

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Goodwin v. State Farm Insurance

Goodwin · No. 1:25-cv-00431-SAB · Decided June 4, 2025

OPINION

Goodwin v. State Farm Insurance

PER CURIAM.

1 2 3 4 5 6 7 8

UNITED STATES DISTRICT COURT

9

EASTERN DISTRICT OF CALIFORNIA

10 11 DUCHUN GOODWIN, Case No. 1:25-cv-00431-SAB 12 Plaintiff, FINDINGS AND
RECOMMENDATIONS

RECOMMENDING DISMISSING

13 v. COMPLAINT

14 STATE FARM INSURANCE, et al., ORDER DIRECTING CLERK OF THE
COURT TO RANDOMLY ASSIGN A

15 Defendants. DISTRICT JUDGE 16 (ECF Nos. 1, 4)

17 OBJECTIONS DUE WITHIN FOURTEEN

DAYS

18 19 Duchun Goodwin (“Plaintiff”), proceeding pro se and in forma pauperis, filed this action 20
on April 14, 2025. (ECF No. 1.) On April 28, 2025, a screening order issued finding Plaintiff 21
had failed to state any cognizable claim and granting Plaintiff leave to file a first amended 22
complaint within thirty days. (ECF No. 4.) In the April 28, 2025 order, Plaintiff was advised 23
that if he failed to file an amended complaint, the Court would recommend that the action be 24
dismissed without leave to amend for failure to state a claim. (Id. at 13.) More than thirty days 25
have passed, and Plaintiff has not filed an amended complaint or otherwise responded to the 26
screening order. For the following reasons, the Court recommends the action be dismissed for 27
failure to state a cognizable claim, failure to prosecute this action, and failure to obey the Court’s
order to file an amended complaint. 1 I.

2 SCREENING REQUIREMENT

3 Notwithstanding any filing fee, the court shall dismiss a case if at any time the Court 4
determines that the complaint “(i) is frivolous or malicious; (ii) fails to state a claim on which 5
relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from 6
such relief.” 28 U.S.C. § 1915(e)(2); see *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) 7

(section 1915(e) applies to all in forma pauperis complaints, not just those filed by prisoners); 8 Calhoun v. Stahl, 254 F.3d 845 (9th Cir. 2001) (dismissal required of in forma pauperis 9 proceedings which seek monetary relief from immune defendants); Cato v. United States, 70 10 F.3d 1103, 1106 (9th Cir. 1995) (district court has discretion to dismiss in forma pauperis 11 complaint under 28 U.S.C. § 1915(e)); Barren v. Harrington, 152 F.3d 1193 (9th Cir. 1998) 12 (affirming sua sponte dismissal for failure to state a claim). The Court exercises its discretion to 13 screen the plaintiff's complaint in this action to determine if it "(i) is frivolous or malicious; (ii) 14 fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a 15 defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2). 16 In determining whether a complaint fails to state a claim, the Court uses the same 17 pleading standard used under Federal Rule of Civil Procedure 8(a). A complaint must contain "a 18 short and plain statement of the claim showing that the pleader is entitled to relief . . ." Fed. R. 19 Civ. P. 8(a)(2). Detailed factual allegations are not required, but "[t]hreadbare recitals of the 20 elements of a cause of action, supported by mere conclusory statements, do not suffice." 21 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 22 544, 555 (2007)). 23 In reviewing the pro se complaint, the Court is to liberally construe the pleadings and 24 accept as true all factual allegations contained in the complaint. Erickson v. Pardus, 551 U.S. 89, 25 94 (2007). Although a court must accept as true all factual allegations contained in a complaint, 26 a court need not accept a plaintiff's legal conclusions as true. Iqbal, 556 U.S. at 678. "[A] 27 complaint [that] pleads facts that are 'merely consistent with' a defendant's liability . . . 'stops 1 Twombly, 550 U.S. at 557). Therefore, the complaint must contain sufficient factual content for 2 the court to draw the reasonable conclusion that the defendant is liable for the misconduct 3 alleged. Iqbal, 556 U.S. at 678. Leave to amend may be granted to the extent that the 4 deficiencies of the complaint can be cured by amendment. Cato, 70 F.3d 1106. 5 II.

