

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
10

11 NORBERTO SERNA,

12 Plaintiff,

13 v.

14 SULLIVAN, et al.,

15 Defendants.  
16  
17  
18  
19  
20  
21  
22  
23

1:18-cv-01650-NONE-GSA-PC

**FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT THIS CASE BE  
DISMISSED, WITH PREJUDICE, FOR  
FAILURE TO STATE A CLAIM  
(ECF No. 19.)**

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

24 **I. BACKGROUND**

25 Norberto Serna (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis*  
26 with this civil rights action pursuant to 42 U.S.C. § 1983 and Title II of the Americans with  
27 Disabilities Act (ADA), 42 U.S.C. § 12132. On June 11, 2018, Plaintiff filed the Complaint  
28 commencing this action at the United States District Court for the Northern District of California.

1 (ECF No. 1.) The Northern District dismissed Plaintiff's claim against Santa Clara County  
2 Superior Court and transferred the remainder of the case to this court on November 19, 2018.

3 (ECF No. 9.) On September 27, 2019, the court screened the Complaint and dismissed it for  
4 violation of Rule 18 of the Federal Rules of Civil Procedure, with leave to amend.<sup>1</sup> (ECF No.  
5 14.) On January 27, 2020, Plaintiff filed the First Amended Complaint, which is now before the  
6 court for screening. (ECF No. 19.)

## 7 **II. SCREENING REQUIREMENT**

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

16 A complaint is required to contain "a short and plain statement of the claim showing that  
17 the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
18 required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere  
19 conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell  
20 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff's allegations are taken  
21 as true, courts "are not required to indulge unwarranted inferences." Doe I v. Wal-Mart Stores,  
22 Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). To state

---

23  
24 <sup>1</sup> Plaintiff was granted thirty days in which to file the First Amended Complaint. (ECF  
25 No. 19.) The thirty-day deadline passed and Plaintiff did not file an Amended Complaint or any other  
26 response to the court's screening order. On December 5, 2019, the court entered findings and  
27 recommendations to dismiss this case for failure to state a claim, obey a court order, and prosecute this  
28 action. (ECF No. 16.) On December 19, 2019, Plaintiff filed objections to the findings and  
recommendations. (ECF No. 17.) In the objections, Plaintiff requested the appointment of counsel and  
argued that he is not educated, does not speak English well, and can barely read and write Spanish. On  
January 6, 2020, the court denied Plaintiff's request for appointment of counsel and withdrew the findings  
and recommendations, granting Plaintiff thirty more days to file the First Amended Complaint. (ECF No.  
18.) On January 27, 2020, Plaintiff filed the First Amended Complaint. (ECF No. 19.)

1 a viable claim, Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim  
2 to relief that is plausible on its face.’” Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service,  
3 572 F.3d 962, 969 (9th Cir. 2009). While factual allegations are accepted as true, legal  
4 conclusions are not. Id. The mere possibility of misconduct falls short of meeting this  
5 plausibility standard. Id.

### 6 **III. PLAINTIFF’S FIRST AMENDED COMPLAINT**

7 Plaintiff’s First Amended Complaint is highly deficient and should be dismissed without  
8 leave to amend. Plaintiff names one defendant, Sullivan, but makes no allegations, states no  
9 claims, and requests no relief. Although Plaintiff signed the form complaint, he did not complete  
10 the pages of the complaint.

### 11 **IV. CONCLUSION AND RECOMMENDATIONS**

12 For the reasons set forth above, the court finds that Plaintiff fails to state any cognizable  
13 claims in the First Amended Complaint. Therefore, the court shall recommend that this case be  
14 dismissed for failure to state a claim.

15 Under Rule 15(a) of the Federal Rules of Civil Procedure, “[t]he court should freely give  
16 leave to amend when justice so requires.” Here, the court previously granted Plaintiff leave to  
17 amend the complaint, with ample guidance by the court, and Plaintiff has not stated any claims  
18 upon which relief may be granted under § 1983. The court is persuaded that Plaintiff is unable  
19 to allege any facts, based upon the circumstances he challenges, that would state a cognizable  
20 claim. “A district court may deny leave to amend when amendment would be futile.” Hartmann  
21 v. CDCR, 707 F.3d 1114, 1130 (9th Cir. 2013). The court finds that the deficiencies outlined  
22 above are not capable of being cured by amendment, and therefore further leave to amend should  
23 not be granted. 28 U.S.C. § 1915(e)(2)(B)(ii); Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir.  
24 2000).

25 Therefore, based on the foregoing, **IT IS HEREBY RECOMMENDED** that:

- 26 1. This case be DISMISSED, with prejudice, for failure to state a claim upon which  
27 relief may be granted under § 1983 or the ADA; and
- 28 2. The Clerk be directed to CLOSE this case.

1           These findings and recommendations will be submitted to the United States District Judge  
2 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen days**  
3 of the date of service of these findings and recommendations, Plaintiff may file written objections  
4 with the court. The document should be captioned “Objections to Magistrate Judge’s Findings  
5 and Recommendations.” Plaintiff is advised that failure to file objections within the specified  
6 time may result in waiver of the right to appeal the district court’s order. Wilkerson v. Wheeler,  
7 772 F.3d 834, 839 (9th Cir. Nov. 18, 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th  
8 Cir. 1991)).

9  
10 IT IS SO ORDERED.

11 Dated: April 13, 2020

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE