

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

Keiron Elias v. C/O Mimaki, et al.

Case No. 2:21-cv-06055-MWF-JC (C.D. Cal. Apr. 7, 2025) · No. 2:21-cv-06055-MWF-JC · Decided April 7, 2025

SUMMARY

The United States District Court for the Central District of California dismissed Keiron Elias’s Second Amended Complaint with leave to amend. The court held that the complaint violated Federal Rules of Civil Procedure 8 and 10 and failed to plausibly state claims involving religious free exercise under the First Amendment or RLUIPA, or First Amendment retaliation. The order directed Plaintiff to file a further amended complaint or otherwise respond as specified by the court.

CASE DETAILS

COURT	United States District Court for the Central District of California
WRITING FOR THE COURT	Jacqueline Chooljian
JURISDICTION	United States District Court for the Central District of California
DECIDED	April 7, 2025
DOCKET	2:21-cv-06055-MWF-JC
DISPOSITION	dismissed
PROCEDURAL POSTURE	Screening of a pro se state prisoner’s Second Amended Complaint under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A.
STANDARD OF REVIEW	On prisoner-complaint screening, the court applies the same standard used for a Rule 12(b)(6) motion, accepting well-pleaded factual allegations as true but disregarding conclusory allegations and legal conclusions. A complaint must satisfy Rules 8 and 10 and contain sufficient factual matter to state a plausible claim for relief.
PRECEDENTIAL VALUE	unpublished district court order; persuasive value only
PARTIES	Keiron Elias v. C/O Mimaki, C/O Lichinov, Lieutenant Johnson, Pat Horn

TOPICS

- section 1983
- prisoners rights
- pleadings
- motions to dismiss
- first amendment

PRACTICE AREAS

prisoner civil rights

constitutional law

federal civil procedure

religious liberty

prison conditions

QUESTIONS PRESENTED

1. Whether the Second Amended Complaint satisfied Federal Rules of Civil Procedure 8(a) and 10(a).
2. Whether the allegations plausibly stated a First Amendment free-exercise claim or a RLUIPA claim.
3. Whether the allegations plausibly stated a First Amendment retaliation claim.
4. Whether the allegations plausibly stated Eighth Amendment claims for deliberate indifference, excessive force, unconstitutional strip-search conditions, or disciplinary conditions.
5. Whether Plaintiff's challenge to disciplinary proceedings and request for restoration of good-time credits was barred by *Heck v. Humphrey* and related favorable-termination principles.

HOLDINGS

1. The Second Amended Complaint failed to provide fair notice of the claims, defendants, conduct, and theories of liability, and it failed to name Warden Horn in the caption as required by Rule 10(a).
2. The Second Amended Complaint failed to plausibly allege that defendants substantially burdened a sincerely held religious belief in a manner not rationally related to legitimate penological interests.
3. The retaliation allegations failed to state a claim because they did not plausibly establish a causal link between Plaintiff's protected activity and the defendants' conduct.
4. The allegations did not plausibly state Eighth Amendment claims for deliberate indifference, excessive force, unconstitutional strip-search conditions, verbal harassment, or disciplinary sanctions.
5. To the extent Plaintiff sought relief that would necessarily invalidate disciplinary proceedings or accelerate release by restoring good-time credits, the challenge was barred by *Heck* and related favorable-termination principles, leaving habeas corpus as the exclusive remedy.

KEY QUOTATIONS

"Plaintiff's belief in obeying only God, or "God in herself," must yield to that interest, at least where, as here, the orders at issue do not seem to have posed any direct conflict with, or substantial burden on, Plaintiff's religious practice." (at 12)

"Here, to the extent that Plaintiff seeks a speedier release from custody, or a favorable determination on Plaintiff's claim(s) would necessarily accomplish this, any challenge to her disciplinary proceedings is barred, and a petition for habeas corpus would be Plaintiff's exclusive remedy." (at 20)

FACTUAL BACKGROUND

Plaintiff alleged that correctional officers ordered her to surrender an extra food tray, which she refused because she considered receiving the food to be an exercise of her religious beliefs. The officers allegedly took the tray, slammed Plaintiff into a steel table, handcuffed her, placed her briefly in a small cage, and required her to undergo a strip search during which they made demeaning comments. Plaintiff further alleged that she was

disciplined for the incident, losing good-time credits and access to the dayroom and other privileges, and claimed violations of the First and Eighth Amendments, RLUIPA, and the First Amendment right against retaliation.

PROCEDURAL HISTORY

Plaintiff filed an original § 1983 complaint on July 27, 2021. The court screened and dismissed the original complaint with leave to amend, then screened and dismissed the First Amended Complaint with leave to amend. After a stay related to Plaintiff's transfer and resentencing proceedings, the court permitted Plaintiff to file a Second Amended Complaint, which the court screened and dismissed with leave to amend. Plaintiff was ordered to file a Third Amended Complaint, a notice of voluntary dismissal, or a notice of intent to stand on the Second Amended Complaint within twenty-one days.

DISPOSITION

dismissed

CASES CITED

- Byrd v. Phoenix Police Dep't, 885 F.3d 639, 641-42 (9th Cir. 2018)
- Rosati v. Igbino, 791 F.3d 1037, 1039 (9th Cir. 2015)
- Zixiang Li v. Kerry, 710 F.3d 995, 998-99 (9th Cir. 2013)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 & n.3 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 676, 678-79 (2009)
- Keates v. Koile, 883 F.3d 1228, 1242 (9th Cir. 2018)
- Ghazali v. Moran, 46 F.3d 52, 54 (9th Cir. 1995)
- Lopez v. Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000) (en banc)
- Foman v. Davis, 371 U.S. 178, 182 (1962)
- West v. Atkins, 487 U.S. 42, 48 (1988)
- Monell v. Dep't of Soc. Servs. of the City of N.Y., 436 U.S. 658, 691 (1978)
- Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988)
- Lacey v. Maricopa County, 693 F.3d 896, 915 (9th Cir. 2012) (en banc)
- Starr v. Baca, 652 F.3d 1202, 1207 (9th Cir. 2011)
- OSU Student Alliance v. Ray, 699 F.3d 1053, 1069, 1076 (9th Cir. 2012)
- Crowley v. Bannister, 734 F.3d 967, 977 (9th Cir. 2013)
- O'Lone v. Estate of Shabazz, 482 U.S. 342, 348-50 (1987)
- Shaw v. Murphy, 532 U.S. 223, 229 (2001)
- Pell v. Procunier, 417 U.S. 817, 822 (1974)
- Jones v. Williams, 791 F.3d 1023, 1031-33 (9th Cir. 2015)
- Shakur v. Schriro, 514 F.3d 878, 884-85 (9th Cir. 2008)
- New Harvest Christian Fellowship v. City of Salinas, 29 F.4th 596, 602 (9th Cir. 2022)