6 COMPLAINT ALLEGATIONS

7 The Court accepts Plaintiff's allegations in the complaint as true only for the purpose of 8 the sua sponte screening requirement under 28 U.S.C. § 1915. 9 Plaintiff names State Farm Insurance ("State Farm") and the California Department of 10 Insurance ("CDI") as defendants in this action. (ECF No. 1 ("Compl.") at 1.) Plaintiff alleges he 11 has been diagnosed with ADHD and PTSD. (Id.) Plaintiff lists the following seven "core 12 allegations": (1) State Farm knowingly listed their office address as Plaintiff's mailing address 13 without consent, intercepted critical mail, and altered Plaintiff's contact information for over a 14 year; (2) Plaintiff discovered and reported this action via email to Laura Selby and only after this 15 exposure was the mailing address corrected; (3) State Farm's local agent, Phillip, scheduled an 16 appraisal on February 23, 2021, yet no appraisal occurred, which led to failure to relocate 17 Plaintiff under proper claims handling standards; (4) mail sent from the federal court was 18 returned under the false premise that Plaintiff did not reside at his address; (5) Plaintiff was 19 kicked out of hotel accommodations on October 5, 2020, following a false claim by Poonam 20 Kelsey from State Farm that Plaintiff

owed a \$900 rental abatement and \$500 deductible, which 21 Plaintiff alleges are figures that were never communicated nor agreed upon; (6) State Farm 22 consistently lied through calls, emails, and denial of benefits while claiming the matter had been 23 settled; and (7) the CDI, including investigator Liza Pedrosa, failed to act or properly investigate 24 despite repeated complaints since 2020. (Id.) 25 Plaintiff requests relief in the form of the issuance of subpoenas to Defendants, 26 emergency injunctive relief to preserve housing and credit status, monetary damages, and a 27 judicial declaration holding Defendants accountable for regulatory misconduct and violations of 1 III.

2 DISCUSSION

3 A. Failure to State a Claim 4 1. Federal Rule of Civil Procedure 8 5 Pursuant to Rule 8(a), a complaint must contain “a short and plain statement of the claim 6 showing that the pleader is entitled to relief[.]” Fed. R. Civ. P. 8(a)(2). “Such a statement must 7 simply give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which 8 it rests.” *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002) (citations and quotations 9 omitted). Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements 10 of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. 11 at 678 (citation omitted). This is because, while factual allegations are accepted as true, legal 12 conclusions are not. *Id.*; see also *Twombly*, 550 U.S. at 556-57; *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). Therefore, Plaintiff must set forth “sufficient factual matter, 14 accepted as true, to ‘state a claim to relief that is plausible on its face.’ ” *Iqbal*, 556 U.S. at 678 15 (quoting *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads 16 factual content that allows the court to draw the reasonable inference that the defendant is liable 17 for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556). 18 The Court notes Plaintiff has filed five other civil actions against the same defendants in 19 the past two years.¹ In recommending dismissal of the following cases, courts provided Plaintiff 20 the requisite pleading standard under Rule 8. See *Goodwin v. State Farm Gen. Ins. Co.*, Case

21 No. 1:23-cv-00165-ADA-HBK (initial complaint filed February 2, 2023, against State Farm, 22 Philip Call, Poonam Kalsi, and Laura Selby for violations of sections 102 and 103 of the Civil 23 Rights Act of 1991; dismissed as deficient and facially frivolous); *Goodwin v. State Farm Gen. 24 Ins. Co.*, No. 1:23-CV-00232-SAB (initial complaint filed on February 15, 2023, against State 25 Farm and its agents for violations of sections 102 and 103 of the Civil Rights Act of 1991; 26 dismissed for failure to state a claim); *Goodwin v. The California Dep’t of Ins.*, Case No. 1:23- 27 1 The court may take judicial notice of court records. *Valerio v. Boise Cascade Corp.*, 80 F.R.D. 626, 635 n.1 (N.D. Cal. 1978)); see also *United States v. Raygoza-Garcia*, 902 F.3d 994, 1001 (9th Cir. 2018) (“A court may take 1 cv-00259-JLT-HBK (initial complaint filed on February 21, 2023, against the California 2 Department of Insurance and its agents, including Liza Pedrosa for violations of sections 102 and 3 103 of the Civil Rights Act of 1991; dismissed because the amended complaint was devoid of 4 any parties or facts that would permit the Court to find that is

