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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RANDY LAMAR BLACK,  
Plaintiff,  
v.  
P. THOMPSON, et al.,  
Defendants.

No. 2:21-cv-02167-TLN-EFB (PC)

FINDINGS AND RECOMMENDATIONS

Plaintiff is a federal inmate proceeding without counsel in a civil right action brought under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Pursuant to 28 U.S.C. § 1915A(a), the court determined that plaintiff’s first amended complaint (FAC), ECF No. 34, alleged a potentially cognizable Eighth Amendment claim against defendants David Allred, M.D. and B. Birch for deliberate indifference to serious medical needs. ECF No. 38. Defendants now move to dismiss the FAC pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure, for failing to state a recognized cause of action under *Bivens*. ECF Nos. 57. Plaintiff opposes the motion and has also filed his own motion which he styles as a motion for judgment on the pleadings. ECF Nos. 64. Finally, plaintiff has filed pleadings captioned as “notices” which the court construes as motions to amend his FAC. ECF Nos. 53, 56, 63.

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1 I. Background

2 The FAC alleges that plaintiff tested positive for Covid-19 and was placed in isolation for  
3 11 days.<sup>1</sup> ECF No. 34 at 3-4. Plaintiff asserts that he asked to see a doctor and Allred saw him 6  
4 days later.<sup>2</sup> *Id.* at 4. Plaintiff asked Allred for medication for breathing problems, Covid-19, and  
5 headaches. *Id.* Allred did not prescribe medication and told plaintiff he could buy over-the-  
6 counter medicine from the commissary. *Id.* at 5.

7 Birch was head of the commissary. *Id.* Birch allegedly did not allow plaintiff to purchase  
8 over-the-counter medication “and covered his backside with a lie.” *Id.* The FAC alleges email  
9 correspondence between Allred and Birch and implies that Birch represented that he had never  
10 denied an inmate the right to medication. *Id.*

11 Plaintiff asserts that he informed Allred he was unable to purchase from the commissary  
12 but Allred still refused to prescribe medicine for plaintiff. *Id.* Plaintiff alleges that he still suffers  
13 after-effects of breathing problems, headaches, and pain all over his body, which have not been  
14 treated. *Id.* Plaintiff requests a jury trial and an unspecified amount of damages. *Id.* at 9.

15 II. Defendants’ Rule 12(b)(6) Motion to Dismiss, ECF No. 57

16 Defendants move to dismiss arguing that plaintiff’s claims are not cognizable under  
17 *Bivens*. ECF No. 57 at 5. They argue that the Supreme Court has implied a *Bivens* cause of  
18 action for money damages against federal agents in only a limited number of contexts not  
19 applicable here.<sup>3</sup> *Id.* at 3-4. Specifically, they argue that an implied *Bivens* action for a jailor’s

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20 <sup>1</sup> The FAC does not allege when this occurred. The original complaint alleges plaintiff  
21 tested positive for Covid-19 on September 9, 2021, was placed in isolation, and was released  
22 from isolation 11 days later, on September 20, 2021. ECF No. 1 at 4-5. This corresponds to the  
allegation in the FAC that plaintiff was isolated for 11 days.

23 The FAC also alleges that plaintiff was “taken to the hospital” on August 10, 2022. ECF  
24 No. 34 at 4-5. Plaintiff’s hospital visit in August 2022 thus appears to be a separate event, and  
not the occurrence on which his claims are based.

25 <sup>2</sup> The FAC’s allegation of a 6-day wait to be seen by Allred repeats plaintiff’s allegation  
in his original complaint that he waited 6 days to see Allred. ECF No. 1 at 5.

