

1 **I. PLAINTIFF’S ALLEGATIONS**

2 This action proceeds on plaintiff’s first amended complaint. Plaintiff names the
3 following Defendants: (1) V. Mini; (2) Cannedy; and (3) L. Turner. Plaintiff alleges Defendants
4 violated his First Amendment right against retaliation, his Eighth Amendment right to adequate
5 mental health care and safety, and Fourteenth Amendment right to due process. Plaintiff’s
6 allegations as to each Defendant are as follows:

7 Mini – Plaintiff alleges Defendant Mini intentionally and deliberately violated his
8 Fourteenth Amendment right to due process by falsifying a document that stated the issue of
9 Plaintiff refusing a cellmate out of fear for his life had been resolved. Plaintiff alleges, because of
10 the false document, Defendant Mini sent Plaintiff back to the yard with a cellmate. Plaintiff
11 alleges he did not receive the necessary requirements of either speaking to Defendant Mini or
12 going before the Institutional Classification Committee (“ICC”) before being sent back to the
13 yard. Plaintiff further alleges, after he refused to be sent back to the yard with a cellmate, he was
14 given multiple “stacked” Rules Violation Reports (“RVR”), which is allegedly illegal.

15 Plaintiff alleges Defendant Mini violated his Eighth Amendment rights by acting
16 with deliberate indifference to Plaintiff’s safety. Plaintiff alleges Defendant Mini falsified
17 documents that resolved the issue of Plaintiff refusing a cellmate out of fear for his life. Plaintiff
18 does not allege facts establishing why living with a cellmate would cause him to fear for his life.

19 Cannedy – Plaintiff alleges Defendant Cannedy violated his Eighth Amendment
20 rights by acting with deliberate indifference to Plaintiff’s mental health and safety. Plaintiff
21 claims he is mentally ill and a schizophrenic. Plaintiff’s schizophrenia causes him to hear loud,
22 demanding, and violent voices that often tell him to kill himself or others. Plaintiff also alleges
23 he is severely depressed which causes him to suffer from additional suicidal ideations. Plaintiff
24 contends his clinician taught him to use the radio and television as coping devices and as a
25 distraction if he has suicidal thoughts. Plaintiff states after telling Defendant Cannedy of the high
26 probability he would commit suicide without his coping devices, Defendant Cannedy “laughed in
27 Plaintiff’s face” and confiscated Plaintiff’s radio and television for ninety days.

28 Turner – Plaintiff alleges Defendant Turner violated Plaintiff’s Eighth Amendment

1 rights by acting with deliberate indifference to Plaintiff's mental health. Plaintiff alleges he filed
2 a 602¹ report after Defendant Cannedy took away his radio and television and was later
3 interviewed by Defendant Turner regarding the urgency of Plaintiff reclaiming his coping
4 devices. Plaintiff states he explained to Defendant Turner the "risk and dangerous probability of
5 Plaintiff committing suicide" without the coping devices. Plaintiff alleges Defendant Turner still
6 refused to return the radio and television. Shortly thereafter, Plaintiff attempted suicide by
7 hanging. Plaintiff claims he "was found lying on the floor unconscious with a broken noose
8 around his neck." Plaintiff states he spent the next eighteen days on suicide watch after he was
9 revived.

10 Plaintiff further alleges Defendant Turner violated his Eighth Amendment rights
11 by acting with deliberate indifference to his safety. Plaintiff claims while being released from the
12 Enhanced Out Patient ("EOP") yard, correctional officer Whitted stated, "Morris you're a piece
13 of shit . . . you know I want to put my foot in your ass . . . [and] Morris you mess with kids."
14 Plaintiff alleges "[t]hey both know that people who mess with kids get seriously injured or
15 straight out killed." Plaintiff asserts the other prisoners on the yard could hear the conversation
16 and Defendant Turner stood by "with a smirk on her face listening to everything." Plaintiff
17 alleges correctional officer Whitted deliberately and intentionally made the comment within
18 earshot of other inmates to have Plaintiff seriously injured or killed and that Defendant Turner
19 "stood right there" and did not say anything or take any action, "[w]hich means it was alright with
20 her."

21 Plaintiff also alleges Defendant Turner violated his First Amendment rights by
22 retaliating against him. Plaintiff claims throughout 2009 he wrote to the warden at CSP-
23 Sacramento to inform him Defendant Turner was mistreating and bullying Plaintiff with the
24 knowledge that Plaintiff was mentally ill and in the EOP program. Plaintiff alleges Defendant
25 Turner then began to retaliate against him for telling the warden that his staff is mistreating and
26 bullying mentally ill prisoners. Plaintiff alleges Defendant Turner knew of the grievances

27 ¹ A "602" is a grievance form that inmates can file against prison staff decisions or staff
28 actions.