has jurisdiction, failed to comply 5 with Rule 8, and failed to establish an arguable basis in law or fact and was therefore facially 6 frivolous); *Goodwin v. The California Dep't of Ins.*, Case No. 23-cv-00346-JLT-HBK (filed on 7 March 8, 2023, against the CDI for violations of sections 102 and 103 of the Civil Rights Act of 8 1991; dismissed for failure to prosecute); *Goodwin v. State Farm Gen. Ins. Co.*, Case No. 24-cv-9 00795-JLT-SAB (initial complaint filed on July 9, 2024, against State Farm and its agents, 10 including Poonam Kalsi, Laura Selby, and Phillip Call, for violations of sections 102 and 103 of 11 the Civil Rights Act of 1991; 41 U.S.C. § 6503; 48 C.F.R. 52.233-4; California Insurance Code 12 Section 790.03(h); 10 C.C.R. §§ 2695.7 and 2695.9; dismissed for failure to state a claim that 13 invokes this Court's jurisdiction, failure to prosecute, and failure to comply with a Court order). 14 Despite being well aware of the federal pleading standards, Plaintiff's instant complaint 15 does not comply with Rule 8. While it is short, it does not clearly state what happened. Instead, 16 Plaintiff's complaint is an impermissible "shotgun" pleading. See *Hughey v. Camacho*, No. 17 2:13-CV-2665-TLN-AC, 2014 WL 5473184, at *4 (E.D. Cal. Oct. 23, 2014) (noting a shotgun 18 pleading occurs when "one party pleads multiple claims and does not identify which specific 19 facts are allocated to which claim.") Plaintiff's lists eight causes of action but does not state 20 which of his seven "core allegations" relate to which claim, how the facts relate to the elements 21 of the legal claims raised, nor which Defendant is implicated in each claim. 22 Courts may dismiss a complaint for failure to comply with Rule 8 even when the 23 complaint is not "wholly without merit." *McHenry v. Renne*, 84 F.3d 1172, 1179 (9th Cir. 24 1996). "Rule 8(e), requiring each averment of a pleading to be 'simple, concise, and direct,' 25 applies to good claims as well as bad, and is a basis for dismissal independent of Rule 12(b)(6)." 26 *Id.* The Court has repeatedly provided Plaintiff guidance that a civil complaint must contain 27 sufficient facts showing the plaintiff is entitled to relief and that each defendant's involvement 1 must be sufficiently alleged. Plaintiff's instant complaint does not comply with these 2 requirements set forth in Rule 8. 3 2. Federal Question Jurisdiction 4 This Court has previously advised Plaintiff that federal courts are courts of limited 5 jurisdiction and their power to adjudicate is limited to that granted by Congress. *U.S. v. Sumner*, 6 226 F.3d 1005, 1009 (9th Cir. 2000). Federal courts are presumptively without jurisdiction over 7 civil actions, and the burden to establish the contrary rests upon the party asserting jurisdiction. 8 *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). Generally, there are two bases 9 for subject matter jurisdiction: federal question jurisdiction and diversity jurisdiction. 10 U.S.C. §§ 1331, 1332. 11 Because Plaintiff and Defendant CDI are citizen of California, this Court does not have 12 diversity jurisdiction. Jurisdiction in this action must therefore be based on a federal question. 13 Pursuant to 28 U.S.C. § 1331, federal courts have original jurisdiction over "all civil actions 14 arising under the Constitution, laws, or treaties of the United States. "A case 'arises under' 15 federal law either where federal law creates the cause of action or where the vindication of a 16 right under state law necessarily turns on some construction of federal law." *Republican Party of 17 Guam v. Gutierrez*,

