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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

8  
9 MICHAEL TATER-ALEXANDER,

CASE NO. 1:10-cv-01050-AWI-SMS

10 Plaintiff,

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DENIAL OF  
MOTION TO AMEND AND DISMISSAL  
FOR FAILURE TO STATE A CLAIM

11 v.

12 COUNTY OF FRESNO, et al.,

13 Defendants.

(Docs. 5 & 6)

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15  
16 On June 10, 2010, Plaintiff Michael Tater-Alexander, proceeding pro se and in forma  
17 pauperis, filed a complaint raising multiple claims under the U.S. Constitution, federal statutes,  
18 and California law arising from Fresno County's refusal to provide an administrative hearing to  
19 review a parking ticket (Doc. 1). The complaint was referred for screening by the Magistrate  
20 Judge, pursuant to 28 U.S.C. § 636(b) and Local Rules 72-302 and 72-304. On June 18, 2010,  
21 this Court dismissed the complaint for failure to state a claim, granting Plaintiff thirty days to  
22 amend (Doc. 4).  
23

24 On July 19, 2010, Plaintiff filed a first amended complaint, which he styled as a *qui tam*  
25 action (Doc. 6). Plaintiff substituted "The People of the County of Fresno" and "The People of  
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1 the State of California” as the plaintiffs and added 22 new defendants.<sup>1</sup> On July 22, 2010,  
2 Plaintiff moved to amend the first amended complaint to further modify the parties and to add  
3 further information. Having reviewed the first amended complaint and the motion to amend in  
4 light of the alleged facts and applicable law, this Court finds that the first amended complaint  
5 fails to state a cognizable claim upon which relief could be granted. Accordingly, the Court  
6 recommends that Plaintiff’s motion to amend again be denied and that this matter be dismissed  
7 with prejudice.  
8

9 **I. Screening Requirement**

10 A court has inherent power to control its docket and the disposition of its cases with  
11 economy of time and effort for both the court and the parties. *Landis v. North American Co.*, 299  
12 U.S. 248, 254-55 (1936); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9<sup>th</sup> Cir.), *cert. denied*, 506  
13 U.S. 915 (1992). Notwithstanding any filing fee, or any portion thereof, that may have been paid,  
14 in cases in which the plaintiff is proceeding *in forma pauperis*, the court shall dismiss the case at  
15 any time if the court determines that . . . the action or appeal . . . is frivolous or malicious . . . or  
16 fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).  
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19 **II. Procedural and Factual Background**<sup>2</sup>

20 When Plaintiff attended a DSS administrative hearing on April 21, 2009, “[t]here [was]  
21 no ample parking” (¶ 40). Since 20-25 empty spaces were available in an adjacent county  
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25 <sup>1</sup> In these Findings and Recommendations, the term “Plaintiff” will refer only to the original individual  
26 Plaintiff in this action, Michael Tater-Alexander.

27 <sup>2</sup> Unless otherwise noted, this section is derived from the first amended complaint (Doc. 6).

1 parking lot, Plaintiff parked there, reasoning that, as a disabled person,<sup>3</sup> he was entitled to  
2 “reasonable accommodation” under the Americans With Disabilities Act (¶ 41). When Plaintiff  
3 returned 20 minutes later, he had received a parking ticket (¶¶40, 41). He maintains that, since  
4 the lot still contained empty parking spaces, the ticket should not have issued since he had done  
5 no harm (¶ 41). Plaintiff mailed a request to dismiss the parking ticket for “excusable neglect,  
6 inadvertence or harmless error” (¶¶ 42, 43).  
7

8 In a written decision dated May 26, 2009, Defendant Fresno County denied Plaintiff’s  
9 request (¶ 43). The envelope in which Plaintiff received the decision was postmarked May 29,  
10 2009 (¶ 43). Because California law provides 21 days to request an administrative hearing,  
11 Plaintiff decided that his request was due 21 days after the envelope was postmarked or June 19,  
12 2009 (¶ 45). The envelope in which Plaintiff mailed his request was postmarked June 16, 2009<sup>4</sup>  
13 (¶ 46).  
14

15 On or about July 15, 2009, Plaintiff received a notice from Fresno County advising him  
16 that the citation was valid, the unpaid fine had doubled to \$70.00, and that his vehicle registration  
17 could be withheld (¶ 47). Plaintiff responded by writing letters explaining the “error” to  
18 Defendants Fresno County, County Supervisor Debbie Poochigian, and the Parking Citation  
19 Service Center (¶¶ 48, 49, 50, 51). Plaintiff received no responses (¶¶ 48, 49). Plaintiff contends  
20 that these letters constituted “Direct and Constructive Notice” to the County that it would be  
21 liable for all future liability arising from its error (¶ 50).  
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24 <sup>3</sup> Plaintiff has multiple disabilities, including diabetes and pancreatitis (¶¶ 35). He walks with a cane, and  
25 occasionally needs to use a walker or wheelchair (¶ 34).

26 <sup>4</sup> In this and several other instances, the first amended complaint indicates the date as “2010” rather than  
27 “2009.” The Court has corrected this error whenever the context indicates that 2009 is the appropriate year of the  
event in question.

1 On July 17, 2009, the registration of Plaintiff's van expired (§ 51). Plaintiff knew that,  
2 because he had not paid the parking ticket, DMV would refuse to reregister it (§ 50). Plaintiff  
3 told DMV manager Barbara Helm-Mendez that the county intentionally miscalculated the 21-day  
4 rule so it could collect a double fine (§ 51). Plaintiff asked DMV for a hearing, which it denied  
5 (§ 51). Plaintiff also filed a claim for damages from the County, which the Board of Supervisors  
6 rejected on December 1, 2009 (§ 52).

8 On August 3, 2009, Plaintiff obtained a temporary motorcycle operator's permit so he  
9 could legally move a motorcycle (§ 68). He specifically did not elect to renew his driver's  
10 license at the same time (§ 68). Plaintiff's driver's license expired on August 30, 2009 (§ 67).

12 Plaintiff continued to drive the van even though it was no longer registered. He intended  
13 to provoke a traffic stop to force "due process re the withholding of his registration to address  
14 and resolve the matter" (§ 65). "[P]laintiff demanded due process even if it meant the possibility  
15 of arrest, the impounding of [P]laintiff's vehicle, potential loss of use of [P]laintiff's vehicle and  
16 other damages rather than be extorted by the County on its illegal parking scam" (§ 66).<sup>5</sup>

18 On September 6, 2009, Plaintiff was stopped by officers of Defendant Clovis Police  
19 Department and cited for driving an unregistered vehicle in violation of California Vehicle Code  
20 § 4000(a)(1) and for driving with an expired operating permit (§ 63). Plaintiff refused to sign the  
21 citations upon the officers' request. Ultimately, Plaintiff was arrested, and his vehicle was  
22 impounded and towed (§ 63).<sup>6</sup>

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24 <sup>5</sup> Plaintiff also sought to trigger a traffic stop while he was alone in his vehicle lest he be stopped with his  
25 young granddaughter in the car (§ 65). If Plaintiff were arrested in her presence, "she would be taken to CPS [and]  
traumatized for life" (§ 65).

26 <sup>6</sup> According to Plaintiff, but for the County's refusal to conduct an administrative hearing regarding the  
27 parking ticket, he would not have been arrested and his vehicle would not have been impounded (§ 63).