1 Plaintiff had been filing because the Sergeant assigned to resolve his complaints told him to stop
2 “writing the warden about Sgt. Turner and c/o Whitted and filing 602’s against them. They don’t
3 like that and will get you and you don’t want them after you.”
4

5 **II. STANDARD FOR MOTION TO DISMISS**

6 In considering a motion to dismiss, the court must accept all allegations of material
7 fact in the complaint as true. See Erickson v. Pardus, 551 U.S. 89, 93-94 (2007). The court must
8 also construe the alleged facts in the light most favorable to the plaintiff. See Scheuer v. Rhodes,
9 416 U.S. 232, 236 (1974); see also Hosp. Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740
10 (1976); Barnett v. Centoni, 31 F.3d 813, 816 (9th Cir. 1994) (per curiam). All ambiguities or
11 doubts must also be resolved in the plaintiff’s favor. See Jenkins v. McKeithen, 395 U.S. 411,
12 421 (1969). However, legally conclusory statements, not supported by actual factual allegations,
13 need not be accepted. See Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949-50 (2009). In addition, pro se
14 pleadings are held to a less stringent standard than those drafted by lawyers. See Haines v.
15 Kerner, 404 U.S. 519, 520 (1972).

16 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement
17 of the claim showing that the pleader is entitled to relief” in order to “give the defendant fair
18 notice of what the . . . claim is and the grounds upon which it rests.” Bell Atl. Corp v. Twombly,
19 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). However, in order
20 to survive dismissal for failure to state a claim under Rule 12(b)(6), a complaint must contain
21 more than “a formulaic recitation of the elements of a cause of action;” it must contain factual
22 allegations sufficient “to raise a right to relief above the speculative level.” Id. at 555-56. The
23 complaint must contain “enough facts to state a claim to relief that is plausible on its face.” Id. at
24 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the
25 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”
26 Iqbal, 129 S. Ct. at 1949. “The plausibility standard is not akin to a ‘probability requirement,’ but
27 it asks for more than a sheer possibility that a defendant has acted unlawfully.” Id. (quoting
28 Twombly, 550 U.S. at 556). “Where a complaint pleads facts that are ‘merely consistent with’ a

1 defendant’s liability, it ‘stops short of the line between possibility and plausibility for entitlement
2 to relief.’ Id. (quoting Twombly, 550 U.S. at 557).

3 In deciding a Rule 12(b)(6) motion, the court generally may not consider materials
4 outside the complaint and pleadings. See Cooper v. Pickett, 137 F.3d 616, 622 (9th Cir. 1998);
5 Branch v. Tunnell, 14 F.3d 449, 453 (9th Cir. 1994). The court may, however, consider: (1)
6 documents whose contents are alleged in or attached to the complaint and whose authenticity no
7 party questions, see Branch, 14 F.3d at 454; (2) documents whose authenticity is not in question,
8 and upon which the complaint necessarily relies, but which are not attached to the complaint, see
9 Lee v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001); and (3) documents and materials
10 of which the court may take judicial notice, see Barron v. Reich, 13 F.3d 1370, 1377 (9th Cir.
11 1994).

12 Finally, leave to amend must be granted “[u]nless it is absolutely clear that no
13 amendment can cure the defects.” Lucas v. Dep’t of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per
14 curiam); see also Lopez v. Smith, 203 F.3d 1122, 1126 (9th Cir. 2000) (en banc).

16 III. DISCUSSION

17 Defendants argue the amended complaint should be dismissed for three reasons:
18 (1) Plaintiff’s amended complaint is barred by the doctrine of claim preclusion; (2) Plaintiff’s
19 amended complaint fails to state a claim for relief; and (3) Plaintiff’s amended complaint is
20 duplicative and frivolous.

21 A. Claim Preclusion

22 Claim preclusion forecloses “successive litigation of the very same claim,
23 whether or not relitigation of the claim raises the same issues as the earlier suit.” Id. Stated
24 another way, “[c]laim preclusion . . . bars any subsequent suit on claims that were raised or
25 could have been raised in a prior action.” Cell Therapeutics, Inc. v. Lash Group, Inc., 586 F.3d
26 1204, 1212 (9th Cir. 2009). “Newly articulated claims based on the same nucleus of facts are
27 also subject to a res judicata finding if the claims could have been brought in the earlier action.”
28 Stewart v. U.S. Bancorp, 297 F.3d 953, 956 (9th Cir. 2002). Thus, claim preclusion prevents a

1 plaintiff from later presenting any legal theories arising from the “same transactional nucleus of
2 facts.” Hells Canyon Preservation Council v. U.S. Forest Service, 403 F.3d 683, 686 n.2 (9th
3 Cir. 2005). The party seeking to apply claim preclusion bears the burden of establishing the
4 following: (1) an identity of claims; (2) the existence of a final judgment on the merits; and
5 (3) identity or privity of the parties. See Cell Therapeutics, 586 F.3d at 1212; see also
6 Headwaters, Inc. v. U.S. Forest Service, 399 F.3d 1047, 1052 (9th Cir. 2005).

7 Determining whether there is an identity of claims involves consideration of four
8 factors: (1) whether the two suits arise out of the same transactional nucleus of facts; (2)
9 whether rights or interests established in the prior judgment would be destroyed or impaired by
10 prosecution of the second action; (3) whether the two suits involve infringement of the same
11 right; and (4) whether substantially the same evidence is presented in the two actions. See
12 ProShipLine, Inc. v. Aspen Infrastructure Ltd., 609 F.3d 960, 968 (9th Cir. 2010). “Whether
13 two suits arise out of the same transactional nucleus depends upon whether they are related to
14 the same set of facts and whether they could conveniently be tried together.” Id. (quoting
15 Western. Sys., Inc. v. Ulloa, 958 F.2d 864, 871 (9th Cir. 1992)) (internal quotation marks
16 omitted).