26 <sup>3</sup> Three distinct categories of *Bivens*-type causes of action have been recognized by the  
27 Supreme Court, as discussed in Part II(B)(1). Other than these three categories of claims, the  
Supreme Court has “consistently rebuffed requests to add to the claims allowed under *Bivens*.”  
28 *Hernández v. Mesa*, 589 U.S. 93, 102 (2020); *see also Egbert v. Boule*, 596 U.S. 482, 486 (2022)  
(since *Bivens*, the Supreme Court has “declined 11 times to imply a similar cause of action for

1 failure to provide adequate medical care, first recognized in *Carlson v. Green*, 446 U.S. 14  
2 (1980), is unavailable for the claims plaintiff alleges here.

3 A. Rule 12(b)(6) Standard

4 In considering a motion to dismiss, the court must accept as true the allegations of the  
5 complaint in question, *Hospital Bldg. Co. v. Rex Hospital Trustees*, 425 U.S. 738, 740 (1976),  
6 construe the pleading in the light most favorable to the party opposing the motion, and resolve all  
7 doubts in the pleader's favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421, *reh'g denied*, 396 U.S.  
8 869 (1969). Further, “a document filed pro se is ‘to be liberally construed.’” *Erickson v. Pardus*,  
9 551 U.S. 89, 93-94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). However, “a  
10 liberal interpretation of a civil rights complaint may not supply essential elements of the claim  
11 that were not initially pled.” *Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9<sup>th</sup> Cir.  
12 1982).

13 To survive a Rule 12(b)(6) motion to dismiss, a complaint must allege enough specific  
14 facts to provide both “fair notice” of the particular claim being asserted and “the grounds upon  
15 which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 & n.3 (2007) (citation omitted);  
16 *see also* Rule 8(a). “Vague and conclusory allegations of official participation in civil rights  
17 violations are not sufficient to withstand a motion to dismiss.” *Ivey v. Bd. of Regents of Univ. of*  
18 *Alaska*, 673 F.2d 266, 268 (9<sup>th</sup> Cir. 1982). Rather, “a complaint must contain sufficient factual  
19 matter ... to ‘state a claim to relief that is plausible on its face.’ A claim has factual plausibility  
20 when the plaintiff pleads factual content that allows the court to draw the reasonable inference  
21 that the defendant is liable for the alleged misconduct.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678  
22 (2009) (citation omitted).

23 B. Defendants’ Challenge to Plaintiff’s Eighth Amendment *Bivens* Claims

24 1. The *Carlson* Line of *Bivens* Claims

25 The Supreme Court has recognized only three categories of implied causes of actions for  
26 damages against federal officials for constitutional violations: (1) claims for violation of Fourth  
27 Amendment unreasonable search and seizure rights, *Bivens*, 403 U.S. at 397; (2) claims for  
28 other alleged constitutional violations”).

1 violation of Fifth Amendment due process rights in the context of employment discrimination,  
2 *Davis v. Passman*, 442 U.S. 228, 245 (1979); and (3) claims for deliberate indifference to serious  
3 medical needs in violation of the Eighth Amendment, *Carlson*, 446 U.S. at 20. Because *Bivens*-  
4 type actions are implied, they are disfavored. *Ashcroft v. Iqbal*, 556 U.S. 662, 675 (2009). If a  
5 case presents a “new *Bivens* context,” then the court must consider whether special factors  
6 indicate that the courts are at least arguably less equipped than Congress to weigh the costs and  
7 benefits of allowing a new type of damages action. *Marquez v. Rodriguez*, 81 F.4th 1027, 1030  
8 (9th Cir. 2023) (citations omitted). If Congress might be better equipped than the courts, the  
9 damages action may not proceed. *Id.*

10 Plaintiff’s claims in this lawsuit proceed, if at all, under the *Carlson* line of *Bivens*-type  
11 claims. *Carlson* involved an inmate who was not given prescribed medications and suffered an  
12 asthma attack. *Green v. Carlson*, 581 F.2d 669, 671 (7th Cir. 1978). There was no physician on  
13 duty, nor consulted, for the eight hours he was in medical crisis. *Id.* An unlicensed nurse tried to  
14 use a broken respirator, then administered an antipsychotic medication contraindicated for  
15 asthmatic attacks. *Id.* The inmate died from respiratory arrest. *Id.*