1           Somehow, Plaintiff ended up at Community Regional Medical Center’s emergency room  
2 (¶ 108). The first amended complaint does not allege whether Plaintiff was somehow injured or  
3 became ill in the course of his arrest or whether Plaintiff requested treatment of one or more of  
4 his existing medical problems. While detained in the emergency room, Plaintiff alleges that he  
5 was restrained by handcuffs or chains or both, and that his requests for administration of  
6 prescription medication(s) he had with him and of certain medical tests were denied (¶¶ 108, 109,  
7 111, 112). Police officers repeatedly advised Plaintiff that he could be released if he signed the  
8 traffic citations (¶¶ 110, 113). Plaintiff interpreted these statements as coercion or abuse.  
9  
10 Ultimately, Plaintiff signed the citations in order to be able to take his medication and to address  
11 Plaintiff’s perceived need to address symptoms that he recognized as impending hypoglycemia (¶  
12 114). Plaintiff alleges that his treatment (or lack of treatment) in the emergency room was  
13 intended to coerce him to sign the citations against his will.  
14

15           Before Plaintiff’s trial on the traffic citations, Plaintiff attempted to renew his driver’s  
16 license but was unable to do so (¶ 69). At one point, a DMV employee told Plaintiff that, since  
17 he had a pending application for a motorcycle permit, he would need to surrender the motorcycle  
18 permit before DMV could process his driver’s license application (¶ 69). Plaintiff refused to  
19 surrender the motorcycle permit unless DMV would agree to refund the \$14.00 fee that Plaintiff  
20 had paid for it (¶ 70). DMV refused (¶ 70).  
21

22           Plaintiff’s trial was scheduled for December 22, 2009. Because “Plaintiff ha[d] previous  
23 dealings with the Fresno Superior Court and believes they are corrupt,” he moved for a  
24 stenographic reporter and verbatim record of the proceedings (¶71). Plaintiff also subpoenaed as  
25 witnesses DMV manager Helm-Mendez, Parking Ticket Service Center Supervisor Armando  
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1 Hindman and employee Brian Varela, to testify that Plaintiff could not receive a driver's license  
2 unless he surrendered the motorcycle permit and that DMV would not refund the fee paid for the  
3 motorcycle permit if Plaintiff surrendered it (§§ 70, 71, 72).

4  
5 Plaintiff, two unnamed Clovis police officers, Hindman and Varela were present at trial  
6 (§ 73). Helm-Mendez declined to appear (§74). Because no district attorney or city attorney was  
7 present, Plaintiff alleges that Judge Fain assumed the role of prosecutor and was biased against  
8 Plaintiff (§ 73).

9  
10 Judge Fain denied Plaintiff's motion for a bench warrant to compel Helm-Mendez's  
11 attendance (§ 78). Plaintiff contends that because Helm-Mendez was to have provided the  
12 foundation for the testimony of Hindman and Varela, he was unable to present Hindman's and  
13 Varela's testimony (§ 80).

14 **III. Pleading Standards**

15 Rule 8(a)'s simplified pleading standard applies to all civil actions, with limited  
16 exceptions," none of which applies to § 1983 actions. *Swierkiewicz v. Sorema N. A.*, 534 U.S.  
17 506, 512 (2002). Pursuant to Rule 8(a), a complaint must contain "a short and plain statement of  
18 the claim showing that the pleader is entitled to relief . . ." Fed. R. Civ. P. 8(a). "Such a  
19 statement must simply give the defendant fair notice of what the plaintiff's claim is and the  
20 grounds upon which it rests." *Swierkiewicz*, 534 U.S. at 512. Detailed factual allegations are not  
21 required, but "[t]hreadbare recitals of the elements of the cause of action, supported by mere  
22 conclusory statements, do not suffice." *Ashcroft v. Iqbal*, \_\_\_ U.S. \_\_\_, 129 S.Ct. 1937, 1949  
23 (2009), *citing Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "Plaintiff must set  
24 forth sufficient factual matter accepted as true, to 'state a claim that is plausible on its face.'"  
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1 *Iqbal*, 129 S.Ct. at 1949, quoting *Twombly*, 550 U.S. at 555. While factual allegations are  
2 accepted as true, legal conclusions are not. *Iqbal*, 129 S.Ct. at 1949.

3 Although accepted as true, “[f]actual allegations must be [sufficient] to raise a right to  
4 relief above the speculative level.” *Twombly*, 550 U.S. at 555 (*citations omitted*). A plaintiff  
5 must set forth “the grounds of his entitlement to relief,” which “requires more than labels and  
6 conclusions, and a formulaic recitation of the elements of a cause of action.” *Id.* at 555-56  
7 (*internal quotation marks and citations omitted*). To adequately state a claim against a defendant,  
8 a plaintiff must set forth the legal and factual basis for his claim.  
9

#### 10 **IV. Preliminary Matters**

##### 11 **A. Class Action**

12 Plaintiff proposes to broaden the scope of his *qui tam* action and convert this case to a  
13 class action. Federal Rule of Civil Procedure 23(a) provides:  
14

15 One or more members of a class may sue or be sued as representative parties on  
16 behalf of all members only if:

- 17 (1) the class is so numerous that joinder of all members is impracticable;
- 18 (2) there are questions of law or fact common to the class;
- 19 (3) the claims or defenses of the representative parties are typical of the claims or  
20 defenses of the class; and
- 21 (4) the representative parties will fairly and adequately protect the interests of the  
22 class.

23 That the action in question are being prosecuted *pro se* is fatal to the requirement that  
24 “the representative parties will fairly and adequately protect the interests of the class.” Fed. R..  
25 Civ. Proc. 23(a)(4). Plaintiff is a layman who could not proceed to represent others in a class  
26 action.  
27

[L]aymen such as plaintiffs--who do have an absolute right to represent  
themselves individually--are not entitled to practice law by representing others.

1 That absolute prohibition reflects in part the societal judgment that nonlawyers do  
2 not possess the legal training and expertise necessary to protect class interests.  
3 Over and above that the potential for conflicts of interest militate against  
4 certifying a class in which the class representative (even though a lawyer) also  
5 seeks to act as class counsel.

6 *Harris v. Spellman*, 150 F.R.D. 130, 132 n. 2 (N.D. Ill. 1993).

7 **B. Color of State Law: Private Parties**

8 The first amended complaint includes constitutional claims against Community Regional  
9 Medical Center, a non-governmental entity. In addition, as this Court understands the first  
10 amended complaint, some of the John Does are intended to be Medical Center employees.

11 Generally, private parties are not acting under color of state law. *See Price v. Hawaii*, 939 F.2d  
12 702, 707-08 (9<sup>th</sup> Cir. 1991), *cert. denied*, 503 U.S. 938 (1992). If a private party conspires with  
13 state officials to deprive others of constitutional rights, however, the private party is acting under  
14 color of state law. *See Tower v. Glover*, 467 U.S. 914, 920 (1984); *Dennis v. Sparks*, 449 U.S.  
15 24, 27-28 (1980); *Franklin v. Fox*, 312 F.3d 423, 441 (9<sup>th</sup> Cir. 2002); *DeGrassi v. City of*  
16 *Glendora*, 207 F.3d 636, 647 (9<sup>th</sup> Cir. 2000); *George v. Pacific-CSC Work Furlough*, 91 F.3d  
17 1227, 1231 (9<sup>th</sup> Cir. 1996) (per curiam), *cert. denied*, 519 U.S. 1081 (1997); *Kimes v. Stone*, 84  
18 F.3d 1121, 1126 (9<sup>th</sup> Cir. 1996); *Howerton v. Gabica*, 708 F.2d 380, 383 (9<sup>th</sup> Cir. 1983).

19 “To prove a conspiracy between the state and private parties under [§] 1983, the  
20 [plaintiff] must show an agreement or meeting of minds to violate constitutional rights. To be  
21 liable, each participant in the conspiracy need not know the exact details of the plan, but each  
22 must at least share the common objective of the conspiracy.” *United Steelworkers of America v.*  
23 *Phelps Dodge Corp.*, 865 F.2d 1539, 1540-41 (9<sup>th</sup> Cir.) (en banc), *cert. denied*, 493 U.S. 809  
24 (1989) (citations and internal quotations omitted). *See also Franklin*, 312 F.3d at 441;  
25  
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1 *Mendocino Environmental Center v. Mendocino County*, 192 F.3d 1283, 1301-02 (9<sup>th</sup> Cir. 1999);  
2 *Gilbrook v. City of Westminster*, 177 F.3d 839, 856-57 (9<sup>th</sup> Cir.), *cert. denied*, 528 U.S. 1061  
3 (1999); *Taylor v. List*, 880 F.2d 1040, 1048 (9<sup>th</sup> Cir. 1989). Conclusory allegations are  
4 insufficient to state a claim of conspiracy. *See Simmons v. Sacramento County Superior Court*,  
5 318 F.3d 1156, 1161 (9<sup>th</sup> Cir. 2003); *Radcliffe v. Rainbow Construction Co.*, 254 F.3d 772, 783-  
6 84 (9<sup>th</sup> Cir.), *cert. denied*, 534 U.S. 1020 (2001); *Price*, 939 F.2d at 708-09.