17 As to privity of the parties, privity is “a legal conclusion designating a person so
18 identified in interest with a party to former litigation that he represents precisely the same right
19 in respect to the subject matter involved.” Kourtis v. Cameron, 419 F.3d 989, 996 (9th Cir.
20 2005), abrogated by Taylor v. Sturgell, 553 U.S. 880, 128 S. Ct. 2161, 171 L. Ed. 2d 155
21 (2008) (quoting United States v. Schimmels, 127 F.3d 875, 881 (9th Cir.1997)). Privity
22 between parties exists “when there is sufficient commonality of interest.” Robinson v. Brown,
23 No. 2:12-CV-1776 MCE DAD, 2014 WL 1779460, at *7 (E.D. Cal. May 5, 2014). “Where the
24 issues in separate suits are the same, the fact that the parties are not precisely identical is not
25 necessarily fatal.” Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381, 402 (1940). In Scott
26 v. Kuhlmann, different defendants were named in the two actions, but all were “employees of
27 the FCC who participated in the inquiry” at issue in the suit. 746 F.2d 1377, 1378 (9th Cir.
28 1984). In Scott, the Ninth Circuit held that even if two actions do not have the exact same

1 defendants, privity still exists “between officers of the same government.” Id. See also
2 Anderson v. Mendoza, No. 2:17-CV-1244-KJM-DB-P, 2018 WL 6528429, at *5 (E.D. Cal.
3 Dec. 12, 2018) (“The respondent in plaintiff’s former habeas action is in privity with the
4 defendants in this action because they are officers of the same state government and agency”);
5 Konarski v. City of Tucson, 289 F. App’x 242, 244 (9th Cir. 2008) (“There is privity in these
6 cases because each current defendant is a government or government employee who is so
7 identified in interest with a party to former litigation that he represents precisely the same right
8 in respect to the subject matter involved.”) (internal quotation marks omitted).

9 To determine the existence of a final judgment on the merits, “Federal Rule of
10 Civil Procedure 41(b) states that “[u]nless the court in its order for dismissal otherwise
11 specifies, a dismissal . . . other than a dismissal for lack of jurisdiction, for improper venue, or
12 for failure to join a party under Rule 19, operates as an adjudication upon the merits.” Stewart
13 v. U.S. Bancorp, 297 F.3d 953, 956 (9th Cir. 2002) (interpreting a district court’s judgment that
14 only stated the action was dismissed and did not specify with or without prejudice is an
15 adjudication on the merits under Rule 41(b), unless one of the exceptions applies). A case
16 dismissed “with prejudice is an acceptable form of shorthand for an adjudication upon the
17 merits.” Semtek Int’l Inc. v. Lockheed Martin Corp., 531 U.S. 497, 505 (2001) (internal
18 quotation marks omitted). Additionally, “a summary judgment dismissal [] is considered a
19 decision on the merits for res judicata purposes.” Mpoyo v. Litton Electro-Optical Sys., 430
20 F.3d 985, 988 (9th Cir. 2005).

21 Based on the analysis below, this Court recommends Plaintiff’s first amended
22 complaint be dismissed because it is barred by the doctrine of claim preclusion. To begin, the
23 Court notes and takes judicial notice of Plaintiff’s previous lawsuits related to the alleged First
24 Amendment, Eighth Amendment, and Fourteenth Amendment violations raised in the current
25 action. In August 2010, Plaintiff filed his first lawsuit against Defendants alleging the same
26 Eighth Amendment and First Amendment violations. See Morris v. Virga, et al., 2:10-CV-
27 02069-TLN-DAD. In May 2012, Plaintiff filed his second lawsuit alleging the same First
28 Amendment violations. See Morris v. Nangalama, et al., 2:12-CV-01202-MCE-KJN. In July

1 2012, Plaintiff filed his third lawsuit alleging the same First Amendment and Eighth
2 Amendment violations. See Morris v. Turner, et al., 2:12-CV-01950-WBS-AC. These prior
3 lawsuits form the basis for the res judicata Defense raised by the Defendants and discussed
4 below.

5 1. Claims Against Turner

6 a. First Amendment – Retaliation

7 First, Plaintiff raises the same claim of retaliation by Defendant Turner for writing
8 to the warden about being mistreated as Plaintiff raised in his first lawsuit filed in 2010 and his
9 third lawsuit filed in 2012. The retaliation claim in all three lawsuits is based on the same
10 evidence, including the same conversation with the Sergeant assigned to resolve Plaintiff's
11 complaints. Because the suits involve the infringement of the same right on the same incident,
12 Plaintiff's First Amendment retaliation claim against Defendant Turner is barred by claim
13 preclusion.

14 Second, Plaintiff sued Defendant Turner on the same retaliation claim in all three
15 prior lawsuits. Although the addition or subtraction of new parties appears to disrupt the "same
16 parties in both actions" requirement, "[t]he doctrine of privity extends the conclusive effect of a
17 judgment to nonparties who are in privity with parties to an earlier action." United States v.
18 ITT Rayonier, Inc., 627 F.2d 996, 1003 (9th Cir. 1980). Accordingly, "privity exists between
19 officers of the same government." See Scott, 746 F.2d at 1378. Because Plaintiff has named
20 only officers of CSP-Sacramento as Defendants, all Defendants are in privity with each other and
21 therefore the "same parties" requirement is satisfied.