- Watison v. Carter, 668 F.3d 1108, 1112, 1114-15 (9th Cir. 2012)
- Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009)
- Hartman v. Moore, 547 U.S. 250, 259 (2006)
- Pratt v. Rowland, 65 F.3d 802, 807-08 (9th Cir. 1995)
- McCollum v. Cal. Dep't of Corr. & Rehab., 647 F.3d 870, 882 (9th Cir. 2011)
- Wilson v. Seiter, 501 U.S. 294, 296-97 (1991)
- Whitley v. Albers, 475 U.S. 312, 319 (1986)
- Wilkins v. Gaddy, 559 U.S. 34, 38 (2010)
- Estelle v. Gamble, 429 U.S. 97, 103-06 (1976)
- Hope v. Pelzer, 536 U.S. 730, 737 (2002)
- Gibson v. County of Washoe, 290 F.3d 1175, 1188 (9th Cir. 2002)
- Castro v. County of Los Angeles, 833 F.3d 1060, 1076 (9th Cir. 2016) (en banc)
- Simmons v. Navajo County, 609 F.3d 1011, 1018 (9th Cir. 2010)
- Madrid v. Gomez, 889 F. Supp. 1146, 1264 (N.D. Cal. 1995)
- Somers v. Thurman, 109 F.3d 614, 622-24 (9th Cir. 1997)
- Austin v. Terhune, 367 F.3d 1167, 1171 (9th Cir. 2004)
- Oltarzewski v. Ruggerio, 830 F.2d 136, 139 (9th Cir. 1987)
- Keenan v. Hall, 83 F.3d 1083, 1091-92 (9th Cir. 1996), amended, 135 F.3d 1318 (9th Cir. 1998)
- Hutto v. Finney, 437 U.S. 678, 685-87 (1978)
- Heck v. Humphrey, 512 U.S. 477, 486-87 (1994)
- Edwards v. Balisok, 520 U.S. 641, 646 (1997)
- Muhammed v. Close, 540 U.S. 749, 754 (2004)
- Nettles v. Grounds, 830 F.3d 922, 929 n.4 (9th Cir. 2016) (en banc)
- McKeever v. Block, 932 F.2d 795, 797-98 (9th Cir. 1991)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 CENTRAL DISTRICT OF
 CALIFORNIA 10 KEIRON ELIAS, Case No. 2:21-cv-06055-MWF-JC 11 Plaintiff, 12 ORDER
 DISMISSING SECOND v. AMENDED COMPLAINT WITH 13 LEAVE TO AMEND AND
 DIRECTING C/O MIMAKI, et al., PLAINTIFF TO RESPOND TO ORDER 14 Defendants. 15
 16 I. INTRODUCTION 17 On July 27, 2021, Plaintiff Keiron Elias, who is in state custody, is 18
 proceeding pro se, and has been granted leave to proceed without prepayment of 19 filing fees
 (“IFP”), filed a Civil Rights Complaint (“Original Complaint”) based 20 on 42 U.S.C. § 1983
 (“Section 1983”), among other grounds.

(Docket No. 1). 21 On November 11, 2021, this Court screened and dismissed the Original
 Complaint 22 with leave to amend. (Docket No. 7). Plaintiff then filed a First Amended 23
 Complaint on April 26, 2022 (Docket No. 15), which the Court screened and 24 dismissed with

leave to amend on June 29, 2023 (Docket No. 18). 25 On September 29, 2023, the Court granted a motion to stay the case because 26 Plaintiff had been moved to the county jail in connection with a pending 27 28 1 resentencing proceeding and had no access to her 1 case files and other materials 2 related to this case.

(See Docket Nos. 20-21). Plaintiff proceeded to file periodic 3 status reports. (See Docket Nos. 23-25). On June 18, 2024, because Plaintiff had 4 been returned to state custody at Richard J. Donovan Correctional Facility (RJD) 5 and was again in possession of her files, and no further extension was warranted, 6 the Court lifted the stay and ordered Plaintiff to respond by filing either a Second 7 Amended Complaint, a voluntary notice of dismissal, or a notice of Plaintiff's 8 intent to stand on the First Amended Complaint.

(Docket No. 28). 9 On July 24, 2024, Plaintiff filed a Second Amended Complaint 10 (alternatively, "SAC") against the following four Defendants at California State 11 Prison, Los Angeles County ("CSP-LAC"), for violation of her First Amendment 12 right to free exercise of religion and her Eighth Amendment rights to be free from 13 cruel and unusual punishment, excessive force, and deliberate indifference to her 14 serious medical needs: 2 (1) Correctional Officer ("C/O") Mimaki; (2) C/O 15 Lichinov; (3) Lieutenant Johnson; and (4) Warden Hor[n]. 3 (SAC at 3-5). 4 16 Defendants Mimaki, Lichinov, and Johnson are sued solely in their individual 17 capacities, while Warden Horn is sued in his individual and official capacities.

18 (SAC at 3-4). Plaintiff seeks monetary and injunctive relief. (SAC at 19-20, 23). 19 /// 20 21 1As Plaintiff's recent filings employ female pronouns to refer to Plaintiff, the Court does so here as well. 22 2As noted below, the Second Amended Complaint also contains references to Plaintiff's 23 rights under the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 114 24 Stat. 803, 42 U.S.C. § 2000cc et seq., as well as her right to be free from retaliation.

(See SAC at 3-4, 10-11, 13-14, 20-21). 25 3Plaintiff's references to "Warden Hor" are construed to refer to Pat Horn, a former 26 warden of CSP-LAC. 27 4Citations to the Second Amended Complaint and its attachments refer to the page 28 numbers from the Court's official Case Management/Electronic Case Filing (CM/ECF) system. 2 1 As the Second Amended Complaint is deficient in multiple respects, 2 including those detailed below, it is dismissed with leave to amend.

3 II. THE SECOND AMENDED COMPLAINT 4 The Second Amended Complaint, construed liberally, alleges the following: 5 Plaintiff's religious beliefs are "rooted in being God in flesh, with absolute 6 free will." (SAC at 13 (some capitalization omitted)). Plaintiff has "declared her 7 rights to live under the power, protection, and authority of GOD and GOD alone in 8 order to live in peace and [e]nsure her spiritual, mental and physical safety without 9 reprimand," so that she can reduce her severe depression and risk of suicide.

10 (SAC at 6). Plaintiff has placed a \$5 million liability on any violation of her 11 “religious and mental peace in treatment of her severe depression,” and the prison 12 staff has all been informed of this. (SAC at 6, 17). 13 On July 20, 2019, Defendants C/O Lichinov and C/O Mimaki ordered 14 Plaintiff to surrender an extra food tray that Plaintiff had taken in the dining hall, 15 but Plaintiff refused to do so.

(See SAC at 3, 5-7). There was allegedly no rule 16 preventing inmates from receiving an extra food tray in these circumstances. 17 (SAC at 9-10). Plaintiff also told Defendants that “receiving food charity” is an 18 exercise of her religious beliefs and “free will, as God.” (SAC at 8). Plaintiff 19 assertedly “exercises her belief 24 [hours] a day[,] in that [e]verything [she] 20 possesses[] belongs to [her] because it serves [her] will as God.” (SAC at 9).

21 Defendants were thus forcing Plaintiff to choose between obedience to their order 22 to give back the tray and obedience “to God within herself.” (SAC at 12). 23 When Plaintiff refused to obey their orders, Defendants C/O Lichinov and 24 C/O Mimaki, without warning, snatched away the food tray, “slammed” Plaintiff 25 into a steel table,” handcuffed her, and placed her in a 3’ by 3’ cage.

(SAC at 7). 26 Defendants then forced Plaintiff to submit to a strip search. (SAC at 10). Plaintiff 27 refused because it “violates [her] belief to get naked in front of men,” and she told 28 Defendant Lichinov to use a body scanner or bring her to a medical nurse to 3 1 conduct the search. (SAC at 10). But Lichinov told Plaintiff that she would 2 remain in the cage and receive an “additional write up for delaying a peace 3 officer” unless she submitted to the search.