8 Plaintiff's fanciful and conclusory allegations do not allege a cognizable claim that  
9 Community Regional Medical Center or any of its employees conspired to violate Plaintiff's  
10 constitutional rights. Accordingly, this Court recommends all § 1983 claims against Community  
11 Regional Medical Center or its employees be dismissed. Nonetheless, these findings and  
12 recommendations will address Community Regional Medical Center's potential liability in each  
13 claim set forth against it the first amended complaint.  
14

15 **C. Defendants Nelson and Baldwin**

16 Defendants Nelson and Baldwin are included within the caption and identified in the  
17 preliminary paragraphs of the first amended complaint, but no substantive allegations against  
18 them are set forth anywhere else in the first amended complaint. Accordingly, this Court  
19 recommends that Defendants Nelson and Baldwin be dismissed from this case, with prejudice.  
20

21 **V. Legal Issues Raised in Introductory Paragraphs of First Amended Complaint**

22 **A. Americans With Disabilities Act (42 U.S.C. § 12101 et seq.)**

23 Plaintiff contends that, because he is a qualified person with a disability, he requires  
24 "reasonable modifications to the rules, policies or practices and/or provision of special services  
25 for the receipt of benefits and/or participation in the programs or activities of a public entity"  
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1 under 42 U.S.C. § 12131(2). Accordingly, Plaintiff assumes that he was entitled to park in the  
2 county lot so long as an empty space was available, even though the lot was not otherwise  
3 available for public parking.

4  
5 Subchapter II of the ADA addressing public services defines a “qualified individual with  
6 a disability”:

7 The term “qualified individual with a disability” means an individual with a  
8 disability who, with or without reasonable modifications to rules, policies, or  
9 practices, the removal of architectural, communication, or transportation barriers,  
10 or the provision of auxiliary aids and services, meets the eligibility requirements  
11 for the receipt of services or the participation in programs or activities provided by  
12 the public entity.

13 42 U.S.C. § 12131(2).

14 The first amended complaint alleges facts sufficient to recognize that Plaintiff is a qualified  
15 person with a disability. Nonetheless, this statutory section only defines the terms used in this  
16 section of the ADA. It does not, of itself, grant or prohibit anything to a qualified disabled  
17 person or to anyone else.

18 The relevant statutory section is 42 U.S.C. § 12132, which provides, in pertinent part, that  
19 “no qualified individual with a disability shall, by reason of such disability, be excluded from  
20 participation in or be denied the benefits of services, programs, or activities of a public entity, or  
21 be subjected to discrimination by such entity.” To establish a violation of Title II of the ADA, a  
22 plaintiff must allege three elements: (1) disability, (2) denial of a public benefit, and (3) that the  
23 denial of benefit or discrimination was solely because of the plaintiff’s disability. *Dillery v. City*  
24 *of Sandusky*, 398 F.3d 562, 567 (6<sup>th</sup> Cir. 2005); *Henrietta D. v. Bloomberg*, 331 F.3d 261, 272

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1 (2d Cir. 2003), *cert. denied*, 541 U.S. 936 (2004); *Concerned Parents to Save Dreher Park Ctr.*  
2 *v. City of West Palm Beach*, 846 F.Supp. 986, 990 (S.D. Fla. 1994).

3           The ADA does not entitle disabled persons to park in no-parking zones. *Douris v.*  
4 *Newtown Borough, Inc.*, 207 Fed.Appx. 242, 244 (3d Cir. 2006). “[N]othing in the Act, its  
5 purpose, or the regulations can reasonably be read to give disabled parkers access to areas that  
6 would not be available to them if they were not disabled.” *Kornblau v. Dade County*, 86 F.3d  
7 193, 194 (11<sup>th</sup> Cir. 1996). “The purpose of the Act is to place those with disabilities on an equal  
8 footing, not to give them an unfair advantage.” *Id.*, quoting *In re Rubenstein*, 637 A.2d 1131  
9 (Del. Sup. 1994); *Fortyune v. American Multi-Cinema, Inc.*, 364 F.3d 1075, 1086 (9<sup>th</sup> Cir. 2004).  
10 If a disabled person is denied access to an area or facility that is also off-limits to an able-bodied  
11 person, no discrimination has occurred since the denial of the benefit was not solely the result of  
12 the person’s disability.

13           Regulations promulgated under ADA do not prohibit a public building’s having separate  
14 parking lots for employees and visitors. *Kornblau*, 86 F.3d at 195. In *Mitchell v. City of*  
15 *Kalamazoo*, 2006 WL 3063433 at \*6 (W.D. Mich. October 26, 2006) (No. 4:05-CV-57), the  
16 plaintiff, a disabled juror, sought to distinguish her request to park in the courthouse’s employee  
17 lot from *Kornblau* by pointing out that the courthouse employee lot included spaces for  
18 maintenance, law enforcement, county officials, and deliveries as well as the building’s  
19 employees. The court rejected her argument, noting that the parking scheme was facially neutral  
20 and, since all jurors were treated equally, had no discriminatory effect. *Id.*

21           In *Doran v. 7-Eleven, Inc.*, 524 F.3d 1034, 1048 (9<sup>th</sup> Cir. 2008), applying the same  
22 principle to public accommodation by commercial establishments, the court rejected a disabled  
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1 patron's claim of entitlement to use the employee restroom in the defendant's convenience store.  
2 "In such 'mixed-use' facilities, where only part of the facility is open to the public, the portion  
3 that is closed to the public is not a place of accommodation and thus is not subject to Title III of  
4 the ADA." *Id.* See also *Olinger v. U.S. Golf Ass'n*, 205 F.3d 1001, 1004 (7<sup>th</sup> Cir. 2000), *vacated*  
5 *on other grounds*, 532 U.S. 1064 (2001); *Jankey v. Twentieth Century Fox Film Corp.*, 14  
6 F.Supp.2d 1174, 1179 (C.D. Cal. 1998), *aff'd*, 212 F.3d 1159 (9<sup>th</sup> ; *Independent Housing Services*  
7 *of San Francisco v. Fillmore Center Assocs.*, 840 F.Supp. 1328, 1344 (N.D. Cal. 1993).  
8

9 Police officers appropriately ticketed Plaintiff for parking his vehicle in a county lot in  
10 which public parking was not permitted.  
11

12 **B. Shuttlesworth**

13 Plaintiff asserts that the Supreme Court's holding in *Shuttlesworth v. City of Birmingham*,  
14 *Ala.*, 394 U.S. 147 (1969), entitled him to drive without a driver's license. In *Shuttlesworth*, a  
15 civil rights era case, the plaintiff was convicted of violating a city ordinance that prohibited  
16 parades, processions, or other public demonstrations conducted without a permit from the city  
17 commission. 394 U.S. at 150. In deciding whether to grant the required permit, commission  
18 members were guided "only by their own ideas of 'public welfare, peace, safety, health, decency,  
19 good order, morals or convenience.'" *Id.* The Supreme Court rejected the Circuit Court's attempt  
20 to reform the ordinance and struck the ordinance down, stating, "It is evident that the ordinance  
21 was administered so as . . . 'to deny or unwarrantably abridge the right of assembly and the  
22 opportunities for the communication of thought \* \* \* immemorially associated with resort to  
23 public places.'" *Id.* at 159.  
24  
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26 ///

1 California's ensuring public safety by licensing drivers on public thoroughfares is not  
2 akin to Birmingham's restricting parade permits only to those whose political speech conformed  
3 to the subjective preferences of its city council. *Shuttlesworth* does not authorize Plaintiff or any  
4 other California resident to drive without a license.  
5

6 **C. Fifth and Fourteenth Amendment Claim**

7 Plaintiff contends that Defendants Fresno County and the Parking Ticket Service Center  
8 violated his due process rights under the Fifth and Fourteenth Amendment to the U.S.  
9 Constitution by denying him the administrative hearing to which he was entitled under California  
10 Vehicle Code § 40215. Plaintiff alleges that his request for an administrative hearing was  
11 refused as untimely because the reviewing entity (unspecified in the first amended complaint)  
12 intentionally miscalculated the 21-day period in which Plaintiff could request the hearing.  
13 Plaintiff misunderstands both the definition of the date of mailing and the statutory requirements  
14 for mailed hearing requests. As a result, the facts alleged in the first amended complaint do not  
15 support a need for this Court to conduct a due-process analysis.  
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18 California law considers parking violations as civil offenses subject to civil penalties and  
19 administrative enforcement. California Vehicle Code §§ 40200, 40203.5(b). The statutory  
20 scheme sets forth a two-step process for contesting a parking ticket. First, within 21 days of the  
21 issuance of the ticket the person may request review by the processing agency. California  
22 Vehicle Code § 40215(a). The processing agency must then conduct an investigation, either with  
23 its own staff or by the issuing agency, and either dismiss the citation or deny the person's request.  
24 California Vehicle Code §§ 40215(a). Plaintiff requested review, claiming "excusable neglect,  
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1 inadvertence or harmless error.”<sup>7</sup> Defendant Fresno County Parking Ticket Service Center  
2 conducted its review and denied Plaintiff’s request.