277 F.3d 1086, 1088 (9th Cir. 2002) (internal punctuation omitted) (quoting 18 Franchise Tax Bd. v. Construction Laborers Vacation Trust, 463 U.S. 1, 8–9 (1983) (citations 19 omitted)). “[T]he presence or absence of federal-question jurisdiction is governed by the ‘well- 20 pleaded complaint rule,’ which provides that federal jurisdiction exists only when a federal 21 question is presented on the face of the plaintiff’s properly pleaded complaint.” Republican Party 22 of Guam, 277 F.3d at 1089 (citations omitted). Here, Plaintiff has not sufficiently alleged facts 23 against the Defendants that would state a cognizable federal claim. 24 a. RICO 25 Plaintiff alleges a violation of “Federal RICO statutes – coordinated misconduct across 26 multiple agents and third parties to displace a vulnerable claimant.” (Compl. at 1.) The Racketeer 27 Influenced and Corrupt Organizations Act (“RICO”) “provides a private civil action to recover 1 S.P.R.L. v. Imrex Corp., 473 U.S. 479, 481 (1985) (quoting 18 U.S.C. § 1964(c)). To state a 2 valid claim under 18 U.S.C. 1962(c), a plaintiff is required to allege “(1) conduct (2) of an 3 enterprise (3) through a pattern (4) of racketeering activity.” Id. at 496. 4 An “enterprise” is defined as “any individual, partnership, corporation, association, or 5 other legal entity, and any union or group of individuals associated in fact although not a legal 6 entity.” 18 U.S.C. § 1961(4). “[R]acketeering activity” is any act indictable under several 7 provisions of Title 18 of the United States Code, and includes the predicate acts of mail fraud, 8 wire fraud and obstruction of justice....” Turner v. Cook, 362 F.3d 1219, 1229 (9th Cir. 2004), 9 citing 18 U.S.C. § 1961(1). A “pattern of racketeering activity” requires at least two acts of 10 racketeering activity within ten years of each other. 18 U.S.C. at § 1961(5). However, while 11 two acts are necessary to state a claim under RICO, those two predicate acts may nonetheless be 12 insufficient. Turner, 362 F.3d at 1229. “A ‘pattern’ of racketeering activity also requires proof 13 that the racketeering predicates are related and ‘that they amount to or pose a threat of continued 14 criminal activity.’” Id. (quoting H.J. Inc. v. Northwestern Bell Telephone Co., 492 U.S. 229, 15 239 (1989)). Significantly, “an alleged ‘series of related predicates’ not ‘extending over a 16 substantial period of time’ and not ‘threatening... future criminal conduct’ fails to” state a claim 17 under RICO. Id. 18 It is unclear what predicate acts form the basis of Plaintiff’s alleged pattern of 19 racketeering activity against unspecified defendants. To the extent Plaintiff claims mail fraud 20 pursuant to 18 U.S.C. § 1341 is a predicate act, it is not sufficiently pleaded. Such allegations are 21 subject to the heightened pleading standards of Federal Rule of Civil Procedure 9(b). Rule 9(b) 22 states, “[i]n alleging fraud or mistake, a party must state with particularity the circumstances 23 constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person’s 24 mind may be alleged generally.” Fed. R. Civ. P. 9(b). As previously discussed, Plaintiff’s 25 complaint does not satisfy the Rule 8 pleading standards, nonetheless the “who, what, when, 26 where, why, and how” required by Rule 9(b). Kearns v. Ford Motor Co., 567 F.3d 1120, 1126 27 (9th Cir. 2009). Plaintiff merely alleges State Farm knowingly listed its address as Plaintiff’s 1 any “coordinated misconduct,” such as who committed the violation, and when and where it 2 occurred. Accordingly, Plaintiff fails to state a claim under RICO. 3 b. ADA 4 Plaintiff broadly alleges a violation of the Americans with