(SAC at 10, 15). To avoid further 4 punishment, Plaintiff “for[went] her religious belief and exercise” and complied 5 with the officers’ order. (SAC at 15). When conducting the strip search, 6 Defendants Lichinov and Mimaki “humiliated” Plaintiff and her beliefs by 7 laughing while making rude comments. (SAC at 15). At one point, Mimaki said, 8 “Some God you are; now bend over and spread your cheeks,” and Lichinov 9 continued, “yeah God, spreadum [sic].” (SAC at 16).

10 This incident was allegedly the second time that Lichinov had “slammed 11 [Plaintiff] into something steel” and “strip searched her against her beliefs.” (SAC 12 at 10). Plaintiff assertedly “believ[es] Lichinov’s motive for bothering [Plaintiff] 13 about the tray was to incite the incident in order to punish [her] in retaliation” for 14 her recent filing of a grievance and civil complaint against Lichinov.

(SAC at 11). 15 Defendants Lichinov and Mimaki also cited Plaintiff for a rule violation 16 purportedly “not for the extra tray, but for disrespect with the potential for 17 violence,” even though such behavior is contrary to Plaintiff’s belief in peace. 18 (SAC at 11). Defendant Lt. Johnson held the disciplinary hearing on the matter, at 19 which Plaintiff gave a “thorough”

explanation about how Mimaki and Lichinov's 20 actions were "unjustified and unreasonable." (SAC at 11).

She told Lt. Johnson 21 that she had not violated any rule, and her "refusal to give back the tray was in 22 exercise of [her] religious belief BEING God." (SAC at 11). But Lt. Johnson 23 found Plaintiff guilty of the rule violation, nonetheless, and punished her with a 24 loss of thirty days of good-time credits and forty-five days of access to the 25 dayroom, among other privileges, which caused Plaintiff further psychological 26 distress.

(SAC at 12-13). 27 /// 28 /// 4 1] IH. PERTINENT LAW 2 A. The Screening Requirement 3 As Plaintiff is a prisoner proceeding IFP on a civil rights complaint against 4 || governmental defendants, the Court must screen the Second Amended Complaint, 5 || and is required to dismiss the case at any time it concludes the action is frivolous 6 || or malicious, fails to state a claim on which relief may be granted, or seeks 7 || monetary relief against a defendant who is immune from such relief.

See 28 8 || U.S.C. §§ 1915(e)(2)(B), 1915A; 42 U.S.C. § 1997e(c); *Byrd v. Phoenix Police* 9 || Dep't, 885 F.3d 639, 641 (9th Cir. 2018) (citations omitted). 10 When screening a complaint to determine whether it states any claim that is 11 || viable, the Court applies the same standard as it would when evaluating a motion 12 || to dismiss under Federal Rule of Civil Procedure 12(b)(6).

See *Rosati v. Igbino*, 13 | 791 F.3d 1037, 1039 (9th Cir. 2015) (citation omitted). Rule 12(b)(6), in turn, is 14 || read in conjunction with Rule 8(a) of the Federal Rules of Civil Procedure. 15 || *Zixiang Li v. Kerry*, 710 F.3d 995, 998-99 (9th Cir. 2013).

Under Rule 8, each 16 || complaint filed in federal court must contain a "short and plain statement of the 17 || claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). While 18 || Rule 8 does not require detailed factual allegations, at a minimum a complaint 19 || must allege enough specific facts to provide both "fair notice" of the particular 20 || claim being asserted and "the grounds upon which [that claim] rests." *Bell* 21 | *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 & n.3 (2007) (citation and 22 || quotation marks omitted); see also *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) 23 || (Rule 8 pleading standard "demands more than an unadorned, the-defendant- 24 || unlawfully-harmed-me accusation" (citing *Twombly*, 550 U.S. at 555)).

25 To avoid dismissal on screening, a complaint must "contain sufficient 26 || factual matter, accepted as true, to state a claim to relief that is plausible on its 27 || face." *Byrd*, 885 F.3d at 642 (citations omitted); see also *Johnson v. City of* 28 || *Shelby*, 574 U.S. 10, 12 (2014) (per curiam) (*Twombly* and *Iqbal* instruct that 1 || plaintiff "must plead facts sufficient to show that [plaintiff's] claim has 2 || substantive plausibility").

A claim is "plausible" when the facts alleged in the 3 || complaint would support a reasonable inference that the plaintiff is entitled to 4 || relief from a specific defendant for specific

misconduct. *Iqbal*, 556 U.S. at 678 5 || (citation omitted); see also *Keates v. Koile*, 883 F.3d 1228, 1242 (9th Cir. 2018) 6 || CTA] [Section 1983] plaintiff must plead that each Government-official defendant, 7 || through the official's own individual actions, has violated the Constitution.”) 8 | (quoting *Iqbal*, 556 U.S. at 676); *Gauvin v. Trombatore*, 682 F. Supp. 1067, 1071 9 || (N.D.

Cal. 1988) (complaint “must allege the basis of [plaintiff's] claim against 10 || each defendant” to satisfy Rule 8 requirements (emphasis added)). Allegations 11 || that are “merely consistent with” a defendant's liability, or reflect only “the mere 12 || possibility of misconduct” do not “show[] that the pleader is entitled to relief” (as 13 || required by Fed.

R. Civ. P. 8(a)(2)), and thus are insufficient to state a claim that is 14 | “plausible on its face.” *Iqbal*, 556 U.S. at 678-79 (citations and quotation marks 15 || omitted). 16 At this preliminary stage, “well-pleaded factual allegations” in a complaint 17 || are assumed true, while “[t]hreadbare recitals of the elements of a cause of action” 18 || and “legal conclusion[s] couched as a factual allegation” are not.

Id. (citation and 19 || quotation marks omitted); *Jackson v. Barnes*, 749 F.3d 755, 763 (9th Cir. 2014) 20 || (“mere legal conclusions ‘are not entitled to the assumption of truth’” (quoting 21 || *Iqbal*, 556 U.S. at 678-79)), cert. denied, 574 U.S. 1077 (2015).

In addition, the 22 || Court is “not required to accept as true conclusory allegations which are 23 || contradicted by documents referred to in the complaint,” *Steckman v. Hart* 24 || *Brewing, Inc.*, 143 F.3d 1293, 1295-96 (9th Cir. 1998) (citation omitted), and 25 || “need not [] accept as true allegations that contradict matters properly subject to 26 || judicial notice or by exhibit,” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 27 || 988 (9th Cir.), amended on denial of reh'g, 275 F.3d 1187 (9th Cir.

2001) (citation 28 || omitted). 1 In general, civil rights complaints are interpreted liberally in order to give 2 || pro se plaintiffs “the benefit of any doubt.” *Byrd*, 885 F.3d at 642 (citations and 3 || internal quotation marks omitted). Nonetheless, a pro se plaintiff must still follow 4 || the rules of procedure that govern all litigants in federal court, including the 5 | Rule 8 requirement that a complaint minimally state a short and plain statement of 6 || a claim that is plausible on its face.

See *Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 7 || 1995) (per curiam) (“Although we construe pleadings liberally in their favor, pro 8 || se litigants are bound by the rules of procedure.” (citation omitted)), cert. denied, 9 || 516 US. 838 (1995); see also *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 10 || 939, 954 (9th Cir. 2011) (en banc) (“[A] liberal interpretation of a... civil rights 11 || complaint may not supply essential elements of [a] claim that were not initially 12 || pled.” (quoting *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir.