22 Third, although Defendant Turner was sued on the same retaliation claim in all
23 three prior lawsuits, only the first and third lawsuit reached a final judgment on the merits. In the
24 first lawsuit, there was a final judgment on the merits because Defendant's motion for summary
25 judgment was granted with respect to Plaintiff's claims 1-5, see Mpoyo, 430 F.3d at 988; where
26 Plaintiff's retaliation claim against Defendant Turner was claim 2. Morris v. Virga, et al., 2:10-
27 CV-02069-TLN-DAD. In the third lawsuit, there was a final judgment on the merits because
28 Plaintiff's complaint was dismissed and closed as duplicative. See Stewart, 297 F.3d at 956.

1 Therefore, because all three elements are met, Plaintiff’s First Amendment claim of retaliation
2 against Defendant Turner is barred by the doctrine of claim preclusion and this Court
3 recommends it be dismissed.

4 b. Eighth Amendment

5 Beginning with Plaintiff’s first Eighth Amendment claim, Plaintiff raises the same
6 claim against Defendant Turner for acting with deliberate indifference to Plaintiff’s suicide
7 warning as was raised in Plaintiff’s third lawsuit. The Eighth Amendment claim in the two
8 lawsuits are based on the same evidence, including the identical interview Turner conducted with
9 the Plaintiff regarding the urgency of returning Plaintiff’s coping devices. Because the suits
10 involve the infringement of the same right on the same incident, Plaintiff’s Eighth Amendment
11 claim against Defendant Turner for acting with deliberate indifference to Plaintiff’s mental health
12 is barred by claim preclusion.

13 Second, Plaintiff sued Defendant Turner on the same Eighth Amendment claim in
14 the third prior lawsuit. Although some Defendants are different, Plaintiff sued only employees of
15 CSP-Sacramento, which is a sufficient privity relationship to satisfy the “same parties”
16 requirement for claim preclusion. See Scott, 746 F.2d at 1378.

17 Third, Plaintiff’s third prior lawsuit reached a final judgment on the merits as
18 Plaintiff’s complaint was dismissed and closed as duplicative. See Stewart, 297 F.3d at 956.
19 Therefore, because all three elements are met, Plaintiff’s Eighth Amendment claim of deliberate
20 indifference by Defendant Turner is barred by the doctrine of claim preclusion and this Court
21 recommends it be dismissed.

22 Turning to Plaintiff’s second Eighth Amendment claim, Plaintiff raises another
23 claim against Defendant Turner for acting with deliberate indifference to Plaintiff’s safety.
24 However, this is the same claim raised in Plaintiff’s first lawsuit. The Eighth Amendment
25 violation arises from the same evidence as previously plead; Defendant Turner heard Correctional
26 Officer Whitted state in front of other inmates to Plaintiff, “you mess with kids,” but she did not
27 say anything or take any action, despite knowing child abuse allegations can lead to serious injury
28 or death by other inmates. Because the two suits involve the infringement of the same right under

1 the same incident, Plaintiff's Eighth Amendment claim against Defendant Turner is barred by
2 claim preclusion. As established above, Defendant Turner was a Defendant in the first lawsuit
3 and thus the "same parties" element is satisfied. Lastly, there was a final judgment on the merits
4 in the first lawsuit because Defendant's motion for summary judgment was granted with respect
5 to Plaintiff's claims 1-5, see Mpooyo, 430 F.3d at 988; where Plaintiff's same claim against
6 Defendant Turner was claim 1. Morris v. Virga, et al., 2:10-CV-02069-TLN-DAD. Thus, this
7 Court recommends both of Plaintiff's Eighth Amendment claims against Defendant Turner be
8 dismissed as claim precluded.

9 2. Claims Against Mini

10 a. Fourteenth Amendment – Due Process

11 First, Plaintiff's current suit is based on the same incident of "stacked" RVRs
12 which led to the confiscation of Plaintiff's coping devices that Plaintiff plead in his third prior
13 lawsuit. See Morris v. Turner, et al., 2:12-CV-01950-WBS-AC. Here, Defendant Mini is
14 named as one of the officials who contributed to the stacked RVRs. Plaintiff alleges Defendant
15 Mini falsified a document that sent Plaintiff back to the yard with a cellmate, to which Plaintiff
16 refused, and was issued an RVR. Although Plaintiff's claim asserting new facts against an
17 additional Defendant may appear to disrupt the "same claim" element, "[t]wo claims may be
18 identical for claim preclusion purposes even where the second case contains additional facts or
19 legal theories not asserted in the first." Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235, 1241
20 (W.D. Wash. 2006). This is because claim preclusion prevents a plaintiff from later presenting
21 any legal theories arising from the "same transactional nucleus of facts." See Hells Canyon
22 Preservation Council, 403 F.3d at 686 n.2. Here, the "same transactional nucleus of facts" is
23 the stacking of RVRs that lead to the confiscation of Plaintiff's coping devices; therefore, the
24 additional fact that Defendant Mini added to the RVRs by falsifying a document that Plaintiff
25 reacted to is a claim that Plaintiff effectively waived by failing to bring it in the prior lawsuit.

26 Second, as established above, Defendant Mini is a Captain at CSP-Sacramento
27 and thus in privity with the Defendants named in Plaintiff's third prior lawsuit. See Scott, 746
28 F.2d at 1378.

