

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

Armstrong v. County of Plumas

No. 2:25-cv-0904 SCR P · No. 2:25-cv-0904 SCR P · Decided August 28, 2025

OPINION

(PC) Armstrong v. County of Plumas

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 ERIC ARMSTRONG, No. 2:25-cv-0904 SCR P

12 Plaintiff, 13 v. ORDER 14 COUNTY OF PLUMAS, et al., 15 Defendants. 16 17 Plaintiff is
incarcerated in Plumas County Jail and proceeding pro se with a civil rights 18 action under 42
U.S.C. § 1983. Plaintiff's complaint is before the undersigned for screening 19 under 28 U.S.C. §
1915A. (ECF No. 1.) Plaintiff has also filed a motion to proceed in forma 20 pauperis (ECF No. 2)
and motions for the appointment of counsel (ECF Nos. 3, 7).

21 IN FORMA PAUPERIS

22 Plaintiff requests leave to proceed without paying the full filing fee for this action, under 23 28
U.S.C. § 1915. (ECF No. 2.) Plaintiff submitted a declaration showing that he cannot afford 24 to
pay the entire filing fee. See 28 U.S.C. § 1915(a)(2). Accordingly, plaintiff's motion to 25 proceed
in forma pauperis is granted. This means that plaintiff is allowed to pay the \$350.00 26 filing fee
in monthly installments that are taken from the inmate's trust account rather than in one 27 lump
sum. 28 U.S.C. §§ 1914(a). As part of this order, the prison is required to remove an initial 28
partial filing fee from plaintiff's trust account. See 28 U.S.C. § 1915(b)(1). A separate order 1
directed to the Sheriff of Plumas County requires monthly payments of twenty percent of the 2
prior month's income to be taken from plaintiff's trust account. These payments will be taken 3
until the \$350 filing fee is paid in full. See 28 U.S.C. § 1915(b)(2).

4 STATUTORY SCREENING OF PRISONER COMPLAINTS

5 The court is required to screen complaints brought by prisoners seeking relief against "a 6
governmental entity or officer or employee of a governmental entity." 28 U.S.C. § 1915A(a). In 7
performing this screening function, the court must dismiss any claim that "(1) is frivolous, 8
malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief
9 from a defendant who is immune from such relief." Id. § 1915A(b). A claim is legally frivolous
10 when it lacks an arguable basis either in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 325

11 (1989). The court may dismiss a claim as frivolous if it is based on an indisputably meritless 12 legal theory or factual contentions that are baseless. *Neitzke*, 490 U.S. at 327. The critical 13 inquiry is whether a constitutional claim, however inartfully pleaded, has an arguable legal and 14 factual basis. See *Jackson v. Arizona*, 885 F.2d 639, 640 (9th Cir. 1989). 15 In order to avoid dismissal for failure to state a claim a complaint must contain more than 16 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause 17 of action.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-557 (2007). In other words, 18 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory 19 statements do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A claim upon which the 20 court can grant relief has facial plausibility. *Twombly*, 550 U.S. at 570. “A claim has facial 21 plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable 22 inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. When 23 considering whether a complaint states a claim, the court must accept the allegations as true, 24 *Erickson v. Pardus*, 551 U.S. 89, 93-94 (2007), and construe the complaint in the light most 25 favorable to the plaintiff, *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

26 PLAINTIFF’S COMPLAINT

27 I. Defendants 28 The complaint names nine defendants: (1) Plumas County; (2) Deputy Andrew Courtright, 1 Plumas County Sheriff’s Dept.; (3) Detective John Fatheree, Plumas County Sheriff’s Dept.; (4) 2 Morgan Dillard, Plumas County Probation Dept.; (5) C/O Rachel Fatheree, Plumas County Jail; 3 (6) C/O Brandvold, Plumas County Jail; (7) C/O Julia Frazier, Plumas County Jail; (8) Sgt. Kalid 4 Forcino, Plumas County Jail; and (9) Steve Clark, Commander. (ECF No. 1 at 1-2.) 5 II. Causes of Action 6 1) Disciplinary Proceedings 7 Plaintiff was arrested on December 31, 2024, and placed in protective custody. (ECF No. 8 1 at 11.) Plaintiff alleges defendant Clark refused to change plaintiff’s race from Black to 9 nonbinary and defendant John Fatheree never brought plaintiff in for an intake interview. (Id.) 10 Plaintiff filed a citizen’s complaint against defendants Clark and John Fatheree. (Id.) He faced 11 retaliation as a result. He received six writeups in a week and was put on a 60-day lockdown on