3 If the person is not satisfied with the results of the initial review, California Vehicle Code  
4 § 40215(b) provides, in pertinent part:  
5

6 If the person is dissatisfied with the results of the initial review, the person may  
7 request an administrative hearing of the violation no later than 21 calendar days  
8 following the mailing of the results of the issuing agency’s initial review. The  
9 request may be made by telephone, in writing, or in person. The person  
requesting the administrative hearing shall deposit the amount of the parking  
penalty with the processing agency.

10 This is the point at which Plaintiff’s request for an administrative hearing began to go  
11 wrong. On May 26, 2009, the reviewing agency issued a written decision declining to dismiss  
12 Plaintiff’s parking citation. The envelope transmitting the decision was postmarked May 29,  
13 2009. Plaintiff treated the postmark as the date of mailing and concluded that the 21-day period  
14 to request an administrative hearing ended June 19, 2009.

15 The date of mailing and the postmark are not synonymous. *See, e.g., Humphrey v.*  
16 *Magnus*, 2005 WL 519304 at \*3 (Ca. App. March 7, 2005) (No. E036543); *In re Marriage of*  
17 *Ruffino*, 2003 WL 22093870 at \*3 (Cal. App. 4<sup>th</sup> Dist. September 10, 2003) (No. G030597). The  
18 “mailing date” is the date on which a notice is placed in the mail, properly addressed and with  
19 appropriate postage attached. California Code of Civil Procedure § 1013(a); *Sharp v. Union*  
20 *Pacific R.R. Co.*, 8 Cal.App.4th 357, 361 (1992). Where a document did not specify its mailing  
21 date, a California appellate court rejected a plaintiff’s reliance on a postmark, observing that the  
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26 <sup>7</sup> The true reason, as Plaintiff admits in his first amended complaint, was that, since parking in the county  
27 lot was more convenient for Plaintiff than searching for a legal parking place, Plaintiff unilaterally determined that  
the parking restrictions did not apply to him and parked in a location in which he was not authorized to park.

1 plaintiff could have been determined the mailing date simply by requesting a copy of the  
2 document from the court. *Humphrey*, 2005 WL 519304 at \*3. This means that DMV properly  
3 calculated the 21-day period from the date of mailing and that Plaintiff could request an  
4 administrative hearing only until June 16, 2009.  
5

6 Plaintiff's second error was to wait until the last minute to mail his request for an  
7 administrative hearing. Since the request was postmarked on June 16, 2009, the DMV could not  
8 have received it on or before June 16. California Vehicle Code § 40309 (*emphasis added*)  
9 provides:

10  
11 Whenever a notice of parking violation is issued in accordance with Sections  
12 40202 and 40203, or a delinquent parking violation is issued pursuant to Section  
13 40206, the amount fixed as a parking penalty for the violation charged may be  
14 forwarded by United States mail to the person authorized to receive a deposit of  
15 the parking penalty. **Payment of a parking penalty forwarded by mail is  
effective only when actually received, and the presumption that a letter duly  
directed and mailed was received does not apply.** Section 40512 is applicable  
to a parking penalty posted pursuant to this section.

16 Accordingly, the County properly rejected Plaintiff's request for an administrative hearing,  
17 noting "Envelope Postmarked 6/16/10. Past 21 days" (§ 47). The notice also requested payment  
18 of \$70.00, double the original fine. Plaintiff never paid.

19 After exhausting the administrative review process, a contestant may obtain judicial  
20 review of the decision of the hearing examiner by filing an appeal in the superior court.  
21 California Vehicle Code § 40230. Logically, Plaintiff's next step would have been to file an  
22 appeal to the Superior Court, seeking to reversal of the administrative decision, based on  
23 Plaintiff's and DMV's disagreement about the method of counting the time. Plaintiff did not do  
24 so. Instead, Plaintiff wrote letters to various Defendants complaining that the County had erred  
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27

1 in counting the days in which he could request the administrative hearing; wrote a letter to the  
2 County notifying it that it would be liable for all harm, injury and damages that Plaintiff might  
3 incur as a result of its error; and filed a claim for damages against the County, which the Board of  
4 Supervisors later denied.  
5

6 Plaintiff's overconfidence in his amateur legal abilities led him to by-pass the next legal  
7 step of appealing to the California Superior Court, and instead to "make a federal case out of it."  
8 Plaintiff's inability to comply with the administrative and judicial rules of procedure of the DMV  
9 and California courts does not constitute a violation of his Fifth and Fourteenth Amendment  
10 rights.  
11

12 **D. Qui Tam Action**

13 **1. Failure to Follow a Court Order**

14 This Court's screening order explicitly stated, "Plaintiff may not change the nature of this  
15 suit by adding new, unrelated claims in his amended complaint" (Doc. 4 at 19). By re-styling the  
16 first amended complaint as a *qui tam* action and purporting to add claims under California  
17 Government Code § 12652 and California Business and Professions Code § 17204, Plaintiff  
18 willfully disobeyed this Court's order.  
19

20 Local Rule 11-110 provides that "failure of counsel or of a party to comply with these  
21 Local Rules or with any order of the Court may be grounds for the imposition by the Court of any  
22 and all sanctions . . . within the inherent power of the Court." District courts have the inherent  
23 power to control their dockets and "in the exercise of that power, they may impose sanctions  
24 including, where appropriate . . . dismissal of a case." *Thompson v. Housing Authority of City of*  
25 *Los Angeles*, 782 F.2d 829, 831 (9th Cir.), *cert. denied*, 479 U.S. 829 (1986). A court may  
26  
27



1 dismiss an action, with prejudice, based on a party's failure to obey a court order. *See Malone v.*  
2 *U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987), *cert. denied*, 488 U.S. 819 (1988)  
3 (dismissal for failure to comply with court order). In determining whether to dismiss an action  
4 for failure to obey a court order, the court must consider several factors: "(1) the public's interest  
5 in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of  
6 prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits;  
7 and (5) the availability of less drastic sanctions." *Thompson*, 782 F.2d at 831; *Malone*, 833 F.2d  
8 at 130.  
9

10  
11 The public's interest in expeditiously resolving this litigation and the Court's interest in  
12 managing its docket weigh in favor of dismissal. The third factor, risk of prejudice to  
13 defendants, also weighs in favor of dismissal, since a presumption of injury arises from the  
14 occurrence of unreasonable delay in prosecuting an action. *Anderson v. Air West, Inc.*, 542 F.2d  
15 522, 524 (9th Cir. 1976). The fourth factor -- public policy favoring disposition of cases on their  
16 merits -- is greatly outweighed by the factors in favor of dismissal discussed in these findings and  
17 recommendations. Finally, this Court explicitly directed Plaintiff not to add any new or unrelated  
18 claims to his amended complaint. Accordingly, this Court recommends dismissal with prejudice  
19 of Plaintiff's "*qui tam*" claims. Dismissal of this claim does not depend solely on Plaintiff's  
20 disobedience to the Court's directives, however, since the first amended complaint fails to  
21 establish a cognizable *qui tam* action.  
22

## 23 24 **2. Qui Tam Action**

25 A *qui tam* action is "an action brought by an informer, under a statute which establishes a  
26 penalty for the commission or omission of a certain act, and provides that the same shall be  
27

1 recoverable in a civil action, part of the penalty to go to any person who will bring such an action  
2 and the remainder to the state or some other institution.” *Black’s Law Dictionary* (6<sup>th</sup> ed.) at  
3 1251 (West 1990). The first amended complaint purports to bring Plaintiff’s multiplicity of  
4 federal statutory and constitutional claims as well as claims under California state law in the form  
5 of a *qui tam* action under California Government Code § 12652 and California Business and  
6 Professions Code § 17204.