1992)) (quotation 13 || marks omitted; ellipses in original)). 14 If a pro se complaint is dismissed for failure to state a claim, the court must 15 | “freely” grant leave to amend. *Cafasso v. Gen.*

Dynamics C4 Sys., Inc., 637 F.3d 16 || 1047, 1058 (9th Cir. 2011) (citation omitted); Lopez v. Smith, 203 F.3d 1122, 17 || 1126-30 (9th Cir. 2000) (en banc) (citations and internal quotation marks omitted).

18 || Nonetheless, courts have the discretion to deny leave to amend in cases of undue 19 || delay, bad faith, undue prejudice to the opposing party, “repeated failure to cure 20 || deficiencies by amendments previously allowed,” and futility. See Foman v. 21 | Davis, 371 U.S. 178, 182 (1962); Cafasso, 637 F.3d at 1058 (citations omitted). 22 || Courts have “particularly broad” discretion where a plaintiff “has previously 23 || amended the complaint.” Cafasso, 637 F.3d at 1058 (citation and quotation marks 24 || omitted); see also Griggs v. Pace Am.

Grp., Inc., 170 F.3d 877, 879 (9th Cir. 1999) 25 || (“The trial court’s discretion... is particularly broad where... a plaintiff 26 || previously has been granted leave to amend.” (citations omitted)). 27 | /// 28 | /// 1 B. — Section 1983 Claims 2 To state a Section 1983 claim, a complaint must allege that a defendant, 3 || while acting under color of state law, caused a deprivation of the plaintiff’s federal 4 || rights.

42 U.S.C. § 1983; West v. Atkins, 487 U.S. 42, 48 (1988) (citations 5 || omitted); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) (citation omitted). 6 || There is no vicarious liability in Section 1983 lawsuits. Iqbal, 556 U.S. at 676. 7 || (citing, inter alia, Monell v. Dep’t of Soc. Servs. of the City of N.Y., 436 U.S. 8 | 658, 691 (1978)). Hence, a government official may not be held liable under 9 || Section 1983 unless the particular official’s own actions caused the alleged 10 || constitutional deprivation.

OSU Student Alliance v. Ray, 699 F.3d 1053, 1069 11 | (9th Cir. 2012) (citing Iqbal, 556 U.S. at 676), cert. denied, 571 U.S. 819 (2013). 12 | A Section 1983 plaintiff must establish both causation-in-fact and proximate (i.e., 13 || legal) causation. See Harper v. City of Los Angeles, 533 F.3d 1010, 1026 (9th Cir. 2008). Allegations regarding Section 1983 causation “must be individualized 15 || and focus on the duties and responsibilities of each individual defendant whose 16 || acts or omissions are alleged to have caused a constitutional deprivation.” Leer v. 17 || Murphy, 844 F.2d 628, 633 (9th Cir.

1988) (citations omitted). “Sweeping 18 || conclusory allegations [regarding causation] will not suffice....” Id. (citation 19 || omitted). 20 An individual “causes” a constitutional deprivation basically when he 21 || (1) “does an affirmative act, participates in another’s affirmative acts, or omits to 22 || perform an act which he is legally required to do that causes the deprivation”; or 23 || (2) “set[s] in motion a series of acts by others which the [defendant] knows or 24 || reasonably should know would cause others to inflict the constitutional injury.” 25 || Lacey v. Maricopa County, 693 F.3d 896, 915 (9th Cir.

2012) (en banc) (quoting 26 || Johnson v. Duffy, 588 F.2d 740, 743-44 (9th Cir. 1978)) (quotation marks 27 || omitted). 28 | /// 1 Similarly, a government official acting in a supervisory capacity “causes” a 2 || deprivation to the extent he (1) personally participates in or directs a subordinate’s 3 || constitutional violation; or (2) was not “physically present when the [plaintiffs] 4 || injury occurred,” but the constitutional deprivation can, nonetheless, be “directly 5 || attributed” to the supervisor’s own wrongful conduct.

Starr v. Baca, 652 F.3d 6 || 1202, 1207 (9th Cir. 2011), cert. denied 566 U.S. 982 (2012); see also OSU 7 || Student Alliance, 699 F.3d at 1069 (citing Iqbal, 556 U.S. at 676). Under the 8 || latter theory, even absent “overt personal participation,” a supervisor may be liable 9 || under Section 1983 if he created, promulgated, implemented, advanced, or was 10 || otherwise responsible for the continued operation of a policy that “requires 11 || subordinates to commit constitutional violations,” and enforcement of the policy 12 || (either by the defendant-supervisor or his subordinates) proximately caused the 13 | plaintiff’s constitutional injury.

OSU Student Alliance, 699 F.3d at 1076 (citing 14 || Dodds v. Richardson, 614 F.3d 1185, 1199 (10th Cir. 2010), cert. denied, 563 U.S. 15 | 960 (2011)); see also Crowley v. Bannister, 734 F.3d 967, 977 (9th Cir. 2013) 16 || (supervisory officials may be held liable “even without overt personal 17 || participation in the offensive act if supervisory officials implement a policy so 18 || deficient that the policy ‘itself is a repudiation of constitutional rights’ and is ‘the 19 || moving force of a constitutional violation’” (citation and internal quotation marks 20 || omitted)).

21] 1V. DISCUSSION 22 The Second Amended Complaint is deficient in multiple respects, including 23 || those detailed below. 24 A. The Second Amended Complaint Violates Rules 8 and 10 of the 25 Federal Rules of Civil Procedure 26 Rule 8(a), as noted above, requires a complaint to provide “fair notice” of 27 || who is being sued, for what particular conduct, and in what particular claim.

See 28 || Twombly, 550 U.S. at 555 & n.3 (Rule 8(a) requires a complaint to give “fair 1 || notice” of the particular claims being asserted against them and “the grounds upon 2 || which [the claims] rest[.]”) (citation and quotation marks omitted); McHenry v. 3 || Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (purpose of Rule 8(a) is to ensure that a 4 || complaint “fully sets forth who is being sued, for what relief, and on what theory, 5 || with enough detail to guide discovery’); see also Cafasso, 637 F.3d at 1058 (a 6 | complaint violates Rule 8 if a defendant would have difficulty understanding and 7 || responding to the complaint).

8 Plaintiff’s Second Amended Complaint violates this rule because it fails to 9 || give Defendants sufficient notice of the claims being asserted against them. For 10 || example, although Plaintiff appears to indicate that her only claims are for 11 | violation of her First Amendment right to free exercise of religion and her Eighth 12 | Amendment rights to be free from excessive force and deliberate indifference 13 || (see SAC at 5), the Second Amended Complaint later makes several

references to 14 || her religious rights under RLUIPA, 42 U.S.C. § 2000cc et seq., and her right to be 15 || free from retaliation (see SAC at 3-4, 10-11), making it unclear whether Plaintiff 16 || intends to assert independent claims on these grounds.” Moreover, while Plaintiff 17 || lists Warden Horn (erroneously named “Hor”) as a Defendant being sued in his 18 || individual and official capacities (SAC at 4), the only subsequent reference to 19 || Warden Horn occurs near the end of the Second Amended Complaint, where 20 || Plaintiff states only that Warden Horn “is sued in his official capacity under 21 || RLUIPA” for “injunctive relief from the RVR and restoration of credits.” (SAC 22 23, | 74 °As discussed below, Plaintiff's allegations fail to demonstrate violations of these rights.