## 16 2. Defendants’ Pre-*Stanard* Argument

17 Defendants argue that plaintiff’s allegations do not describe a life-threatening medical  
18 emergency such as in *Carlson* and therefor his FAC cannot be actionable under *Bivens*. ECF No.  
19 57 at 5. Defendants contend that allowing plaintiff to proceed on the allegations of the FAC  
20 would imply a new form of constitutional tort liability based on inadequate non-emergency care  
21 relating to Covid-19. ECF No. 59 at 1-2 (citing *Washington v. Federal Bureau of Prisons*, 2022  
22 WL 3701577, at \*5 (D.S.C. Aug. 26, 2022)).<sup>4</sup> Stated another way, they argue that the allegations  
23 present a new *Bivens* context and there are “special factors” present here which counsel against  
24 extending *Bivens* liability to these circumstances. ECF No. 57 at 7-8.

25 As to the “special factors,” defendants point to an alternative remedial structure in the  
26 form of a grievance system and argue that Congress is better equipped than the courts to

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27 <sup>4</sup> *Washington* and other cases finding new *Bivens* contexts are discussed in *Feao v.*  
28 *Ponce*, 696 F. Supp. 3d 887, 907-908 (C.D. Cal. 2023). *See also infra* Part II(B)(4).

1 determine whether plaintiff should have a claim for monetary damages available to him. *Id.* at 9-  
2 10. They contend that providing a *Bivens* remedy in these circumstances would require the court  
3 to wade into, and adversely impact, prison management policies and create an influx of claims.  
4 *Id.* at 9-10.

5 After the close of briefing on the motion, the Ninth Circuit decided *Stanard v. Dy*, 88  
6 F.4th at 817 (9th Cir. 2023), and the defendants filed a request for supplemental briefing to  
7 address it. ECF. No. 60. As defendants acknowledge in their supplemental brief, the Ninth  
8 Circuit held that differences in the degree of deficient medical care are not so meaningful as to  
9 give rise to a new *Bivens* context such that a claim predicated on *Carlson*, 446 U.S. at 20, would  
10 imply a new constitutional tort. *Id.* at 1 (citing *Stanard*, 88 F.4th at 817). The inmate in *Stanard*  
11 was denied treatment for Hepatitis C Virus for a period of time after he had initially declined it.  
12 88 F.4th at 817. The Ninth Circuit held that an inmate’s claim seeking “a damages remedy for  
13 failure to provide medical attention evidencing deliberate indifference to serious medical needs”  
14 falls within “every dimension the Supreme Court has identified as relevant” to the question  
15 whether the claim is meaningfully different than *Carlson*. *Id.* (citing *Hicks v. Ferreyra*, 965 F.3d  
16 302, 311 (9th Cir. 2020) (internal quotation marks omitted)).

### 17 3. Defendants’ Post-*Stanard* Argument

18 Defendants nevertheless argue that *Stanard* does not dictate that plaintiff’s claims must  
19 proceed. Defendants contend that *Stanard* is factually distinguishable from this case, which  
20 simply begs the question addressed in *Stanard* that factual distinctions must be ones that present  
21 meaningful differences. Defendants also note that *Stanard* was fully briefed before the Supreme  
22 Court issued its decision in *Egbert v. Boule*, 596 U.S. 482, 492 (2022). Defendants argue that:

23 The opinion in *Stanard* does not “bear on the relevant point” in *Egbert*:  
24 that the “Judiciary is comparatively ill suited to decide whether a damages remedy  
25 . . . is appropriate[.]” even in cases involving “similar allegations of” deliberate  
26 indifference to medical care that “present ‘almost parallel circumstances’ or a  
similar ‘mechanism of injury’” to *Carlson*, because such “superficial similarities  
are not enough to support the judicial creation of a cause of action.”