1 Third, Plaintiff's third prior lawsuit reached a final judgment on the merits as
2 Plaintiff's complaint was dismissed and closed as duplicative. See Stewart, 297 F.3d at 956.
3 Therefore, because all three elements are met, Plaintiff's Fourteenth Amendment claim against
4 Defendant Mini is barred by the doctrine of claim preclusion and this Court recommends it be
5 dismissed.

6 b. Eighth Amendment

7 First, Plaintiff's Eighth Amendment claim is based on allegations that Defendant
8 Mini falsified a document that stated the issue of Plaintiff refusing a cellmate out fear for his life
9 had been resolved. However, this is a new legal theory arising from the "same transactional
10 nucleus of facts" involving the stacked RVRs against Plaintiff that he plead in his third prior
11 lawsuit. See Morris v. Turner, et al., 2:12-cv-01950-WBS-AC. Plaintiff now alleges additional
12 facts that Defendant Mini forging a document regarding Plaintiff's perception of his personal
13 safety with a cellmate reveals an alleged deliberate indifference for Plaintiff's safety. However,
14 this is a claim that Plaintiff could have brought in the third lawsuit, but failed to do so, because
15 it stems from the RVR incident. Plaintiff has thus waived his ability to bring any claim on this
16 same incident in the future. See Hells Canyon Preservation Council, 403 F.3d at 686 n.2.

17 Second, as established above, Defendant Mini is a Captain at CSP-Sacramento
18 and therefore in privity with the Defendants named in Plaintiff's third prior lawsuit. See Scott,
19 746 F.2d at 1378.

20 Third, Plaintiff's third prior lawsuit reached a final judgment on the merits as
21 Plaintiff's complaint was dismissed and closed as duplicative. See Stewart, 297 F.3d at 956.
22 Therefore, because all three elements are met, Plaintiff's Eighth Amendment claim of deliberate
23 indifference by Defendant Mini is barred by the doctrine of claim preclusion and this Court
24 recommends it be dismissed.

25 3. Claims Against Cannedy

26 a. Eighth Amendment

27 First, Plaintiff's Eighth Amendment claim in the current suit is based on
28 allegations that Defendant Cannedy acted with deliberate indifference to Plaintiff's suicide

1 warning by proceeding with confiscating Plaintiff's coping devices, which were raised in
2 Plaintiff's third lawsuit. The Eighth Amendment claim in the two lawsuits are based on the same
3 evidence, but with here with new allegations that Defendant Cannedy is the one who physically
4 confiscated the television and radio. Because both lawsuits involve the infringement of the same
5 right under the "same transactional nucleus of facts," and Plaintiff did not bring this claim in his
6 first lawsuit, Plaintiff has effectively waived his ability to bring any claim on this same incident
7 in the future. See Hells Canyon Preservation Council, 403 F.3d at 686 n.2. Plaintiff's Eighth
8 Amendment claim against Defendant Cannedy for deliberate indifference is barred by claim
9 preclusion.

10 Second, as established above, Defendant Cannedy is a Lieutenant at CSP-
11 Sacramento and therefore in privity with the Defendants named in Plaintiff's third prior lawsuit.
12 See Scott, 746 F.2d at 1378.

13 Third, Plaintiff's third prior lawsuit reached a final judgment on the merits as
14 Plaintiff's complaint was dismissed and closed as duplicative. See Stewart, 297 F.3d at 956.
15 Therefore, because all three elements are met, Plaintiff's Eighth Amendment claim of deliberate
16 indifference by Defendant Cannedy is barred by the doctrine of claim preclusion and this Court
17 recommends it be dismissed.

18 **B. Cognizability of Claims Raised in Current Action**

19 1. Eighth Amendment

20 a. Mental Health

21 The treatment a prisoner receives in prison and the conditions under which the
22 prisoner is confined are subject to scrutiny under the Eighth Amendment, which prohibits cruel
23 and unusual punishment. See Helling v. McKinney, 509 U.S. 25, 31 (1993); Farmer v. Brennan,
24 511 U.S. 825, 832 (1994). The Eighth Amendment "... embodies broad and idealistic concepts
25 of dignity, civilized standards, humanity, and decency." Estelle v. Gamble, 429 U.S. 97, 102
26 (1976). Conditions of confinement may, however, be harsh and restrictive. See Rhodes v.
27 Chapman, 452 U.S. 337, 347 (1981). Nonetheless, prison officials must provide prisoners with
28 "food, clothing, shelter, sanitation, medical care, and personal safety." Toussaint v. McCarthy,

1 801 F.2d 1080, 1107 (9th Cir. 1986). A prison official violates the Eighth Amendment only when
2 two requirements are met: (1) objectively, the official's act or omission must be so serious such
3 that it results in the denial of the minimal civilized measure of life's necessities; and (2)
4 subjectively, the prison official must have acted unnecessarily and wantonly for the purpose of
5 inflicting harm. See Farmer, 511 U.S. at 834. Thus, to violate the Eighth Amendment, a prison
6 official must have a "sufficiently culpable mind." See id.