8 California Government Code § 12652(c)(1) authorizes investigation and prosecution of  
9 false claims, as defined by California Government Code § 12651. Although the duty to  
10 investigate and prosecute is assigned to the Attorney General, under certain circumstances, an  
11 individual may bring a *qui tam* action to compel investigation and prosecution:  
12

13 A person may bring a civil action for a violation of this article for the person and  
14 either for the State of California in the name of the state, if any state funds are  
15 involved, or for a political subdivision in the name of the political subdivision , if  
political subdivision funds are exclusively involved.

16 California Government Code § 12652 (c)(1).

17 Plaintiff reasons that this law applies because he believes that the Defendants conspired to  
18 miscount the 21-day period in which Plaintiff could request an administrative hearing as a means  
19 of doubling the parking penalty owed for the original citation. As discussed above, however,  
20 Plaintiff, not DMV, miscalculated the time period for the hearing request. In addition, there was  
21 no false claim involving public funds. The first amended complaint alleges no facts indicating  
22 the existence of a false claim as defined by California Government Code § 12651.  
23

24 As part of the subsection addressing preservation and regulation of business competition,  
25 California Business and Professions Code § 17204 authorizes the Attorney General and certain  
26  
27

1 other government officials to seek injunctions for relief of persons or entities who have lost  
2 money or property as a result of unfair business competition. In the absence of any allegation of  
3 unfair business competition, this statute has no application to Plaintiff's statutory and  
4 constitutional claims.  
5

6 The first amended complaint fails to state a cognizable *qui tam* claim.

7 **E. RICO Claims**

8 For the first time in his first amended complaint, Plaintiff alleges that this action does not  
9 seek review of any of the lower court's "decisions, findings, conclusions of law, or . . . relief in  
10 the underlying lower trial court infractions whatsoever" (Doc. 6 at ¶ 82). Instead, Plaintiff  
11 alleges RICO claims against Defendants County of Fresno Parking Citation Service Center, its  
12 Supervisor Hindman and employee Varela; the Fresno County Board of Supervisors and  
13 Poochigian; the Department of Motor Vehicles, Helm-Mendez,<sup>8</sup> and unnumbered John Doe  
14 Defendant-employees of the Clovis DMV branch, including employee J002; Superior Court  
15 County of Fresno, Judge Fain,<sup>9</sup> and various unnamed court employees; the Fresno County Clerk  
16 of Court's office, Matilda Molina and Chan (last name unknown), and additional unnamed  
17 employees; Superior Court of Fresno, Appellate Division, Judge Donald S. Black, Judge Kent  
18 Hamlen, and other unnamed appellate division employees; and City Attorney David J. Wolfe,  
19 Deputy City Attorney Jenell Van Bindsbergen,<sup>10</sup> and an unnamed Deputy City Attorney.  
20  
21  
22

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23 <sup>8</sup> Helm-Mendez is not named as a Defendant in the caption or in the initial paragraphs identifying the  
24 Defendants.

25 <sup>9</sup> Judge Fain is not named as a Defendant in the caption or in the initial paragraphs identifying the  
26 Defendants.

27 <sup>10</sup> Wolfe and Van Bindsbergen are not named as Defendants in the caption or in the initial paragraphs  
identifying the Defendants.

1 Alleging no factual support whatsoever, Plaintiff pleads only his legal conclusion that all of the  
2 Defendants named in this claim were RICO conspirators who worked together to impose a  
3 double parking fine on Plaintiff by miscalculating the time period in which he could request an  
4 administrative hearing. As previously discussed, Defendants did not miscalculate the time  
5 period: Plaintiff did. Further, no facts alleged in the first amended complaint suggest that the  
6 diverse group of Defendants included in this claim ever conspired in any way.  
7

8 As previously discussed, this Court's screening order explicitly stated, "Plaintiff may not  
9 change the nature of this suit by adding new, unrelated claims in his amended complaint" (Doc. 4  
10 at 19). The complaint did not include a RICO claim. Even if Plaintiff had provided sufficient  
11 factual allegations to support his assertions and state a claim upon which relief might be granted,  
12 this claim would still violate this Court's screening order precluding the introduction of another  
13 new claim into the first amended complaint. The Court recommends that this claim be dismissed  
14 with prejudice.  
15

16 **F. Eighth Amendment Claim: Deliberate Indifference to Medical Need**

17 Plaintiff alleges that Defendant Police Officers Riddle, Roseno, Baines and McFadden,  
18 the Clovis Police Department, and Community Regional Medical Center subjected him to cruel  
19 and unusual punishment incident to his arrest. Despite knowing that Plaintiff was disabled, these  
20 Defendants allegedly withheld pain medication and insulin as punishment or an inducement to  
21 coerce Plaintiff to sign his traffic citation. They denied his requests for a blood draw, lipase level  
22 check, and white blood cell count. They "tortured, embarrassed, humiliated and degraded"  
23 Plaintiff and continuously stated that, if Plaintiff would sign the traffic citation, he could have his  
24

25  
26 ///

1 medications and receive medical treatment. They failed to conduct an adequate medical  
2 examination.

3  
4 Because a pretrial detainee has not been convicted of a crime, but has only been arrested,  
5 the detainee's right to receive adequate medical care derives from the substantive Due Process  
6 Clause of the Fourteenth Amendment rather than from the Eighth Amendment's protection  
7 against cruel and unusual punishment. *Gibson v. County of Washoe, Nevada*, 290 F.3d 1175,  
8 1187 (9<sup>th</sup> Cir. 2002), *cert. denied*, 537 U.S. 1106 (2003). *See also Bell v. Wolfish*, 441 U.S. 520,  
9 535 (1979); *Frost v. Agnos*, 152 F.3d 1124, 1128 (9<sup>th</sup> Cir. 1998); *Carnell v. Grimm*, 74 F.3d 977,  
10 979 (9<sup>th</sup> Cir. 1996). Nonetheless, the Due Process Clause imposes, at a minimum, the same duty  
11 to provide adequate medical care to those incarcerated as imposed by the Eighth Amendment:  
12  
13 “persons in custody ha[ve] the established right to not have officials remain deliberately  
14 indifferent to their serious medical needs.” *Gibson*, 290 F.3d at 1187, *quoting Carnell*, 74 F.3d  
15 at 979. Accordingly, a court evaluating a pretrial detention claim may rely on decisions applying  
16 the Eighth Amendment standards for claims of inadequate medical care to convicted prisoners.

17  
18 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an  
19 inmate must show ‘deliberate indifference to serious medical needs.’” *Jett v. Penner*, 439 F.3d  
20 1091, 1096 (9<sup>th</sup> Cir. 2006), *quoting Estelle v. Gamble*, 429 U.S. 97 (1976). The two-part test for  
21 deliberate indifference requires the plaintiff to show (1) “‘a serious medical need’ by  
22 demonstrating that ‘failure to treat a prisoner’s condition could result in further significant injury  
23 or the unnecessary and wanton infliction of pain,’” and (2) “‘the defendant’s response to the need  
24 was deliberately indifferent.” *Jett*, 439 F.3d at 1096, *quoting McGuckin v. Smith*, 974 F.2d 1050,  
25 1059 (9<sup>th</sup> Cir. 1992), *overruled on other grounds, WMX Techs., Inc. v. Miller*, 104 F.3d 1133,  
26  
27

1 1136 (9th Cir. 1997) (en banc) (*internal quotations omitted*). Deliberate indifference is shown by  
2 “a purposeful act or failure to respond to a prisoner’s pain or possible medical need, and harm  
3 caused by the indifference.” *Jett*, 439 F.3d at 1096, *citing McGuckin*, 974 F.2d at 1060.