27 ECF No. 60 at 2 (citing *Egbert*, 596 U.S. at 495 (internally quoting *Ziglar v. Abbasi*, 582 U.S.  
28 120, 139 (2017))).

1 Even though *Stanard* was briefed before *Egbert* was decided, the Ninth Circuit Court had  
2 the benefit of and explicitly acknowledged the *Egbert* decision in deciding *Stanard*, see 88 F.4th  
3 at 815-816. Accordingly, *Stanard* must be understood to have fully considered *Egbert*'s analysis  
4 in reaching its holding. This brings us back to considering how *Stanard* affects the analysis of  
5 whether plaintiff's Eighth Amendment claims present a new *Bivens* context.

6 Defendants maintain that "*Stanard* did not hold that all prisoner medical claims fall within  
7 *Carlson*'s context," ECF No. 60 at 3, and that there are meaningful differences between this case  
8 and *Carlson*. Defendants argue it is a "fact" that plaintiff "did not face a life-threatening medical  
9 issue." *Id.* Based on this assertion, defendants propose three reasons why differences between  
10 this case and *Carlson* are meaningful: (1) claims based on routine and non-emergency medical  
11 care cases risk more disruption by the judiciary on the executive; (2) the judiciary has less clear  
12 guidance as to how medical providers should respond to non-emergency medical care for Covid-  
13 19 compared to a life-threatening disease as in *Carlson*; and (3) "potential" special factors that  
14 were not considered in *Carlson* are present here, namely the post-*Carlson* enactment of the Prison  
15 Litigation Reform Act (PLRA) and the alternative potential relief available through the Bureau of  
16 Prisons's (BOP's) administrative remedy program. *Id.* at 3-4. Plaintiff responds that Covid-19 is  
17 a life-threatening disease and that he still suffers from its long-term after-effects. ECF No. 62 at  
18 1.

#### 19 4. Analysis

20 Defendants' arguments, and plaintiff's response, highlight the difficulty with attempting  
21 to identify new *Bivens* contexts in Eighth Amendment claims on a motion to dismiss: the  
22 undeveloped state of the record at this stage. Defendants insist that this case presents a new  
23 *Bivens* context because it is a "fact" that plaintiff's medical issue was not life-threatening. Yet,  
24 the complaint does not state that as a fact and nothing in the record establishes it. Further, it is  
25 not always possible to conclusively establish the life-threatening (or not) nature of a plaintiff's  
26 medical issue as a "fact" at the pleading stage. The essence of plaintiff's medical issue is that he  
27 could not access medications recommended by his physician while infected with a potentially  
28 life-threatening disease. Lack of medication was the beginning of the chain of events in *Carlson*

1 that ultimately led to the inmate’s death. It cannot be presumed that inability to access  
2 medications is not life-threatening, even if that were the standard articulated in *Stanard*, which it  
3 is not. The Ninth Circuit’s holding in *Stanard* was that an Eighth Amendment claim seeking  
4 damages for failure to provide medical attention evidencing deliberate indifference to serious  
5 medical needs is not meaningfully different than *Carlson* and does not present a new *Bivens*  
6 context. 88 F.4th at 817.

7 Contrary to defendant’s first argument, a life-threatening or emergency/non-emergency  
8 medical issue is not the standard stated in *Standard*. Plaintiff’s Eighth Amendment claim checks  
9 all the boxes described by the Ninth Circuit in *Stanard* and therefore does not present a new  
10 *Bivens* context. See *Sides v. Hosseini*, No. 2:22-cv-08334-DMG (GJG), 2024 WL 2867802, at  
11 \*15 (C.D. Cal. Mar. 6, 2024) (the *Stanard* panel did not find meaningful differences between a  
12 “potentially fatal asthma attack versus delay in HCV treatment,” which indicates that severity of  
13 medical need does not present new *Bivens* context); see also *Faeo*, 696 F. Supp. 3d at 908-909  
14 (holding, before *Stanard* was issued, that the court “[was] not persuaded that the long-term  
15 mismanagement of a serious condition, resulting in an inmate’s death, is meaningfully different  
16 from the more immediate mismanagement issue in *Carlson*, at least for purposes of determining  
17 whether a *Bivens* remedy should be available” and noting that “such a conclusion would  
18 essentially limit *Carlson* to its facts”).