7 Deliberate indifference to a prisoner's serious illness or injury, or risks of serious
8 injury or illness, gives rise to a claim under the Eighth Amendment. See Estelle, 429 U.S. at 105;
9 see also Farmer, 511 U.S. at 837. This applies to physical as well as dental and mental health
10 needs. See Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982). An injury or illness is
11 sufficiently serious if the failure to treat a prisoner's condition could result in further significant
12 injury or the ". . . unnecessary and wanton infliction of pain." McGuckin v. Smith, 974 F.2d
13 1050, 1059 (9th Cir. 1992); see also Doty v. County of Lassen, 37 F.3d 540, 546 (9th Cir. 1994).
14 Factors indicating seriousness are: (1) whether a reasonable doctor would think that the condition
15 is worthy of comment; (2) whether the condition significantly impacts the prisoner's daily
16 activities; and (3) whether the condition is chronic and accompanied by substantial pain. See
17 Lopez v. Smith, 203 F.3d 1122, 1131-32 (9th Cir. 2000) (en banc).

18 The requirement of deliberate indifference is less stringent in medical needs cases
19 than in other Eighth Amendment contexts because the responsibility to provide inmates with
20 medical care does not generally conflict with competing penological concerns. See McGuckin,
21 974 F.2d at 1060. Thus, deference need not be given to the judgment of prison officials as to
22 decisions concerning medical needs. See Hunt v. Dental Dep't, 865 F.2d 198, 200 (9th Cir.
23 1989). The complete denial of medical attention may constitute deliberate indifference. See
24 Toussaint v. McCarthy, 801 F.2d 1080, 1111 (9th Cir. 1986). Delay in providing medical
25 treatment, or interference with medical treatment, may also constitute deliberate indifference. See
26 Lopez, 203 F.3d at 1131. Where delay is alleged, however, the prisoner must also demonstrate
27 that the delay led to further injury. See McGuckin, 974 F.2d at 1060.

28 Negligence in diagnosing or treating a medical condition does not, however, give

1 rise to a claim under the Eighth Amendment. See Estelle, 429 U.S. at 106. Moreover, a
2 difference of opinion between the prisoner and medical providers concerning the appropriate
3 course of treatment does not give rise to an Eighth Amendment claim. See Jackson v. McIntosh,
4 90 F.3d 330, 332 (9th Cir. 1996).

5 Here, if Plaintiff's Eighth Amendment claims against Defendant Cannedy and
6 Defendant Turner were not claim precluded, then they would be cognizable because Plaintiff
7 alleges sufficient facts to support a § 1983 claim for deliberate indifference to Plaintiff's mental
8 health. Plaintiff alleges both Defendant Cannedy and Defendant Turner were made aware that if
9 Plaintiff's coping devices were confiscated, he would commit suicide. Defendant Cannedy
10 confiscated the coping devices for ninety days and Defendant Turner laughed in Plaintiff's face
11 when he met with her to discuss the urgency of having his coping devices returned before he
12 attempted to take his own life. Consequently, Defendant Turner and Defendant Cannedy did not
13 return Plaintiff's coping devices and Plaintiff attempted suicide by hanging.

14 Plaintiff's Eighth Amendment claims against Defendant Cannedy and Defendant
15 Turner, if not claim precluded, would also be cognizable because both Defendants acted with
16 deliberate indifference to Plaintiff's mental health which resulted in significant injury and the
17 unnecessary and wanton infliction of pain. See McGuckin, 974 F.2d at 1059. Plaintiff's coping
18 devices were confiscated because of allegedly illegally stacked RVRs and Defendant Cannedy
19 and Defendant Turner allegedly contributed to stacking those RVRs. Despite the knowledge
20 there was a "high probability" Plaintiff would attempt suicide without his coping devices,
21 Defendant Cannedy and Defendant Turner refused to return them, thus subjectively acting
22 unnecessarily and wantonly for the purpose of inflicting harm. See Farmer, 511 U.S. at 834.

23 b. Safety

24 Prison officials have a duty to take reasonable steps to protect inmates from
25 physical abuse. See Hoptowit v. Ray, 682 F.2d 1237, 1250-51 (9th Cir. 1982); Farmer, 511 U.S.
26 at 833. Liability exists only when two requirements are met: (1) objectively, the prisoner was
27 incarcerated under conditions presenting a substantial risk of serious harm; and (2) subjectively,
28 prison officials knew of and disregarded the risk. See Farmer, 511 U.S. at 837. The very

1 obviousness of the risk may suffice to establish the knowledge element. See Wallis v. Baldwin,
2 70 F.3d 1074, 1077 (9th Cir. 1995). Prison officials are not liable, however, if evidence is
3 presented that they lacked knowledge of a safety risk. See Farmer, 511 U.S. at 844. The
4 knowledge element does not require that the plaintiff prove that prison officials know for a
5 certainty that the inmate's safety is in danger, but it requires proof of more than a mere suspicion
6 of danger. See Berg v. Kincheloe, 794 F.2d 457, 459 (9th Cir. 1986). Finally, the plaintiff must
7 show that prison officials disregarded a risk. Thus, where prison officials actually knew of a
8 substantial risk, they are not liable if they took reasonable steps to respond to the risk, even if
9 harm ultimately was not averted. See Farmer, 511 U.S. at 844.

10 Here, if Plaintiff's Eighth Amendment safety claim against Defendant Turner was
11 not claim precluded, it would be cognizable because Plaintiff states a cognizable claim under
12 § 1983. Plaintiff alleges Defendant Turner acted with deliberate indifference to his safety by not
13 taking action when correctional officer Whitted loudly asserted in front of other inmates that
14 Plaintiff "messes with kids." Plaintiff alleges "they both know" that inmates exposed for child
15 abuse are seriously injured or killed by other inmates. Accordingly, the obviousness of the risk is
16 enough to establish the element of Defendant Turner's knowledge. See Wallis, 70 F.3d at 1077.
17 Defendant Turner knew of the risk correctional officer Whitted subjected Plaintiff to with his
18 statement and only "smirked" at the comment, thereby disregarding Plaintiff's safety and taking
19 no reasonable steps to respond to the risk.