Disabilities Act for “failure to 5 accommodate and protect a claimant with documented disabilities” against unspecified 6 defendants. (Compl. at 2.) 7 Title II of the ADA, 42 U.S.C. § 12132 prohibits a public entity from discriminating 8 against a qualified individual with a disability on the basis of disability. *Weinreich v. L.A. 9 County Metro. Transp. Auth.*, 114 F.3d 976, 978 (9th Cir. 1997). To state a claim of disability 10 discrimination under Title II, a plaintiff must allege that: 11 (1) he “is an individual with a disability;” (2) he “is otherwise qualified to participate in or receive the benefit of some public 12 entity's services, programs, or activities;” (3) he “was either excluded from participation in or denied the benefits of the public 13 entity's services, programs, or activities, or was otherwise discriminated against by the public entity;” and (4) “such 14 exclusion, denial of benefits, or discrimination was by reason of [his] disability.” 15 16 *McGary v. City of Portland*, 386 F.3d 1259, 1265 (9th Cir. 2004) (quoting *Thompson v. Davis*, 17 295 F.3d 890, 895 (9th Cir. 2002)). A plaintiff may only assert a Title II claim against “public 18 entities.” 42 U.S.C. § 12132; *Miranda B. v. Kitzhaber*, 328 F.3d 1181, 1187-88 (9th Cir. 2003). 19 Additionally, to assert a claim against a private entity under Title III of the ADA, a 20 plaintiff must allege: “(1) he is disabled as defined by the ADA; (2) the defendant is a private 21 entity that owns, leases or operates a place of public accommodation; (3) the defendant 22 employed a discriminatory policy or practice; and (4) the defendant discriminated against the 23 plaintiff based upon the plaintiff's disability by (a) failing to make a requested reasonable 24 modification that was (b) necessary to accommodate the plaintiff's disability”. *Fortyune v. Am. 25 Multi-Cinema, Inc.*, 364 F.3d 1075, 1082 (9th Cir. 2004). 26 Plaintiff fails to allege sufficient facts to support an ADA claim against either State Farm, 27 a private entity, or the CDI, a public entity. Even assuming Plaintiff's allegation that he has ADHD and PTSD is sufficient to show he is an individual with a qualified disability under the 1 ADA, Plaintiff's complaint does not clearly allege the remaining elements of either a Title II or 2 Title III ADA claim. Accordingly, Plaintiff fails to state a claim under the ADA. 3 c. Title 18 of the United States Code 4 Plaintiff also alleges violations of “18 U.S. Code § 241 - Conspiracy against rights” and 5 “18 U.S. Code § 1341 – Mail Fraud.” (Compl. at 2.) To the extent Plaintiff intends to bring 6 standalone claims under these statutes, such claims are not cognizable as these are criminal 7 statutes which confer no private right of action. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 8 1980) (criminal provisions under Title 18 of the U.S. Code “provide no basis for civil liability”) 9 (citations omitted); *Velia v. Amador Cnty.*, No. 2:24-CV-2535-DJC-CKD, 2024 WL 4466742, at 10 *1 (E.D. Cal. Sept. 20, 2024) (no private civil cause of action under 18 U.S.C. § 241); *Lobstein 11 v. Washington Mut. Mortg. Pass-Through Certificates WMALT Series 2007-OC1*, No. 2:19-cv- 12 07615-SVW-JPR, 2019 WL 9362078, at *3 (C.D. Cal. Dec. 18, 2019) (no private right of action 13 under 18 U.S.C. § 1341). The instant case is not one of a federal prosecution and “in American 14 jurisprudence... a private citizen lacks a judicially cognizable interest in the prosecution or 15 nonprosecution of another.” *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973). Because these 16 statutes do not create a private right of action, Plaintiff fails to state cognizable claims under 18 17 U.S.C. § 241