4 Deliberate indifference may be manifested “when prison officials deny, delay or intentionally  
5 interfere with medical treatment, or it may be shown by the way in which prison physicians  
6 provide medical care.” *Jett*, 439 F.3d at 1096, *citing McGuckin*, 974 F.2d at 1060 (*internal*  
7 *quotations omitted*).

8  
9 Before a court can conclude that a prisoner’s civil rights have been violated, “the  
10 indifference to his medical needs must be substantial. Mere ‘indifference,’ ‘negligence,’ or  
11 ‘medical malpractice’ will not support this cause of action.” *Broughton v. Cutter Laboratories*,  
12 622 F.2d 458, 460 (9<sup>th</sup> Cir. 1980), *citing Estelle*, 429 U.S. at 105-06. Deliberate indifference is  
13 “a state of mind more blameworthy than negligence” and “requires ‘more than ordinary lack of  
14 due care for the prisoner’s interests or safety.’” *Farmer v. Brennan*, 511 U.S. 825, 835 (1994),  
15 *quoting Whitley v. Albers*, 475 U.S. 312, 319 (1986).

16  
17 Delays in providing medical care may manifest deliberate indifference. *Estelle*, 429 U.S.  
18 at 104-05. To establish a claim of deliberate indifference arising from delay, a plaintiff must  
19 show that the delay was harmful. *See Berry v. Bunnell*, 39 F.3d 1056, 1057 (9<sup>th</sup> Cir. 1994) (per  
20 curiam); *McGuckin*, 974 F.2d at 1059; *Wood v. Housewright*, 900 F.2d 1332, 1335 (9<sup>th</sup> Cir.  
21 1990); *Hunt v. Dental Dep’t*, 865 F.2d 198, 200 (9<sup>th</sup> Cir. 1989); *Shapley v. Nevada Board of State*  
22 *Prison Comm’rs*, 766 F.2d 404, 407 (9<sup>th</sup> Cir. 1985) (per curiam). Plaintiff does not allege any  
23 physical harm arising from the delay: he complains only that he signed the traffic citations  
24 because he feared physical harm if he did not take his medications on schedule.  
25  
26  
27

1 Courts generally defer to prison official's decisions to delay administering prescription  
2 drugs to prisoners until they have been able to confirm the identity of the drug in question and  
3 verify that it was properly prescribed to the prisoner. Denial of prescription medication upon  
4 arrest generally does not satisfy the deliberate indifference standard if the plaintiff prisoner  
5 ultimately received his medication. *Wyatt v. County of Butte*, 2006 WL 3388550 (E.D.Cal.  
6 November 22, 2006) (No. 2:06-cv-1003-GEB-DAD). Existing cases reflect varying factual  
7 situations underlining the wisdom of officials' not automatically administering prescription  
8 medications in the detainee's possession until the substance's identity has been confirmed and  
9 the prescription verified. *See, e.g., Gibson*, 290 F.3d at 1183 (acknowledging Washoe County 's  
10 procedure requiring police officers to provide any prescription medications belonging to detainee  
11 to intake nurse for evaluation and determination whether to place it in detainee's secure property  
12 or to transfer it to infirmary for detainee's follow-up care); *Knowles-Browder v. California*  
13 *Forensic Medical Group Staff*, 2007 WL 210518 (E.D. Cal. January 26, 2007), *adopted by* 2007  
14 WL 763697 (E.D. Cal. March 9, 2007) (No. CIV S-05-1260 FCD DAD P) (upholding prison  
15 physicians' decision to discontinue administration of drug prescribed for prisoner before his  
16 arrest where medical records did not establish diagnosis for which the prescribed drug was  
17 appropriate and emergency room physician had prescribed drug on a trial basis); *Reynolds v.*  
18 *Verbeck*, 2006 WL 3716589 (N.D. Cal. December 15, 2006) (No. C 05-05201 CRB) (noting, in  
19 dicta, that jail personnel would need to contact the prescribing doctor to verify a detainee's  
20 prescription); *Allen v. Daniels*, 2006 WL 1704514 (D. Ore. June 14, 2006) (No. 05-1277-BR)  
21 (finding without merit the plaintiff's claims that prescription medicine for his lung cancer was  
22 incorrectly withheld where official's attempts to verify the medication found no record of a lung  
23  
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1 cancer diagnosis or of prescriptions to detainee of the drugs in question). “Confiscating  
2 prescription medication . . . from a detainee on being placed in jail clearly does not violate the  
3 constitution.” *Davis v. Clark County Detention Center*, 2010 WL 3070431 at \* 4 (D. Nev.  
4 August 4, 2010) (No. 2:09-cv-02196-RCJ-LRL). That Defendants did not automatically dispense  
5 Plaintiff’s prescription on his request was not a constitutional offense.  
6

7 Without an additional supporting facts, the officers’ statements that if Plaintiff signed the  
8 citations, he could be released to take his medication and to secure any medical test he desired  
9 appears to be no more than a statement of fact. Plaintiff could have simply resolved the ordinary  
10 restrictions accompanying his arrest, with which he was apparently very unhappy, by signing the  
11 traffic citations as most motorists routinely do in the course of getting a ticket. The first  
12 amended complaint provides no facts about the circumstances of Plaintiff’s refusing to sign the  
13 citations and requiring the officers to arrest him. Plaintiff’s actions are particularly inexplicable  
14 since Plaintiff not only admits that his vehicle was unregistered and that his driver’s license had  
15 expired at the time the citations were issued, but contends that he specifically sought a traffic  
16 stop and citations as a means of forcing the issue of the administrative hearing that he believed  
17 was wrongfully denied.  
18

19  
20 Further, arresting officers do not generally render medical treatment or make decisions  
21 regarding administration of prescription medication or medical tests. Defendant police officers  
22 responded promptly and properly to Plaintiff’s complaints of discomfort and need for  
23 prescription medicine: they transported him to Community Medical Center’s emergency room to  
24 be cared for by medical professionals. Plaintiff alleges no cognizable claim against Defendants  
25 Riddle, Roseno, Baines and McFadden for deliberate indifference to serious medical needs. *See*  
26  
27



1 *Walker v. Fresno Police Department*, 249 Fed.Appx. 525, 526 (9<sup>th</sup> Cir. 2007), *cert. denied*, 552  
2 U.S. 1198 (2008) (affirming grant of summary judgment to defendant police officers on  
3 plaintiff's claim of inadequate medical attention following arrest since defendants took the  
4 plaintiff to a hospital emergency room soon after they arrested him). *See also Tatum v. City and*  
5 *County of San Francisco*, 441 F.3d 1090, 1099 (9<sup>th</sup> Cir. 2006) (holding that officers satisfied  
6 their duty to provide medical care to a suspect injured in the course of his arrest by summoning  
7 medical help to take detainee to hospital); *Maddox v. City of Los Angeles*, 792 F.2d 1408, 1415  
8 (9<sup>th</sup> Cir. 1986) (finding that jury could reasonably have concluded that police officers fulfilled  
9 their duty under the due process clause by taking injured detainee to a hospital for medical  
10 attention). *Cf. Gallagher v. City of Winlock, Washington*, 287 Fed.Appx. 568, 575-76 (9<sup>th</sup> Cir.  
11 2008) (reversing and remanding for further proceedings juvenile detainee's claim that officers  
12 were deliberately indifferent to her medical need by denying her request to take epilepsy  
13 medication, which resulted in her having a seizure while en route to detention facility).

14  
15  
16  
17       Emergency room personnel and Community Regional Medical Center Defendants did not  
18 violate Plaintiff's due process rights by failing to provide medication and administer tests  
19 according to Plaintiff's preferences or schedule. Mere differences of opinion between the  
20 detainee and the medical providers as to proper medical care do not give rise to a constitutional  
21 claim. *Jackson v. McIntosh*, 90 F.3d 330, 332 (9<sup>th</sup> Cir.), *cert. denied*, 519 U.S. 1029 (1996);  
22 *Sanchez v. Vild*, 891 F.2d 240, 242 (9<sup>th</sup> Cir. 1989); *Franklin v. Oregon*, 662 F.2d 1337, 1344 (9<sup>th</sup>  
23 Cir. 1981).