12 January 30, 2025. (Id.) Plaintiff filed the complaint on March 12, 2025. (Id. at 1.) In his time on

13 lockdown, plaintiff has not been reviewed by medical and only receives fifteen minutes of outside 14 yard every other day. He has no access to the phone, the library, or commissary. (Id. at 4.) 15 2) Property 16 Plaintiff alleges defendant John Fatherlee seized three cell phones from plaintiff’s jail cell 17 on January 8, 2025, without producing a receipt or warrant. (ECF No. 1 at 6.) On February 18, 18 2025, defendant Brandvold took plaintiff’s Hell’s Angels sticker that his lawyer sent him via legal 19 mail. Plaintiff alleges Brandvold’s action was in response to a complaint. (Id.) Plaintiff also 20 challenges the conditions of his PRCS [Post Release Community Supervision]. (Id. at 12.) He is 21 subject to 36 conditions, including drug terms when he has no drug charges. Other conditions are 22 contradictory. The phones were seized under a fictitious

term. (Id.) 23 3) Basic Necessities 24 Defendant Forcino was supposed to bring plaintiff cleaning supplies for his cell but didn't. 25 (ECF No. 1 at 7.) The cell has not been cleaned in seven days. (Id.) Plaintiff's heater has been 26 broken since February 15, 2025, and he got sick from the "freezing cell." He has no jacket and or 27 extra blankets. (Id.) Plaintiff's utensils have not been exchanged in 3 weeks or more. The Jail 28 refuses to give him extra blankets because of his writeup. (Id.) Plaintiff has requested cleaning 1 supplies for his cell but never received any. (Id.) Plaintiff claims the facility is in violation of 2 Cal. Code Regs., tit. 15, § 3050 because it is not providing two hot meals a day.¹ Nor is a "wide 3 variety" of food being served. (Id. at 5.) 4 4) Legal Mail 5 On February 13, 2025, "Defendants" opened plaintiff's outgoing legal mail. (ECF No. 1 6 at 8.) On January 29, 2025, defendants took legal paperwork and searched it out of plaintiff's 7 presence. (Id.) 8 5) Excessive Force 9 On January 30, 2025, defendant Courtright arrested plaintiff and put the handcuffs on so 10 tight plaintiff received a permanent scar. (ECF No. 1 at 9.) Plaintiff also claims to have tendon 11 damage. (Id.) 12 III. Requested Relief 13 Plaintiff seeks damages in the amount of \$1 million dollars. (ECF No. 1 at 13.)

14 LEGAL STANDARDS

15 I. 42 U.S.C. § 1983

16 A plaintiff may bring an action under 42 U.S.C. § 1983 to redress violations of "rights, 17 privileges, or immunities secured by the Constitution and [federal] laws" by a person or entity, 18 including a municipality, acting under the color of state law. 42 U.S.C. § 1983. To state a claim 19 under 42 U.S.C. § 1983, a plaintiff must show that (1) a defendant acting under color of state law 20 (2) deprived plaintiff of rights secured by the Constitution or federal statutes. *Benavidez v. 21 County of San Diego*, 993 F.3d 1134, 1144 (9th Cir. 2021). 22 II. Linkage