or 18 U.S.C. § 1341. 18 d. 42 U.S.C. § 1983 19 Plaintiff also alleges a violation of 42 U.S. Code § 1983 – Civil action for deprivation of 20 rights.” (Compl. at 2.) Section 1983 provides a cause of action for the violation of a plaintiff’s 21 constitutional or other federal rights by persons acting under color of state law. *Nurre v. 22 Whitehead*, 580 F.3d 1087, 1092 (9th Cir 2009); *Long v. Cnty. of Los Angeles*, 442 F.3d 1178, 23 1185 (9th Cir. 2006); *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). To state a claim 24 under section 1983, Plaintiff is required to show that (1) each defendant acted under color of 25 state law and (2) each defendant deprived him of rights secured by the Constitution or federal 26 law. *Long*, 442 F.3d at 1185. 27 To the extent Plaintiff brings a Section 1983 claim against the CDI, he cannot do so. *The 1 Ins., No. CIV. S-11-2392 KJM*, 2012 WL 33034, at *2 (E.D. Cal. Jan. 6, 2012); *Will v. 2 Michigan Dept. of State Police*, 491 U.S. 58, 64–66 (1989) (states, state agencies and state 3 officials sued in their official capacities are not persons subject to civil rights suits); *Howlett v. 4 Rose*, 496 U.S. 356, 365, 110 S.Ct. 2430, 110 L.Ed.2d 332 (1990) (noting “the State and arms of 5 the State ... are not subject to suit under § 1983 in either federal court or state court.”) 6 Neither is State Farm a “person” subject to liability under 42 U.S.C. § 1983. Further, 7 Plaintiff fails to allege facts that plausibly support State Farm or its agents were acting under 8 color of state law. “[P]urely private conduct, no matter how wrongful, is not within the 9 protective orbit of section 1983.” *Ouzts v. Maryland Nat. Ins. Co.*, 505 F.2d 547, 550 (9th Cir. 10 1974); see also *Van Ort v. Estate of Stanewich*, 92 F.3d 831, 835 (9th Cir. 1996) (there is no 11 right to be free from the infliction of constitutional violations by private actors). 12 Even if they were considered “person(s)” subject to liability under Section 1983, Plaintiff 13 must also demonstrate that each defendant personally participated in the deprivation of his rights. 14 *Iqbal*, 556 U.S. at 677; *Simmons v. Navajo County, Ariz.*, 609 F.3d 1011, 1020-21 (9th Cir. 15 2010); *Ewing v. City of Stockton*, 588 F.3d 1218, 1235 (9th Cir. 2009); *Jones*, 297 F.3d at 934. 16 The complaint must allege that every defendant acted with the requisite state of mind to violate 17 the underlying constitutional provision. *OSU Student Alliance v. Ray*, 699 F.3d 1053, 1070 (9th

18 Cir. 2012). Plaintiff does not allege either Defendant violated a right secured by the 19 Constitution. Nor does Plaintiff state what federal law supports his Section 1983 claim. 20 Accordingly, Plaintiff fails to state a claim under Section 1983. 21 e. Plaintiff’s State Law Claims 22 Where a district court has original jurisdiction, it may exercise supplemental jurisdiction 23 over all claims that are that are so related that they form part of the same case or controversy. 28 24 U.S.C. § 1367(a). Relevant here, the district court may decline to exercise supplemental 25 jurisdiction where all claims over which the court has original jurisdiction have been dismissed. 26 28 U.S.C. § 1367(c)(3). “A district court’s decision whether to exercise that jurisdiction after 27 dismissing every claim over which it had original jurisdiction is purely discretionary.” *Carlsbad* 1 supplemental jurisdiction over Plaintiff’s state law claims.2 2 B. Plaintiff’s Failure to Prosecute and Comply with a Court Order 3 Additionally, the Court should dismiss the action due to Plaintiff’s failure to comply with 4 a Court order and failure to prosecute. Plaintiff failed to file an