19 Defendants’ second argument, that the judiciary has less clear guidance how medical  
20 providers should respond to non-emergency needs for Covid-19 medical care, fails for similar  
21 reasons. *Stanard* does not hold that new *Bivens* contexts may be based on the type of disease or  
22 medical need. Also, the judiciary is no more or less equipped to address deliberate indifference to  
23 medical needs as to certain types of such needs, versus other types of medical needs.

24 Defendant’s third argument, that the Prison Litigation Reform Act (PLRA) was enacted  
25 after *Carlson* was decided and that the BOP has an administrative remedy program, is  
26 unpersuasive. *Carlson* was decided in 1980. The PLRA was enacted in 1996 and became  
27 effective in 1997.<sup>5</sup> In the decades since the PLRA was enacted, courts have continued to apply

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28 <sup>5</sup> Pub. L. No. 104-134, §§ 801-10, 110 Stat. 1321, 1321-66 to -77 (1996) (codified as

1 *Carlson* to find implied causes of action for Eighth Amendment prisoner claims for deliberate  
2 indifference to serious medical needs. Defendants cite to five decisions issued by district courts  
3 in 2023 that found certain prisoner medical care claims presented “new contexts.” ECF No. 60 at  
4 4-5. These five cases were all decided after the Supreme Court’s June 8, 2022 decision in *Egbert*  
5 but before the Ninth Circuit issued its December 11, 2023 decision in *Stanard*. *Stanard* did not  
6 directly address the effect, if any, of the PLRA or the BOP’s administrative remedy program.<sup>6</sup>  
7 However, the Ninth Circuit Court did describe the *Stanard* plaintiff’s efforts to pursue the BOP’s  
8 administrative remedies. 88 F.4th at 814; *see also Porter v. Nussle*, 534 U.S. 516, 524 (2002)  
9 (PLRA’s exhaustion requirements applies to federal prisoners pursuing *Bivens* claims). At least  
10 implicitly, the *Stanard* decision appears to refute defendants’ argument that the BOP’s  
11 administrative remedies – and whether administrative remedies were exhausted or otherwise  
12 excused as required by the PLRA – constituted any “new context.”

13 Although defendants’ arguments fail to convince that plaintiff’s claims should be  
14 dismissed on this Rule 12(b)(6) motion, it is equally true that just because the FAC has survived  
15 screening does not negate plaintiff’s burden to prove the objective and subjective elements of his  
16 Eighth Amendment claims for deliberate indifference to a serious medical need. *See, e.g.,*  
17 *Colwell v. Bannister*, 763 F.3d 1060, 1066 (9th Cir. 2014). Just as defendants are unable at this  
18 stage to rely on a “fact” that plaintiff “did not face a life-threatening medical issue,” so also  
19 plaintiff has not yet proven as a “fact” that he had a serious medical condition. His allegation that  
20 he did suffice to survive this Rule 12(b)(6) motion. But this case should proceed to resolve the  
21 merits of plaintiff’s Eighth Amendment claims, including resolution of any disputed facts  
22 regarding whether plaintiff had a serious medical need that defendants disregarded with deliberate  
23 indifference. For all the above reasons, it is recommended that defendants’ Rule 12(b)(6) motion

24 \_\_\_\_\_  
25 amended in scatter sections of 11, 18, 28, and 42 U.S.C.).

