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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL RAY FOWLER,
Plaintiff,
v.
MILLER, et al.,
Defendants.

No. 2:23-cv-00248-KJM-DMC-P

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge as provided by Eastern District of California local rules.

On July 26, 2023, the Magistrate Judge filed findings and recommendations, which were served on the parties and which contained notice that the parties may file objections within the time specified therein. Timely objections to the findings and recommendations have been filed.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a *de novo* review of this case. Having reviewed the file, the court finds the findings and recommendations to be supported by the record and by the proper analysis. As the magistrate judge notes, F. & R. at 2, ECF No. 10, there is no private right of action under the Health Insurance Portability and Accountability Act (HIPAA), *Webb v. Smart Document Sols., LLC*, 499 F.3d 1078, 1081 (9th Cir. 2007). As such, plaintiff cannot state a federal claim under

1 HIPAA. *See id.* Plaintiff's complaint, which solely alleges violation of HIPAA, must be
2 dismissed. "Unless it is absolutely clear that no amendment can cure the defect, . . . a pro se
3 litigant is entitled to notice of the complaint's deficiencies and an opportunity to amend prior to
4 dismissal of the action." *Lucas v. Dep't of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995). Here no
5 amendment could cure plaintiff's inability to state a federal claim under HIPAA.

6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. The findings and recommendations filed July 26, 2023, are adopted in full.
- 8 2. This action is DISMISSED with prejudice for failure to state a claim upon
9 which relief can be granted.
- 10 3. Plaintiff's motion for equitable tolling, ECF No. 9, is DENIED as moot.
- 11 4. The Clerk of the Court is directed to enter judgment and close this file.

12 DATED: November 20, 2023.

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16 CHIEF UNITED STATES DISTRICT JUDGE
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