amended complaint as provided 5 by the April 28, 2025 order granting him leave to amend. A court may dismiss an action based 6 on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with 7 local rules. See, e.g., *Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for 8 noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) 9 (dismissal for failure to comply with an order to file an amended complaint); *Malone v. U.S. 10 Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); 11 *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution 12 and failure to comply with local rules). Where a plaintiff fails to file an amended complaint after 13 being provided with leave to amend to cure the failure to state a claim, a district court may 14 dismiss the entire action. *Lira v. Herrera*, 427 F.3d 1164, 1169 (9th Cir. 2005). 15 In determining whether to dismiss an action for failure to comply with a pretrial order, 16 the Court must weigh “(1) the public's interest in expeditious resolution of litigation; (2) the 17 court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public 18 policy favoring disposition of cases on their merits; and (5) the availability of less drastic 19 sanctions.” In *re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 20 2006); *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). 21 These factors guide a court in deciding what to do; they are not conditions that must be met in 22 order for a court to take action. In *re Phenylpropanolamine*, 460 F.3d at 1226. 23 In this instance, the public's interest in expeditious resolution of the litigation and the 24 Court's need to manage its docket weigh in favor of dismissal. *Id.* Plaintiff was ordered to file 25 an amended complaint to cure the deficiencies that were identified in his complaint within thirty 26 days of April 28, 2025. (ECF No. 4.) Plaintiff has been provided with both the legal standards 27 2 The Court provided the relevant legal standards related to each state law claims mentioned in Plaintiff's complaint 1 that would apply to his claims and the opportunity to file an amended complaint. Plaintiff has 2 neither filed an amended complaint nor otherwise responded to the Court's order. Plaintiff's 3 failure to comply with the orders of the Court hinders the Court's ability to move this action 4 towards disposition and indicates that Plaintiff does not intend to diligently litigate this action. 5 Since it appears that Plaintiff does not intend to litigate this action diligently, there arises 6 a rebuttable presumption of prejudice to the defendants in this action. In *re Eisen*, 31 F.3d 1447, 7 1452–53 (9th Cir. 1994). The risk of prejudice to the defendants also weighs in favor of 8 dismissal. 9 The public policy in favor of deciding cases on their merits is greatly outweighed by the 10 factors in favor of dismissal. It is Plaintiff's responsibility to move this action forward. This 11 action can proceed no further without Plaintiff's cooperation and compliance with the order at 12 issue, and the action cannot simply remain idle on the Court's docket, unprosecuted. In this 13 instance, the fourth factor does not outweigh Plaintiff's failure to comply with the Court's orders. 14 Finally, a court's warning to a party that their failure to obey the court's order will result 15 in dismissal satisfies the “consideration of alternatives” requirement. *Ferdik*, 963 F.2d at 1262; 16 *Malone*, 833 at 132–33; *Henderson*, 779 F.2d at 1424.

The Court's April 28, 2025 order 17 requiring Plaintiff to file an amended complaint expressly stated: "If Plaintiff fails to file a first 18 amended complaint in compliance with this order, the Court will recommend to a District Judge 19 that this action be dismissed without leave to amend for failure to state a claim." (ECF No. 4 at 20 13.) Thus, Plaintiff had adequate warning that dismissal of this action would result from his 21 noncompliance with the Court's order and his failure to state a claim. Plaintiff's noncompliance 22 warrants dismissal. 23 IV.

24 CONCLUSION AND ORDER

25 Accordingly, it is **HEREBY RECOMMENDED** that this action be **DISMISSED** without 26 leave to amend for Plaintiff's failure to state a claim, failure to prosecute, and failure to comply 27 with a court order. 1 These findings and recommendations are submitted to the district judge assigned to this 2 | action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within fourteen 3 | (14) days of service of this recommendation, Plaintiff may file written objections to these 4 | findings and recommendations with the Court limited to 15 pages in length, including any 5 | exhibits. Such a document should be captioned "Objections to Magistrate Judge's Findings and 6 | Recommendations." The district judge will review the magistrate judge's findings and 7 | recommendations pursuant to 28 U.S.C. § 636(b)(1)(C). Plaintiff is advised that failure to file 8 | objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v. 9 | Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th 10 | Cir. 1991)). 11 **IT IS FURTHER ORDERED** that the Clerk of the Court is **DIRECTED** to randomly 12 | assign this matter to a District Judge. 13

4 **IT IS SO ORDERED.** FA. ee

15 | Dated: _ June 4, 2025

STANLEY A. BOONE

16 United States Magistrate Judge 17 18 19 20 21 22 23 24 25 26 27 28