzalez, K. Toor, and K.J. Allen be
19 dismissed from the action for failure to state a cognizable claim for relief; and
- 20 3. The Office of the Clerk is directed to randomly assign this action to a District Judge.

21 These Findings and Recommendations will be submitted to the United States District Judge
22 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen (14) days**
23 after being served with these Findings and Recommendations, the parties may file written objections
24 with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and
25 Recommendations." The parties are advised that failure to file objections within the specified time

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1 may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir.
2 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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IT IS SO ORDERED.

Dated: November 30, 2017


UNITED STATES MAGISTRATE JUDGE