20 Turning now to Plaintiff's Eighth Amendment claim against Defendant Mini for
21 acting with deliberate indifference to Plaintiff's safety, even if this assertion was not claim
22 precluded, it should still be dismissed for failure to state a cognizable claim. Plaintiff alleges
23 Defendant Mini essentially ignored the fact Plaintiff feared for his life if provided a cellmate
24 when Defendant Mini allegedly lied to resolve the issue and sent Plaintiff back to the yard with a
25 cellmate. However, Plaintiff fails to allege sufficient facts to support an Eighth Amendment
26 claim for deliberate indifference to his safety because Plaintiff does not establish any reason why
27 he harbors this fear or what specific safety risk having a cellmate would impose. Further,
28 Plaintiff claims in his own complaint that he had been sent to "the hole," or solitary confinement,

1 for refusing to take a cellmate. ECF No. 34, at 3. This punishment for Plaintiff refusing a
2 cellmate demonstrates officials at the prison had not determined any safety concerns existed that
3 warranted Plaintiff to be single-celled. Accordingly, this Court recommends Plaintiff's Eighth
4 Amendment claim against Defendant Mini be dismissed as precluded and for failure to state a
5 claim under § 1983.

6 2. Fourteenth Amendment – Due Process

7 The Due Process Clause protects prisoners from being deprived of life, liberty, or
8 property without due process of law. Wolff v. McDonnell, 418 U.S. 539, 556 (1974). In order to
9 state a claim of deprivation of due process, a plaintiff must allege the existence of a liberty or
10 property interest for which the protection is sought. See Ingraham v. Wright, 430 U.S. 651, 672
11 (1977); Bd. of Regents v. Roth, 408 U.S. 564, 569 (1972). Due process protects against the
12 deprivation of property where there is a legitimate claim of entitlement to the property. See Bd.
13 of Regents, 408 U.S. at 577. Protected property interests are created, and their dimensions are
14 defined, by existing rules that stem from an independent source – such as state law – and which
15 secure certain benefits and support claims of entitlement to those benefits. See id.

16 Liberty interests can arise both from the Constitution and from state law. See
17 Hewitt v. Helms, 459 U.S. 460, 466 (1983); Meachum v. Fano, 427 U.S. 215, 224-27 (1976);
18 Smith v. Sumner, 994 F.2d 1401, 1405 (9th Cir. 1993). In determining whether the Constitution
19 itself protects a liberty interest, the court should consider whether the practice in question “. . . is
20 within the normal limits or range of custody which the conviction has authorized the State to
21 impose.” Wolff, 418 U.S. at 557-58; Smith, 994 F.2d at 1405. Applying this standard, the
22 Supreme Court has concluded that the Constitution itself provides no liberty interest in good-time
23 credits, see Wolff, 418 U.S. at 557; in remaining in the general population, see Sandin v. Conner,
24 515 U.S. 472, 485-86 (1995); in not losing privileges, see Baxter v. Palmigiano, 425 U.S. 308,
25 323 (1976); in staying at a particular institution, see Meachum, 427 U.S. at 225-27; or in
26 remaining in a prison in a particular state, see Olim v. Wakinekona, 461 U.S. 238, 245-47 (1983).

27 In determining whether state law confers a liberty interest, the Supreme Court has
28 adopted an approach in which the existence of a liberty interest is determined by focusing on the

1 nature of the deprivation. See Sandin v. Connor, 515 U.S. 472, 481-84 (1995). In doing so, the
2 Court has held that state law creates a liberty interest deserving of protection only where the
3 deprivation in question: (1) restrains the inmate’s freedom in a manner not expected from the
4 sentence; and (2) “imposes atypical and significant hardship on the inmate in relation to the
5 ordinary incidents of prison life.” Id. at 483-84. Prisoners in California have a liberty interest in
6 the procedures used in prison disciplinary hearings where a successful claim would not
7 necessarily shorten the prisoner’s sentence. See Ramirez v. Galaza, 334 F.3d 850, 853, 859 (9th
8 Cir. 2003) (concluding that a due process challenge to a prison disciplinary hearing which did not
9 result in the loss of good-time credits was cognizable under § 1983); see also Wilkinson v.
10 Dotson, 544 U.S. 74, 82 (2005) (concluding that claims which did not seek earlier or immediate
11 release from prison were cognizable under § 1983).

12 Where a prisoner alleges the deprivation of a liberty or property interest caused by
13 the random and unauthorized action of a prison official, there is no claim cognizable under 42
14 U.S.C. § 1983 if the state provides an adequate post-deprivation remedy. See Zinermon v. Burch,
15 494 U.S. 113, 129-32 (1990); Hudson v. Palmer, 468 U.S. 517, 533 (1984). A state’s post-
16 deprivation remedy may be adequate even though it does not provide relief identical to that
17 available under § 1983. See Hudson, 468 U.S. at 531 n.11. A due process claim is not barred,
18 however, where the deprivation is foreseeable and the state can therefore be reasonably expected
19 to make pre-deprivation process available. See Zinermon, 494 U.S. at 136-39. An available
20 state common law tort claim procedure to recover the value of property is an adequate remedy.
21 See id. at 128-29.