24  
25       The first amended complaint does not allege a cognizable claim for deliberate  
26 indifference to serious medical need.  
27

1           **G.     Eighth Amendment Claim: Physical Restraints**

2           Plaintiff further contends that Defendant police officers' handcuffing Plaintiff incident to  
3 his arrest constituted cruel and unusual punishment. Handcuffing a detainee in the course of his  
4 or her arrest is an accepted part of law enforcement that promotes the safety and security of both  
5 officers, detainees, and in this case, emergency room personnel. Not "every malevolent touch . . .  
6 gives rise to a federal cause of action." *Hudson v. McMillian*, 503 U.S. 1, 9 (1992). "The Eighth  
7 Amendment's prohibition of cruel and unusual punishments necessarily excludes from  
8 constitutional recognition *de minimis* uses of physical force, provided that the use of force is not  
9 of a sort repugnant to the conscience of mankind." *Id.* at 9-10 (*internal quotation marks and*  
10 *citations omitted*). That Plaintiff was restrained in the course of his arrest and emergency room  
11 visit does not offend the federal constitution.

12           **H.     Procedural Challenges to Traffic Court Proceedings**

13           Although the first amended complaint is less than clear on the proceedings and current  
14 status of Plaintiff's state court trial on his traffic violations, Plaintiff raises multiple claims based  
15 on alleged procedural errors in the course of trial. Plaintiff may not use a federal district court as  
16 a means to overcome or set aside questions integral to California courts' civil procedure.

17           Appellate jurisdiction of state court judgments rests in the United States Supreme Court,  
18 not in the federal district court. 28 U.S.C. § 1257. A federal district court lacks subject matter  
19 jurisdiction to hear an appeal of a state court judgment (the Rooker-Feldman Doctrine). *District*  
20 *of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.*,  
21 263 U.S. 413 (1923). *See Bianchi v. Rylaarsdam*, 334 F.3d 895, 896 (9<sup>th</sup> Cir. 2003), *cert. denied*,  
22 540 U.S. 1213 (2004). A federal claim must be dismissed for lack of subject matter jurisdiction  
23  
24  
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1 if the claims raised in the complaint are inextricably intertwined with the state court’s decisions  
2 so that adjudication of the federal claims would undercut the state ruling or require the district  
3 court to interpret the application of state laws or procedural rules. *Bianchi*, 334 F.3d at 898. Put  
4 another way, these procedural claims are inextricably intertwined with the state court judgment  
5 because the federal claim succeeds only to the extent that the state court erred in the course of  
6 Plaintiff’s trial and because the relief that Plaintiff requests in this federal claim would  
7 effectively reverse the state court’s decision or void its ruling. *Fontana Empire Center, LLC v.*  
8 *City of Fontana*, 307 F.3d 987, 992 (9<sup>th</sup> Cir. 2002). The Rooker-Feldman Doctrine applies to  
9 federal “cases brought by state-court losers complaining of injuries caused by state-court  
10 judgments rendered before the district court proceedings and inviting district court review and  
11 rejection of those judgments.” *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280,  
12 284 (2005).

13  
14  
15 Plaintiff’s claim seeks review of determinations made in the course of the state traffic  
16 court action and in matters intertwined with it. Because this Court lacks subject matter  
17 jurisdiction over Plaintiff’s claims of procedural errors in state court, this claim must be  
18 dismissed.  
19

20 **V. Numbered Claims**

21 **A. First Cause of Action: EMTALA (42 U.S.C. §1395dd(a))**

22  
23 Plaintiff first claims that Defendants Community Regional Medical Center, City of  
24 Clovis, Clovis Police Department, and Does 1-10 violated the provisions of the Emergency  
25 Medical Treatment and Active Labor Act (42 U.S.C. § 1395dd) (“EMTALA”) by failing to  
26 provide stabilizing treatment. EMTALA provides, in pertinent part:  
27

1 In the case of a hospital that has a hospital emergency department, if any  
2 individual (whether or not eligible for benefits under this subchapter) comes to the  
3 emergency department and a request is made on the individual's behalf for  
4 examination or treatment for a medical condition, the hospital must provide for an  
5 appropriate medical screening examination within the capability of the hospital's  
6 emergency department, to determine whether or not an emergency medical  
7 condition (within the meaning of subsection (e)(1) of this section) exists.

8 42 U.S.C. § 1395dd(a).

9 Police officers have no duties under EMTALA. Indeed, the statute does not even  
10 consider police officers or any person or entity other than hospitals. The legislative purpose of  
11 EMTALA is to ensure that adequate emergency medical treatment is provided to stabilize  
12 emergency room patients before hospitals transfer them elsewhere. *Jackson v. East Bay*  
13 *Hospital*, 246 F.3d 1248, 1254 (9<sup>th</sup> Cir. 2001). "The Committee [was] greatly concerned about  
14 the increasing number of reports that hospital emergency rooms [were] refusing to treat patients  
15 with emergency conditions if the patient [did] not have medical insurance." H.R. Rep. No. 241,  
16 99<sup>th</sup> Cong., 1<sup>st</sup> Sess., Part I. at 27 (1985), *reprinted in* 1986 U.S. Code & Admin. News 579, 605.

17 A hospital's first duty under EMTALA is to provide an "appropriate medical screening  
18 examination within the capability of the hospital's emergency department" to determine  
19 "whether or not an emergency medical condition exists." *Jackson*, 246 F.3d at 1254, *quoting* 42  
20 U.S.C. § 1395dd(a) (1986). An "emergency medical condition" is one "manifesting itself by  
21 acute symptoms of sufficient severity (including symptoms of severe pain) such that the absence  
22 of immediate medical attention could reasonably be expected to result in—(i) the placing of the  
23 health of the individual . . .in serious jeopardy, (ii) serious impairment to bodily functions, or (iii)  
24 serious dysfunction of any bodily organ or part . . ." *Jackson*, 246 F.3d at 1254, *quoting* 42  
25 U.S.C. § 1395dd(b)(1)(A) (1986). If the hospital detects an emergency medical condition,  
26  
27

1 EMTALA generally requires it to stabilize the patient before transfer. *Eberhardt v. City of Los*  
2 *Angeles*, 62 F.3d 1253, 1259 (9<sup>th</sup> Cir. 1995). No duty to stabilize the patient arises unless the  
3 hospital identifies an emergency medical condition. *Id.*  
4

5 Plaintiff does not allege that he was experiencing an emergency medical condition within  
6 the definition set forth in EMTALA. Plaintiff contends that he possess a chronic medical  
7 condition requiring him to take certain prescribed medications, that the hospital and unidentified  
8 arresting officers did not allow him to take the medication as he requested, and that the hospital  
9 failed to provide specific screening associated with Plaintiff's chronic pancreatic condition upon  
10 Plaintiff's request. EMTALA is not intended to address Plaintiff's claim. It is intended only to  
11 identify emergency medical conditions manifested by acute and severe symptoms and to ensure  
12 that the patient is not transferred or discharged without first having been stabilized. *Ardary v.*  
13 *Aetna Health Plans of California, Inc.*, 98 F.3d 496, 497 n. 2 (9<sup>th</sup> Cir. 1996), *cert. denied*, 520  
14 U.S. 1251 (1997).  
15

16 The first amended complaint does not state a cognizable EMTALA claim.  
17

18 **B. Second Cause of Action: Americans With Disabilities Act**

19 Title II of the Americans with Disabilities Act (ADA) "prohibit[s] discrimination on the  
20 basis of disability." *Lovell v. Chandler*, 303 F.3d 1039, 1052 (9<sup>th</sup> Cir. 2002), *cert. denied*, 537  
21 U.S. 1105 (2003).  
22

23 No individual shall be discriminated against on the basis of disability in  
24 the full and equal enjoyment of the goods, services, facilities, privileges,  
25 advantages, or accommodations of any place of public accommodation by any  
26 person who owns leases (or leases to), or operates a place of public  
27 accommodation.