25 °On this point, Plaintiff correctly acknowledges that only prospective injunctive relief is available under RLUIPA, and such relief cannot be sought against officers sued in their 26 || individual capacities. See *Wood v. Yordy*, 753 F.3d 899, 904 (9th Cir. 2014) (RLUIPA “does 27 || not authorize suits against a person in anything other than an official or governmental capacity”); *Cochran v. Sherman*, 2017 WL 1022789, at *4 (E.D.

Cal. Mar. 16, 2017) (“RLUIPA only 28 || authorizes official capacity suits against governmental employees for prospective, injunctive relief.” (citations omitted)). 10 1 || at 20). It is therefore unclear on what grounds, or for what conduct, Plaintiff 2 || intends to sue Warden Horn in his individual capacity.’ 3 The Second Amended Complaint also violates Rule 10(a), which requires 4 || that “all the parties” be named in the caption of a complaint.

Fed. R. Civ. P. 10(a) 5 || ‘Caption; Names of Parties.... [T]he title of the complaint must name all the 6 || parties”). The caption of Plaintiff's Second Amended Complaint names only 7 || Defendants Mimaki, Lichinov, and Lt. Johnson, not Warden Horn, despite that 8 || Horn is listed as a Defendant within the Second Amended Complaint. (See Comp. 9 || at 1, 3-4).

10 Accordingly, the Second Amended Complaint warrants dismissal with leave 11 || to amend for violation of Rules 8(a) and 10(a) of the Federal Rules of Civil 12 || Procedure. See *McHenry*, 84 F.3d at 1178-80 (affirming dismissal of complaint 13 || for violation of Rule 8 where “one cannot determine from the complaint who is 14 || being sued, for what relief, and on what theory, with enough detail to guide 15 || discovery”); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1263 (9th Cir.), as amended (May 16 || 22, 1992) (affirming dismissal of action based on failure to comply with court 17 || order that complaint be amended to name all defendants in caption as required by 18 || Rule 10(a)), cert. denied, 506 U.S. 915 (1992).

19 B. The Second Amended Complaint Fails to State a Claim for 20 Violation of Plaintiff's Religious Rights Under the First 21 Amendment or RLUIPA 22 Prisoners “retain protections afforded by the First Amendment” including 23 || the right to “the free exercise of religion.” *O’Lone v. Estate of Shabazz*, 482 U.S. 24 || 342, 348 (1987) (citations omitted), superseded by statute on other grounds, 42 25 || U.S.C. §§ 2000cc, et seq.

However, as a consequence of incarceration, a 26 27 ‘As indicated above, supervisory officials such as Warden Horn cannot be held liable in their individual capacities unless they personally caused a violation of Plaintiff's rights in some 28 || respect. See *Starr v. Baca*, 652 F.3d at 1207. 11 1 || prisoner’s First Amendment rights are necessarily “more limited in scope than the 2 || constitutional rights held by individuals in society at large.” *Shaw v. Murphy*, 532 3 || U.S. 223, 229 (2001).

An inmate retains only “those First Amendment rights that 4 || are not inconsistent with his status as a prisoner or with the legitimate penological 5 || objectives of the corrections system.” *Pell v. Procunier*, 417 U.S. 817, 822 (1974). 6 To state a First Amendment free exercise claim, an inmate must allege that a 7 || prison official’s actions (1) “substantially burden[ed]” the inmate’s exercise of a 8 || sincerely held religious belief; and (2) did so in an unreasonable manner — i.e., the 9 || official’s actions were not “rationally related to legitimate penological interests.” 10 || See *O’Lone*, 482 U.S. at 348-50; *Jones v. Williams*, 791 F.3d 1023, 1031, 1033 11 | (9th Cir.

2015) (citation omitted); *Shakur v. Schriro*, 514 F.3d 878, 884-85 (9th 12 || Cir. 2008) (citations omitted). “[G]overnment action places a substantial burden 13 || on an individual’s right to free exercise of religion when it tends to coerce the 14 || individual to forego [his or] her sincerely held religious beliefs or to engage in 15 | conduct that violates those beliefs.” *Jones v. Williams*, 791 F.3d at 1031-33 16 || (citations omitted).

17 Here, Plaintiff claims Defendants violated her First Amendment free 18 || exercise rights in part by punishing her for refusing to give back the second meal 19 || tray despite that her religious beliefs permit her to accept food in “charity” and 20 || forbid her to obey anyone other than herself, who is “God.” (See SAC at 8-9, 11- 21 || 12, 15).

However, first, Plaintiff does not plausibly allege that her religious belief 22 || in “possess[ing] and receiv[ing] meals in charity” (SAC at 15) was substantially 23 || burdened by having to give up the second tray.

Moreover, to the extent that 24 | Plaintiffs religious beliefs generally forbid her to obey officers’ orders, such 25 || beliefs are clearly incompatible with the officers’ strong, legitimate penological 26 || interest in requiring inmates to obey their orders and in punishing inmates’ failure 27 || to do so, which is essential to maintaining order and security in the prison.

28 || Plaintiffs belief in obeying only God, or “God in herself,” must yield to that 12 1 || interest, at least where, as here, the orders at issue do not seem to have posed any 2 || direct conflict with, or substantial burden on, Plaintiff's religious practice. 3 Plaintiff also claims that her right to religious free exercise was violated 4 | when Defendants Mimaki and Lichinov coerced her to submit to a strip search.

5 || (See SAC at 5, 10-11, 16). However, Plaintiff's vague, conclusory assertion that 6 || the search "violate[d] [her] belief to get naked in front of men" (SAC at 10) does 7 || not plausibly show that the search actually conflicted with — and substantially 8 | burdened — a belief that was "sincerely held" and "rooted in religious belief." See 9 || *Malik v. Brown*, 16 F.3d 330, 333 (9th Cir.

1994) (for First Amendment claim, 10 |) belief "must be sincerely held" and "must be rooted in religious belief, not in 11 || 'purely secular' philosophical concerns" (citations omitted)); see also *White v.* 12 || *Davenport*, 2024 WL 5237438, at *6 (C.D. Cal. Nov. 13, 2024) ("While courts 13 || will not second-guess the reasonableness of a plaintiff's assertion that a 14 || requirement conflicts with her religious beliefs, a plaintiff still must allege what 15 || the conflict is." (citing *Bolden-Hardge v. Office of Cal. State Controller*, 63 F.4th 16 | 1215, 1223 (9th Cir.

2023))), report and recommendation adopted, 2025 WL 17 || 268850 (C.D. Cal. Jan. 22, 2025). Plaintiff also does not demonstrate a substantial 18 || burden based on Defendants' verbal insults during the search regarding Plaintiff's 19 || belief that she is "God." (SAC at 16). 20 Accordingly, the Second Amended Complaint fails to state a First 21 || Amendment free exercise claim.

See *O'Lone*, 482 U.S. at 348-50. Plaintiff also 22 || fails to state a claim under RLUIPA, which similarly requires pleading a 23 || substantial burden on her religious exercise.' See *Warsoldier v. Woodford*, 418 24 || F.3d 989, 994-95 (9th Cir. 2005) (under RLUIPA, plaintiff bears initial burden to 25 || demonstrate that defendant's actions substantially burden the exercise of his 26 27TyO00CO 28 "Although unclear, it appears that Plaintiff s RLUIPA claim is predicated solely on the tray incident and subsequent disciplinary sanctions, not the strip search.