22 Finally, with respect to prison disciplinary proceedings, due process requires
23 prison officials to provide the inmate with: (1) a written statement at least 24 hours before the
24 disciplinary hearing that includes the charges, a description of the evidence against the inmate,
25 and an explanation for the disciplinary action taken; (2) an opportunity to present documentary
26 evidence and call witnesses, unless calling witnesses would interfere with institutional security;
27 and (3) legal assistance where the charges are complex or the inmate is illiterate. See Wolff, 418
28 U.S. at 563-70. Due process is satisfied where these minimum requirements have been met, see

1 Walker v. Sumner, 14 F.3d 1415, 1420 (9th Cir. 1994), and where there is “some evidence” in the
2 record as a whole which supports the decision of the hearing officer, see Superintendent v. Hill,
3 472 U.S. 445, 455 (1985). The “some evidence” standard is not particularly stringent and is
4 satisfied where “there is any evidence in the record that could support the conclusion reached.”
5 Id. at 455-56. However, a due process claim challenging the loss of good-time credits as a result
6 of an adverse prison disciplinary finding is not cognizable under § 1983 and must be raised by
7 way of habeas corpus. See Blueford v. Prunty, 108 F.3d 251, 255 (9th Cir. 1997).

8 Here, even if Plaintiff’s Fourteenth Amendment claim was not claim precluded,
9 this Court still recommends dismissal of Plaintiff’s claim against Defendant Mini for allegedly
10 fabricating a document stating the issue regarding Plaintiff’s fear of living with a cellmate was
11 resolved. Plaintiff has failed to allege sufficient facts to support a due process claim because
12 Plaintiff has not established the type of document Defendant Mini allegedly fabricated, nor what
13 liberty interest Plaintiff was deprived of as a result of the false document. Because Plaintiff has
14 not demonstrated how the allegedly falsified document violated his due process rights, this Court
15 recommends Plaintiff’s Fourteenth Amendment claim be dismissed as precluded and for failure to
16 state a cognizable claim under § 1983.

17 **C. Duplicative and Frivolous**

18 In assessing duplicative lawsuits, “we examine whether the causes of action and
19 relief sought, as well as the parties or privies to the action, are the same.” Adams v. California
20 Dep’t of Health Servs., 487 F.3d 684, 689 (9th Cir. 2007). “Under the first part of the duplicative
21 action test, [t]o ascertain whether successive causes of action are the same, [a court should] use
22 the transaction test, developed in the context of claim preclusion. In re Consol. Salmon Cases,
23 688 F. Supp. 2d 1001, 1007 (E.D. Cal. 2010) (internal quotation marks omitted). “[A] suit is
24 duplicative if the claims, parties, and available relief do not significantly differ between the two
25 actions.” Adams, 487 F.3d at 689 (internal quotation marks omitted).

26 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
27 See Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28
28 (9th Cir. 1984). When applied to a complaint, the term “frivolous” embraces both the inarguable

1 legal conclusion and the fanciful factual allegation. See Neitzke, 490 U.S. at 325. The court
2 may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal
3 theory or where the factual contentions are clearly baseless. Id. at 327. The critical inquiry is
4 whether a constitutional claim, however inartfully pleaded, has an arguable legal and factual
5 basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989); Franklin, 745 F.2d at 1227.
6 The court need not accept the allegations in the complaint as true, but must determine whether
7 they are fanciful, fantastic, or delusional. See Denson v Hernandez, 504 U.S. 25, 33 (1992)
8 (quoting Neitzke, 490 U.S. at 328). Finally, a complaint may be dismissed as frivolous if it
9 merely repeats pending or previously litigated claims. See Cato v. United States, 70 F.3d 1103,
10 1105 n.2 (9th Cir. 1995).

11 Here, because the duplicative action test was developed in the context of claim
12 preclusion, Plaintiff's current action, which the court finds is precluded, is effectively duplicative
13 of the first three lawsuits. The claims and parties do not significantly differ between all actions.
14 See Adams, 487 F.3d at 689. Further, under the transaction test of claim preclusion, Plaintiff's
15 claims have all been established above as arising under the same transactional nucleus of facts.

16 Lastly, although Plaintiff's amended complaint has an arguable legal and factual
17 basis, because a complaint may be considered frivolous if it repeats previously litigated claims,
18 Plaintiff's amended complaint is also necessarily frivolous. See Cato, 70 F.3d at 1105 n.2.
19 Thus, this Court recommends Plaintiff's complaint be dismissed as duplicative and frivolous.

20 21 **IV. CONCLUSION**

22 Based on the foregoing, the undersigned recommends that Defendants' motion to
23 dismiss (ECF No. 37) be granted and that this action be dismissed without leave to amend and
24 with prejudice.

25 These findings and recommendations are submitted to the United States District
26 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
27 after being served with these findings and recommendations, any party may file written
28 objections with the court. Responses to objections shall be filed within 14 days after service of

1 objections. Failure to file objections within the specified time may waive the right to appeal.

2 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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5 Dated: July 29, 2019



6 DENNIS M. COTA
7 UNITED STATES MAGISTRATE JUDGE

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