26 <sup>6</sup> *Stanard* did consider, and rejected, an argument that the prisoner in that case “unlike the  
27 inmate in *Carlson*,” was “challenging a broadly applicable BOP policy governing HCV treatment  
28 protocol in federal prisons, rather than a non-policy based pattern of neglect.” 88 F.4th at 817.  
The inmate’s claim in *Stanard* was about the “actions and state of mind of Defendants in denying  
him HCV treatment” and was not “simply challenging a broadly applicable BOP policy.” *Id.* at  
818.



1 to dismiss be denied.

2 III. Plaintiff's Motions And Evidentiary Matters

3 A. Rule 12(c) Motion for Judgment on the Pleadings, ECF No. 64

4 Plaintiff has filed a motion for judgment on the pleadings asking the court to rule on this  
5 case on the grounds that this case is "ripe." ECF No. 64 at 1. Plaintiff argues that he has  
6 prevailed because the court denied his motion for a jury trial and that "[t]he only question left is  
7 the damages phase." *Id.* at 2. His point is difficult to discern as plaintiff cites no authority and  
8 makes no substantive argument.

9 Defendants responded that the motion should be denied because their motion to dismiss is  
10 pending. ECF No. 65. Plaintiff reply asserts that defendants' argument is "time barred" or  
11 "procedurally barred." Whatever plaintiff's point, he simply misunderstands the nature of a  
12 motion for judgment on the pleadings.

13 A motion for judgment on the pleadings is governed by Rule 12(c) of the Rules of Civil  
14 Procedure, and like a motion under Rule 12(b)(6), seeks to have a plaintiff's complaint dismissed  
15 for failure to state a claim. Plaintiff fails to understand that the motion is essentially the same as a  
16 motion under Rule 12(b)(6), and its purpose is to test the sufficiency of the pleadings. *Granda v.*  
17 *California Public Employees' Retirement Sys.*, 620 F. Supp. 3d 1038, 1041 (E.D. Cal. 2022).

18 Plaintiff seems to believe, mistakenly, that judgment can be entered on his behalf solely  
19 on the basis of his FAC, and because the court denied his request for a jury trial. The court's  
20 denial of a jury trial simply means that this case will be tried before the court without a jury. *See*  
21 *Fed. R. Civ. P. 38, 39.* For these reasons, it is recommended that plaintiff's Rule 12(c) motion for  
22 judgment on the pleadings be denied.

23 B. Motions to Amend The FAC, ECF Nos. 53, 56, 63

24 After plaintiff's amended complaint was screened and he elected to proceed only with his  
25 Eighth Amendment claims against defendants Allred and Birch, he filed a "notice of retaliation  
26 by B.O.P.," ECF No. 53, and another pleading captioned "retaliation for above case as follows,"  
27 ECF No. 56. Plaintiff has also filed a "notice of B.O.P. impairment," which does not explicitly  
28 reference retaliation but implies that the BOP has interfered with plaintiff's right of access to the

1 courts by losing his legal mail. ECF No. 63.<sup>7</sup>

2 Plaintiff was informed in the screening order that he may not change the nature of this suit  
3 by alleging new, unrelated claims. ECF No. 38 at 5 (citing *George v. Smith*, 507 F.3d 605, 607  
4 (7th Cir. 2007)). Any claims that plaintiff might seek to add to this lawsuit based on allegations  
5 of retaliation, or of interference with plaintiff's right of access to the courts, are unrelated and  
6 would change the nature of this suit. Plaintiff's pleadings docketed at ECF Nos. 53, 56, and 63,  
7 construed as motions to further amend his complaint to add claims against prison officials who  
8 have allegedly retaliated against him for pursuing this lawsuit, should be denied.