(See SAC at 13-14, 20). 13 1 religious beliefs (citing 42 U.S.C. § 2000cc-2(b)). In sum, Plaintiff's allegations 2 do not establish a substantial burden, or a "significantly great restriction or onus 3 upon [religious] exercise," to support a violation of her religious rights under 4 RLUIPA or the First Amendment. *New Harvest Christian Fellowship v. City of* 5 *Salinas*, 29 F.4th 596, 602 (9th Cir.

2022), cert. denied, 143 S. Ct. 567 (2023). 6 C. The Second Amended Complaint Fails to State a First 7 Amendment Retaliation Claim 8 "Prisoners have a First Amendment right to file grievances against prison 9 officials...." *Watison v. Carter*, 668 F.3d 1108, 1114 (9th Cir. 2012) (citation 10 omitted). Retaliation against a prisoner for exercising his First Amendment right 11 to seek redress/access the court is an independent constitutional violation.

12 *Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir. 2009). To prevail on a First 13 Amendment retaliation claim, an inmate must prove that (1) the plaintiff/inmate 14 engaged in conduct that is protected under the First Amendment; (2) a prison 15 official took "adverse action" against the inmate; (3) the inmate's protected 16 conduct was the "substantial or motivating factor" behind the prison official's 17 action; (4) the official's retaliatory action "would chill or silence a person of 18

ordinary firmness from future First Amendment activities”; and (5) the action “did 19 not advance legitimate goals of the correctional institution” because it was either 20 “arbitrary and capricious” or “unnecessary to the maintenance of order in the 21 institution.” Watison, 668 F.3d at 1114-15 (citations and internal quotation marks 22 omitted).

A complaint that does not allege a “chilling effect” may still state a 23 viable retaliation claim if it alleges that the plaintiff “suffered some other harm... 24 that is more than minimal....” Id. at 1114 (citations and internal quotation marks 25 omitted). 26 To satisfy the causation element of a First Amendment retaliation claim, an 27 inmate/plaintiff must demonstrate that there was a specific causal link between the 28 defendant’s alleged retaliatory conduct and the inmate’s exercise of a 14 1 constitutional right.

See generally *Hartman v. Moore*, 547 U.S. 250, 259 (2006) 2 (citations omitted); *Pratt v. Rowland*, 65 F.3d 802, 807-08 (9th Cir. 1995). A 3 plaintiff may do so either with direct evidence of a defendant’s retaliatory motive, 4 or with circumstantial evidence of the defendant’s knowledge of the protected 5 conduct at issue plus some other evidence probative of retaliatory intent, such as 6 “(1) proximity in time between protected speech and the alleged retaliation; 7 (2) [that] the [defendant] expressed opposition to the speech; [or] (3) other 8 evidence that the reasons proffered by the [defendant] for the adverse... action 9 were false and pretextual.” *McCollum v. Cal. Dep’t of Corr. & Rehab.*, 647 F.3d 10 870, 882 (9th Cir.

2011) (citation and quotation marks omitted; alterations in 11 original); see generally *Watison*, 668 F.3d at 1114 (direct evidence of retaliatory 12 intent “rarely” available). 13 Here, to the extent that Plaintiff intends to assert a First Amendment 14 retaliation claim, such claim fails at least because Plaintiff’s allegations do not 15 establish causation.

Plaintiff asserts that she “believ[es] Lichinov’s motive for 16 bothering [Plaintiff] about the tray was to incite the incident in order to punish 17 [her] in retaliation” for Plaintiff’s filing of a grievance and civil complaint against 18 Lachinov thirty days earlier. (SAC at 11, 20).

However, absent any facts to 19 suggest that Defendant actually knew about Plaintiff’s protected conduct, the 20 alleged thirty-day proximity is insufficient to raise a plausible inference that the 21 protected conduct was a “substantial or motivating factor” behind any Defendant’s 22 actions against her. 23 D. The Second Amended Complaint Fails to State an Eighth 24 Amendment Claim 25 The Eighth Amendment prohibits “the infliction of cruel and unusual 26 punishments on those convicted of crimes.” *Wilson v. Seiter*, 501 U.S. 294, 296- 27 97 (1991) (citation and internal quotation marks omitted). “After incarceration, 28 only the unnecessary and wanton infliction of pain... constitutes cruel and 15 1 || unusual punishment forbidden by the Eighth Amendment.” *Whitley v. Albers*, 2 || 475 U.S. 312, 319 (1986) (citation and internal quotation marks omitted); *Hope v. 3 || Pelzer*, 536 U.S. 730, 737 (2002). “The alleged pain may be physical or 4 || psychological.

Nevertheless, the inmate must objectively show that he was 5 || deprived of something sufficiently serious.” *Watson*, 668 F.3d at 1112 (internal 6 || quotations and citations omitted). “[N]ot ‘every malevolent touch by a prison 7 || guard gives rise to a federal cause of action.’” *Wilkins v. Gaddy*, 559 U.S. 34, 38 8 | (2010) (per curiam) (quoting *Hudson v. McMillian*, 503 U.S. 1, 9 (1992)).

9 Prison officials also violate the Eighth Amendment when they respond with 10 || deliberate indifference to an inmate’s serious medical needs. *Estelle v. Gamble*, 11 | 429 US. 97, 103-05 (1976) (citations and footnotes omitted). A prison official 12 || violates the Eighth Amendment when: (1) an inmate is incarcerated under 13 || conditions posing a substantial risk of serious harm; and (2) the prison official 14 | deliberately disregards the risk by failing to take reasonable measures to abate it.

15 || *Farmer v. Brennan*, 511 U.S. 825, 847 (1994); *Hearns v. Terhune*, 413 F.3d 1036, 16 || 1040-42 (9th Cir. 2005). Under this standard, the prison official must not only “be 17 || aware of facts from which the inference could be drawn that a substantial risk of 18 || serious harm exists,” but that person “must also draw the inference.” *Farmer*, 511 19 | U.S. at 837. “Ifa [prison official] should have been aware of the risk, but was not, 20 || then the [official] has not violated the Eighth Amendment, no matter how severe 21 | the risk.” *Gibson v. County of Washoe*, 290 F.3d 1175, 1188 (9th Cir.

2002) 22 || (citation omitted), cert. denied, 537 U.S. 1106 (2003), overruled in part on other 23 || grounds by *Castro v. County of Los Angeles*, 833 F.3d 1060, 1076 (9th Cir. 2016) 24 || (en banc), cert. denied, 580 U.S. 1099 (2017). Mistake, negligence, or malpractice 25 || does not establish deliberate indifference to serious medical needs. *Estelle*, 429 26 || U.S. at 105-06.

27 Here, Plaintiff claims that Defendants violated the Eighth Amendment by 28 || punishing her for refusing to give up her extra meal tray, “slamm[ing]” her into a 16 1 || steel table, and subjecting her to a strip search. (See SAC at 3, 5, 7, 16-19). 2 || Plaintiff fails to demonstrate an Eighth Amendment violation on any of these 3 || grounds. 4 First, although Plaintiff alleges that she suffered from depression and 5 || suicide attempts and had informed Defendants about her condition and her 6 || religious and mental health needs generally (see SAC at 6, 17), she fails to 7 || plausibly allege that Defendants were deliberately indifferent to such harm.