42 U.S.C. § 12182(a).

1           “To establish a violation of Title II of the ADA, a plaintiff must show that (1) [he] is a  
2 qualified individual with a disability; (2) [he] was excluded from participation in or otherwise  
3 discriminated against with regard to a public entity’s services, programs, or activities; and (3)  
4 such exclusion or discrimination was by reason of [his] disability.” *Lovell*, 303 F.3d at 1052.  
5

6           Plaintiff contends that Defendants City of Clovis, officers of the Clovis Police  
7 Department, and Community Regional Medical Center refused Plaintiff emergency medical  
8 treatment and denied him medication on the basis of his status as a disabled individual. The first  
9 amended complaint alleges only the legal conclusions that Plaintiff is a disabled person and that  
10 he was denied treatment and medication because of his disability. No factual allegation supports  
11 a conclusion that Plaintiff was denied any treatment based on his disability. The only facts  
12 alleged reveal that Plaintiff was denied prescribed medications and testing that he personally  
13 wanted in the course of his arrest: an experience that occurred without regard to Plaintiff’s  
14 alleged disabilities. The first amended complaint does not set forth a cognizable ADA claim.  
15

16  
17           **C.     Fourth Cause of Action: First Amendment Claim**<sup>11</sup>

18           Plaintiff asserts that Defendants Fresno County, City of Clovis, Clovis Police Department  
19 Officers, and John Does 11-40 violated Plaintiff’s rights of speech, petition, assembly, and  
20 association under the First Amendment of the U.S. Constitution. (The first amended complaint  
21 neither identifies John Does 11-40 nor links them to this claim in any way.) No alleged fact links  
22 Fresno County or the City of Clovis to any violation of Plaintiff’s rights of speech, petition,  
23 association, or assembly. One or more specific officers, never identified in the first amended  
24 complaint, stopped Plaintiff for driving an unregistered vehicle and issued a second citation  
25

26  
27           

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<sup>11</sup> The first amended complaint does not include a Third Cause of Action.

1 because he was an unlicensed driver. Plaintiff admits that he committed the traffic violations but  
2 refused to sign the citations at the scene, leading to his arrest. The first amended complaint does  
3 not state a cognizable claim for violation of his First Amendment rights by any of the Defendants  
4 named in this count.  
5

6 **D. Fifth Cause of Action: Supervisory Liability**

7 Plaintiff contends that Defendants Fresno County, City of Clovis, Community Regional  
8 Medical Center, Clovis Police Department Officers, and John Does 10-20 are liable as  
9 supervisors to Plaintiff for violation of his rights under the First, Fourth, Eighth, and Fourteenth  
10 Amendments to the United States Constitution. This cause of action fails to state a claim upon  
11 which relief may be granted in that it sets forth no factual basis for its allegations that the various  
12 Defendants named were liable as supervisors of an unidentified John Doe Defendant whose  
13 alleged wrongdoing is unspecified. A plaintiff must set forth “the grounds of his entitlement to  
14 relief,” which “requires more than labels and conclusions, and a formulaic recitation of the  
15 elements of a cause of action.” *Twombly*, 550 U.S. at 555-56 (*internal quotation marks and*  
16 *citations omitted*).  
17  
18

19 Initially, this Court observes that neither Fresno County of Community Regional Medical  
20 Center can be categorized as supervisors of a the unspecified officer. At no point in the first  
21 amended complaint is there any suggestion of involvement by any county officer. Nor can any  
22 John Doe Defendants be included as supervisors with no allegations identifying them in any way  
23 or linking them to supervision of the unidentified officer.  
24

25 The City of Clovis is not subject to supervisory liability as a matter of law, and this claim  
26 must be dismissed against it. Municipal liability must rest on the municipality’s actions, not those  
27

1 of its employees. A local government unit may not be held responsible for the acts of its  
2 employees under a *respondeat superior* theory of liability. See *Board of County Comm'rs of*  
3 *Bryan County, Okla. v. Brown*, 520 U.S. 397, 403 (1997); *Collins v. City of Harker Heights,*  
4 *Tex.*, 503 U.S. 115, 121 (1992); *City of Canton, Ohio v. Harris*, 489 U.S. 378, 385 (1989);  
5 *Monell v. Department of Social Services*, 436 U.S. 658, 691 (1978); *Fogel v. Collins*, 531 F.3d  
6 824, 834 (9<sup>th</sup> Cir. 2008); *Webb v. Sloan*, 330 F.3d 1158, 1163-64 (9<sup>th</sup> Cir. 2003), *cert. denied*, 540  
7 U.S. 1141 (2004); *Gibson*, 290 F.3d at 1185; *Hopper v. City of Pasco*, 241 F.3d 1067, 1082 (9<sup>th</sup>  
8 Cir.), *cert. denied*, 534 U.S. 951 (2001).

9  
10 This vague claim does not state a cognizable cause of action.

11  
12 **E. Sixth Cause of Action: Unspecified Violations of Plaintiff's Civil Rights**

13 The sixth cause of action is too vague and uncertain to state a cognizable cause of action.  
14 The Defendants' identity is unclear. The caption identifies this claim as being against  
15 "Supervisory Officer John Doe and John Doe Officer 2 and Does 1 through 100"; the body of the  
16 claim identifies the Defendants as Supervisory Officer Sgt. McFadden, Officer Resano, and Does  
17 1 through 100. The conclusory allegation that the Defendants violated Plaintiff's First, Fourth,  
18 Fourteenth, and Eighth Amendment rights never alleges any facts explaining what the alleged  
19 violation was or how it occurred, or how Defendants' unspecified acts were malicious,  
20 oppressive and in reckless disregard of Plaintiff's rights, entitling him to punitive damages. This  
21 claim should be dismissed with prejudice.

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23  
24 **F. Causes of Action Seven Through Seventeen: Plaintiff's State Claims**

25 Section 1983 does not provide a cause of action for violations of state law. See *Weilburg*  
26 *v. Shapiro*, 488 F.3d 1202, 1207 (9<sup>th</sup> Cir. 2007); *Galen v. County of Los Angeles*, 477 F.3d 652,  
27



1 662 (9<sup>th</sup> Cir. 2007); *Ove v. Gwinn*, 264 F.3d 817, 824 (9<sup>th</sup> Cir. 2001); *Sweaney v. Ada County*,  
2 *Idaho*, 119 F.3d 1385, 1391 (9<sup>th</sup> Cir. 1997); *Lovell v. Poway Unified School Dist.*, 90 F.3d 367,  
3 370 (9<sup>th</sup> Cir. 1996); *Draper v. Coombs*, 792 F.2d 915, 921 (9<sup>th</sup> Cir. 1986); *Ybarra v. Bastian*, 647  
4 F.2d 891, 892 (9<sup>th</sup> Cir.), *cert. denied*, 454 U.S. 857 (1981). Pursuant to 28 U.S.C. § 1367(a),  
5 however, in any civil action in which the district court has original jurisdiction, the district court  
6 “shall have supplemental jurisdiction over all other claims in the action within such original  
7 jurisdiction that they form part of the same case or controversy under Article III,” except as  
8 provided in subsections (b) and (c).  
9

10  
11 “[O]nce judicial power exists under § 1367(a), retention of supplemental jurisdiction over  
12 state law claims under 1367(c) is discretionary.” *Acri v. Varian Assoc., Inc.*, 114 F.3d 999, 1000  
13 (9<sup>th</sup> Cir. 1997). “The district court may decline to exercise supplemental jurisdiction over a claim  
14 under subsection (a) if . . . the district court has dismissed all claims over which it has original  
15 jurisdiction.” 28 U.S.C. § 1367 (c)(3). The Supreme Court has cautioned that “if the federal  
16 claims are dismissed before trial . . . the state claims should be dismissed as well.” *United Mine*  
17 *Workers of Amer.*, 383 U.S. at 726. Accordingly, unless a complaint states a cognizable federal  
18 cause of action, a federal court should not exercise jurisdiction over Plaintiff’s state claims.  
19

20 Because this Court recommends that all federal causes of action be dismissed, it also  
21 recommends that the District Court not exercise its pendant jurisdiction over the eleven state  
22 claims. In light of this recommendation, these Findings and Recommendations do not address  
23 the eleven state claims. In the event that the District Court disagrees with these Findings and  
24 Recommendations, it may direct this Court to prepare supplemental findings and  
25 recommendation regarding the state claims.  
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UNITED STATES MAGISTRATE JUDGE

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