9 C. Plaintiff's Evidentiary References

10 Plaintiff's FAC refers to, and presumes to rely upon, documents that he believes "the  
11 court" has in its possession.<sup>8</sup> He has not supplied them nor explained why they are appropriate  
12 for consideration on the Rule 12(b)(6) motion. Courts normally do not look beyond the  
13 complaint in resolving a Rule 12(b)(6) motion. *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 248  
14 (9th Cir.1997); *see also Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir.2001) (a court may  
15 consider material that the plaintiff properly submitted as part of the complaint or, even if not  
16 physically attached to the complaint, material that is not contended to be inauthentic and that is  
17 necessarily relied upon by the plaintiff's complaint). Whatever the nature of the documents  
18 plaintiff references, he has not provided copies nor made clear what he might be attempting to  
19 incorporate by reference.

20 Even if this were a motion under Rule 56, the court cannot import nor infer plaintiff's  
21 evidentiary record in this case based on vague references to documents that may or may not be in

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22 <sup>7</sup> Plaintiff filed similar pleadings alleging or implying forms of retaliation, ECF Nos. 6,  
23 15, 26, *before* the court accepted the cognizable claim stated in the FAC and plaintiff elected to  
24 proceed on that claim. ECF Nos. 34, 38, 41. These earlier pleadings were mooted by plaintiff's  
election to proceed on only the Eighth Amendment claim against Allred and Birch as stated in the  
FAC. ECF No. 41.

25 <sup>8</sup> The FAC cites to a document that plaintiff apparently believes the court has in its  
26 possession. ECF No. 34 at 4 (stating "see Court's copy"). Plaintiff also alleges he received a  
27 "sales slip", but he was denied medical treatment and medicine. *Id.* at 6. Plaintiff again refers the  
28 court to records he says the court has in its possession. *Id.* at 5 ("I have no copies but this Court  
has several slips.").

1 the record of this case, or that may be in pleadings or exhibits filed in another lawsuit.<sup>9</sup> *See Bias*  
2 *v. Moynihan*, 508 F.3d 1212, 1219 (9th Cir. 2007) (“[a] district court does not have a duty to  
3 search for evidence that would create a factual dispute” on summary judgment, not even within  
4 the record of the case before the court, and not even for pro se litigants (citation omitted)); *Justice*  
5 *v. Rockwell Collins, Inc.*, 117 F. Supp. 3d 1119, 1128 (D. Ore. 2015) (a pro se plaintiff’s initial  
6 pleadings are held to less stringent standards, but at summary judgment the plaintiff’s burden of  
7 proof and the elements he must prove are not relaxed). Even if pleadings or exhibits plaintiff has  
8 filed in other cases might contain documents relevant to the resolution of his claims in this case,  
9 plaintiff is cautioned that the court will not undertake to examine those records to attempt to infer  
10 plaintiff’s evidence or arguments for him. Plaintiff must adhere to the Federal and Local Rules  
11 governing presentation and filing of his pleadings and evidentiary exhibits.

12 IV. Recommendations

13 Accordingly, for all the reasons stated above, IT IS HEREBY RECOMMENDED that:

- 14 1. Plaintiff’s motions to amend his complaint, ECF Nos. 53, 56, and 63 be DENIED.
- 15 2. Defendants’ motion to dismiss, ECF No. 57, be DENIED.
- 16 3. Plaintiff’s motion for judgment on the pleadings, ECF No. 64, be DENIED.

17 These findings and recommendations are submitted to the United States District Judge  
18 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
19 after being served with these findings and recommendations, any party may file written  
20 objections with the court and serve a copy on all parties. Such a document should be captioned  
21 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the  
22 objections shall be filed and served within fourteen days after service of the objections. The  
23 parties are advised that failure to file objections within the specified time may waive the right to  
24 appeal the District Court’s order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

25 DATED: August 29, 2024

26   
27 EDMUND F. BRENNAN  
28 UNITED STATES MAGISTRATE JUDGE

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28 <sup>9</sup> Plaintiff is a three-strikes litigant who has litigated in multiple jurisdictions. ECF No. 32 at 1-2.