In 8 || particular, Plaintiff fails to show that any of the Defendants, even when informed 9 || of Plaintiff’s condition, would have known that their own respective alleged 10 | conduct might pose a substantial risk of serious harm within the circumstances at 11 || issue. Cf. *Simmons v. Navajo County*, 609 F.3d 1011, 1018 (9th Cir. 2010) 12 || (claims of deliberate indifference in prison suicide cases require allegations that 13 || specific Defendant actually knew that the inmate was “in substantial danger” of 14 || “imminent suicide[.]” and deliberately failed to take reasonable precautionary 15 || measures (emphasis in original; citation and quotation marks omitted),

overruled 16 || in part on other grounds by Castro, 833 F.3d 1060); see also, e.g., Madrid v. 17 | Gomez, 889 F. Supp. 1146, 1264 (N.D.

Cal. 1995) (“The Eighth Amendment 18 || simply does not guarantee that inmates will not suffer some psychological effects 19 || from incarceration or segregation.”). This includes Defendants’ alleged actions in 20 || taking away Plaintiff’s second meal tray and subjecting her to disciplinary 21 || sanctions such as the temporary loss of dayroom access and other privileges, 22 || which allegedly caused Plaintiff “mental anguish” and psychological distress.

23 || (See SAC at 17-19). 24 Second, Plaintiff fails to show that Defendants Mimaki and Lichinov used 25 || excessive force when confronting Plaintiff about the extra tray. “[W]henever 26 || prison officials stand accused of using excessive physical force in violation of the 27 || Cruel and Unusual Punishments Clause, the core judicial inquiry is... whether 28 || force was applied in a good-faith effort to maintain or restore discipline, or 17 1 || maliciously and sadistically to cause harm.” Hudson, 503 U.S. at 6-7.

Plaintiff 2 || alleges that when she was ordered to give up the extra tray, she refused to do so, 3 || and Mimaki and Lichinov responded by “snatch[ing] the trays out of [Plaintiff’s] 4 || hands, put[ting] them down and then grabb[ing]” Plaintiff and “slamm[ing] [her] 5 || on a steel table dazzling [sic]” her and “forc[ing] [her] into handcuffs....” (SAC 6 || at 6-7).

Without more, these facts do not demonstrate that Defendants acted 7 || “maliciously or sadistically to cause harm” in the circumstances. 8 Third, subjecting inmates to strip searches generally does not rise to an 9 || Eighth Amendment violation, particularly where, as here, Plaintiff does not allege 10 || that any force or touching was applied in the process.

See, e.g., Somers v. 11 | Thurman, 109 F.3d 614, 622-24 (9th Cir.) (cross-gender visual body cavity 12 || searches of male inmates, as well as watching the inmate shower, not objectively 13 || harmful enough to serve as basis of Eighth Amendment claim), cert. denied, 522 14 || U.S. 852 (1997); Foster v. Triplett, 2019 WL 452683, at *6 (C.D. Cal. Jan. 3, 15 || 2019) (weekly strip searches did not violate the Eighth Amendment where 16 || plaintiff did not allege any facts suggesting that the strip searches, in themselves, 17 || were so egregiously harmful as to violate the Eighth Amendment), report and 18 || recommendation adopted, 2019 WL 450671 (C.D.

Cal. Feb. 5, 2019); Wilson v. 19 || Soto, 2016 WL 825194, at *5 (C.D. Cal. Jan. 21, 2016) (allegations of strip search 20 || in the presence of other inmates and female officers insufficient to state an Eighth 21 || Amendment claim), report and recommendation adopted, 2016 WL 827747 (C.D. 22 || Cal. Mar. 2, 2016). Plaintiffs allegation that Defendants used demeaning 23 || language while conducting the search does not suffice.

See Austin v. Terhune, 24 | 367 F.3d 1167, 1171 (9th Cir. 2004) (“Although prisoners have a right to be free 25 || from sexual abuse, whether at the hands of fellow inmates or prison guards, the 26 ||

Eighth Amendment's protections do not necessarily extend to mere verbal sexual 27 || harassment." (citations omitted)); *Oltarzewski v. Ruggerio*, 830 F.2d 136, 139 (9th Cir. 1987).

1987) ("[V]erbal harassment or abuse... is not sufficient to state a 18 1 || constitutional deprivation under 42 U.S.C. § 1983." (brackets and citations 2 || omitted)); *Keenan v. Hall*, 83 F.3d 1083, 1092 (9th Cir. 1996), as amended, 135 3 || F.3d 1318 (9th Cir. 1998).

Moreover, Plaintiff's alleged confinement in a 3' by 3' 4 || cell for a brief period before or during the search does not amount to a violation of 5 || her rights. See *Hutto v. Finney*, 437 U.S. 678, 685-87 (1978) (in considering 6 || whether prisoner has been deprived of his rights, courts may consider length of 7 || time he is without benefit of, inter alia, adequate shelter; "A filthy, overcrowded 8 | cell... might be tolerable for a few days and intolerably cruel for weeks or 9 || months."); *Keenan*, 83 F.3d at 1091-92 (affirming dismissal of Eighth Amendment 10 | "living space" claim where plaintiff alleged that the cell in which he lived was 6' 11 || by 9'); *Melendez v. Hunt*, 2016 WL 5156469, *11 & n.5 (E.D.

Cal. Sept. 21, 12 | 2016) ("Even if placement of a claustrophobic inmate in a small cell could 13 || constitute deprivation of a basic need, a short duration of the detention 14 || [approximately one hour] weighs against such a finding." (citation omitted)). 15 Fourth, Plaintiff's alleged disciplinary sanctions resulting from the tray 16 || incident, such as the temporary losses of dayroom and telephone use, among other 17 || privileges, do not implicate the Eighth Amendment, as they did not deprive 18 || Plaintiff of the "minimal civilized measure of life's necessities[.]'" *Farmer*, 511 19 20 *Nor do Plaintiff's allegations regarding her conditions of confinement rise to level of a viable Fourteenth Amendment due process violation.

The Fourteenth Amendment prohibits the state deprivation of a protected liberty interest without due process of law. U.S. Const. amend. 22 || XIV, § 1. In the prison context the Due Process Clause is generally implicated only when an 3 inmate's conditions of confinement exceed the inmate's sentence in a particularly "unexpected manner," or impose "atypical and significant hardship on the inmate in relation to the ordinary 24 || incidents of prison life." *Sandin v. Conner*, 515 U.S. 472, 484 (1995) (citations omitted); *Chappell v. Mandeville*, 706 F.3d 1052, 1062-65 (9th Cir.

2013) (citations omitted). Plaintiff's 25 allegations fall well short of meeting the foregoing standard. See, e.g., *Serrano v. Francis*, 345 26 F.3d 1071, 1078 (9th Cir. 2003) (placement in segregated housing in and of itself typically not due process violation) (citations omitted), cert. denied, 543 U.S. 825 (2004); *Anderson v. Kern*, 27 || 45 F.3d 1310, 1315 (9th Cir.) ("[T]he hardship associated with administrative segregation, such 28 as a loss of recreational and rehabilitative programs or confinement to one's cell for a lengthy (continued...)

19 1 || U.S. at 832 (citations omitted); *Foster v. Runnels*, 554 F.3d 807, 812 (9th Cir. 2 || 2009) (citing *Farmer*, 511 U.S. at 832); see also *Stinson v. Blanckensee*, 2019 WL 3 || 7195294, at *2 (D. Ariz. Oct. 17, 2019) (temporary loss of email and telephone 4 || privileges “does not result in the type of ‘extreme deprivation’ that constitutes an 5 || Eighth Amendment violation” (citing *Hudson*, 503 U.S. at 8-9; *Castillo v. FBOP* 6 || FCI Fort Dix, 221 F. App’x 172, 175-76 (3rd Cir.

2007))), report and 7 || recommendation adopted, 2019 WL 7194708 (D. Ariz. Dec. 26, 2019); *Thao v. 8 || Dickinson*, 2013 WL 2458413, at *7 (E.D. Cal. June 6, 2013) (“[P]laintiffs... 9 || Eighth Amendment claims must fail because [he] does not allege that he has been 10 || deprived of adequate shelter, food, clothing, sanitation, medical care, or personal 11 || safety.

Instead, she claims that she was deprived of full privileges, such as daily 12 || phone calls and contact visits. Plaintiff has no Eighth Amendment right to full 13 || privileges, and accordingly their deprivation does not support a cognizable claim.” 14 || (footnote omitted)), report and recommendation adopted, 2014 WL 1117256 (E.D. 15 || Cal. Mar. 19, 2014).

16 Accordingly, the Second Amended Complaint fails to state an Eighth 17 || Amendment claim. 18 E. Plaintiff’s Challenge to Her Disciplinary Proceedings Appears to 19 Be Barred by Heck 20 Plaintiff’s Second Amended Complaint challenges the outcome of her 21 || disciplinary proceedings and seeks a restoration of the credits lost as a result of 22 || those proceedings.

(See SAC at 10-13, 20). 23 Under the “favorable termination doctrine” set forth in *Heck v. Humphrey*, 24 || the district court must dismiss a state prisoner’s Section 1983 claim for damages if 25 || *(...continued) period of time, does not violate the due process clause because there is no liberty interest in 27 || remaining in the general population.” (citations omitted)), opinion amended on denial of reh’g, 28 75 F.3d 448 (9th Cir.

1995). Regardless, the Second Amended Complaint does not raise a due process claim. 20 1 || “judgment in favor of the plaintiff would necessarily imply the invalidity of her 2 || conviction or sentence... unless the plaintiff can demonstrate that the conviction 3 || or sentence has already been invalidated.” *Heck v. Humphrey*, 512 U.S. 477, 4 || 486-87 (1994).

This doctrine has been extended to apply in the prison disciplinary 5 || context where the “defect complained of by [the plaintiff] would, if established, 6 || necessarily imply the invalidity of the deprivation of his good-time credits[.]” 7 || *Edwards v. Balisok*, 520 U.S. 641, 646 (1997); *Nonnette v. Small*, 316 F.3d 872, 8 || 875 (9th Cir. 2002), cert. denied, 540 U.S. 1218 (2004), and if the restoration of 9 || those credits “necessarily” would “affect the duration of time to be served.” 10 || *Muhammed v. Close*, 540 U.S. 749, 754 (2004) (per curiam); see also *Nettles v. 11 || Grounds*, 830 F.3d 922, 929 n.4 (9th Cir.

2016) (en banc) (“Heck applies only to 12 || administrative determinations that ‘necessarily’ have an effect on ‘the duration of 13 || time to be served[.]’” (citations omitted)), cert. denied, 580 U.S.

1063 (2017). 14 Here, to the extent that Plaintiff seeks a speedier release from custody, or a 15 || favorable determination on Plaintiff's claim(s) would necessarily accomplish this, 16 || any challenge to her disciplinary proceedings is barred, and a petition for habeas 17 || corpus would be Plaintiff's exclusive remedy.

See Nettles, 830 F.3d at 929 n.4. ORDERS” 19 In light of the foregoing, IT IS HEREBY ORDERED that the Second 20 || Amended Complaint is dismissed with leave to amend. 21 4 /// 22 23 The Magistrate Judge's orders herein constitute non-dispositive rulings on pretrial 24 || matters. See McKeever v. Block, 932 F.2d 795, 797-98 (9th Cir. 1991) (magistrate Judges can dismiss complaints with leave to amend; dismissal of complaint with leave to amend is 25 non-dispositive matter).

To the extent a party disagrees with such non-dispositive rulings, such 26 || Party may file a motion for review by the assigned District Judge within fourteen (14) days. See Local Rule 72-2.1. To the extent a party believes the rulings to be dispositive, rather than non- 27 || dispositive, such party has the right to object to this Court's determination that the rulings are 28 non-dispositive within fourteen (14) days.

A party will be foreclosed from challenging the rulings herein if such party does not seek review thereof, or object thereto. 21 1 IT IS FURTHER ORDERED that within twenty-one (21) days of the date of 2 this Order, Plaintiff must do one of the following: 3 1. File a Third Amended Complaint which cures the pleading defects 4 set forth herein;11 or 5 2. Sign and file the attached Notice of Dismissal which will result in 6 the voluntary dismissal of this action without prejudice; or 7 3.

File a Notice of Intent to Stand on Second Amended Complaint, 8 indicating Plaintiff's intent to stand on the Second Amended Complaint despite 9 the pleading defects set forth herein, which may result in the dismissal of this 10 action in its entirety based upon such defects. 11 Plaintiff is cautioned that Plaintiff's failure timely to file a Third 12 Amended Complaint, a Notice of Dismissal, or a Notice of Intent to Stand on 13 Second Amended Complaint may be deemed Plaintiff's admission that 14 amendment is futile, and may result in the dismissal of this action with or 15 without prejudice on the grounds set forth above, on the ground that 16 /// 17 /// 18 19 11The Clerk is directed to provide Plaintiff with a Central District of California Civil Rights Complaint Form, CV-66, to facilitate Plaintiff's filing of a Third Amended Complaint if 20 she elects to proceed in that fashion.

Any Third Amended Complaint must: (a) be labeled 21 “Third Amended Complaint”; (b) be complete in and of itself and not refer in any manner to prior complaints in this action – i.e., it must include all claims on which Plaintiff seeks to 22 proceed (Local Rule 15-2); (c) contain a “short and plain” statement of each of the claim(s) for relief (Fed. R. Civ. P. 8(a)); (d) make each allegation “simple, concise and direct” (Fed.

R. Civ. 23 P. 8(d)(1)); (e) set forth clearly the sequence of events giving rise to the claim(s) for relief in 24 sequentially “numbered paragraphs, each limited as far as practicable to a single set of circumstances” (Fed. R. Civ. P. 10(b)); (f) allege specifically what the Defendant did and how 25 that individual’s conduct specifically violated Plaintiff’s civil rights; (g) state the names of all 26 Defendants in the caption and not include in the body of the Third Amended Complaint Defendants who are not also named in the caption (Fed.

R. Civ. P. 10(a)); (h) be signed by 27 Plaintiff who is proceeding pro se (Fed. R. Civ. P. 11; Local Rule 11-1); and (i) not add Defendants or claims that are not reasonably related to the claim asserted in the previous 28 complaints. 22 1 amendment is futile, for failure diligently to prosecute and/or for failure to 2 comply with this Order. 3 IT IS SO ORDERED.

4 5 DATED: April 7, 2025 6 _____/s/_____ 7 Honorable
Jacqueline Chooljian UNITED STATES MAGISTRATE JUDGE 8 9 Attachments 10 11 12 13 14
15 16 17 18 19 20 21 22 23 24 25 26 27 28 23