23 Section 1983 requires that there be an actual connection or link between the actions of the 24 defendants and the deprivation alleged to have been suffered by plaintiff. See *Monell v. 25 Department of Social Services*, 436 U.S. 658, 694 (1978); *Rizzo v. Goode*, 423 U.S. 362, 370-71 26 (1976). Plaintiff may demonstrate that connection by alleging facts showing: (1) a defendant's 27 1 Per § 3050(a)(2), "[i]ncarcerated persons shall be provided three meals each day, two of which 28 shall be served hot." 1 "personal involvement in the constitutional deprivation," or (2) that a defendant set "in motion a 2 series of acts by others" or "knowingly refus[ed] to terminate a series of acts by others, which 3 [the defendant] knew or reasonably should have known would cause others to inflict a 4 constitutional injury." *Starr v. Baca*, 652 F.3d 1202, 1207-08 (9th Cir. 2011) (quotation marks 5 and citation omitted). In other words, "[a] person 'subjects' another to the deprivation of a 6 constitutional right, within the meaning of section 1983, if he does an affirmative act, participates 7 in another's affirmative acts or omits to perform an act which he is legally required to do that 8 causes the deprivation of which complaint is made." *Johnson v. Duffy*, 588 F.2d 740, 743 (9th

9 Cir. 1978) (citation omitted).

10 DISCUSSION

11 Plaintiff's complaint is difficult to follow and illegible at times. As explained below, even 12
liberally construed, the complaint fails to state cognizable claims. Plaintiff will be given to leave
13 to amend and provided with the relevant standards for his substantive claims. 14 I. First
Amendment Retaliation 15 The undersigned construes plaintiff's first, "disciplinary proceedings"
claim as alleging 16 First Amendment retaliation against defendants Clark and John Fatheree.
"Within the prison 17 context, a viable claim of First Amendment retaliation entails five basic
elements: (1) An 18 assertion that a state actor took some adverse action against an inmate (2)
because of (3) that 19 prisoner's protected conduct, and that such action (4) chilled the inmate's
exercise of his First 20 Amendment rights, and (5) the action did not reasonably advance a
legitimate correctional goal. 21 *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005)
(citations omitted). Filing an inmate 22 grievance is a protected action under the First
Amendment. *Bruce v. Ylst*, 351 F.3d 1283, 1288 23 (9th Cir. 2003). 24 The complaint plausibility
alleges plaintiff was written up and placed in lockdown for 25 engaging in protected conduct.
However, plaintiff has not alleged any state actor's personal 26 participation in the alleged
retaliatory acts. It is not clear who retaliated against plaintiff or 27 whether they were aware of his
citizens complaint against Clark and Fatheree. For this reason, 28 plaintiff has not stated a
cognizable retaliation claim. See *Castaneda v. CDCR*, 2018 WL 1 11474352, at *4 (E.D. Cal. Jan.
23, 2018) (screening out retaliation claim where complaint did 2 not allege that the defendants
responsible for adverse transfer were aware of plaintiff's protected 3 activities); *Wood v. Yordy*,
753 F.3d 899, 905 (9th Cir. 2014) ("[M]ere speculation that 4 defendants acted out of retaliation is
not sufficient."). Plaintiff will be given an opportunity to 5 amend his retaliation claim. If plaintiff
chooses to amend, he must explain who retaliated against 6 him and allege facts connecting their
retaliatory acts to his complaint. 7 II. Fourth Amendment Search and Seizure 8 Plaintiff claims his
property was seized without a warrant in violation of the Fourth 9 Amendment. (ECF No. 1 at 6.)
While Plaintiff states that this occurred in jail, he also suggests it 10 occurred when he was
arrested. Typically, the Fourth Amendment protects individuals "against 11 unreasonable searches
and seizures ... [without] probable cause." U.S. Const. amend. IV. But 12 plaintiff alleges he was
on PRCS (id. at 12), which requires a Fourth Amendment waiver to 13 participate. See Cal. Penal
Code § 3465 ("Every person placed on [PRCS], and his or her 14 residence and possessions, shall
be subject to search or seizure at any time of the day or night, 15 with or without a warrant, by an
agent of the supervising county agency or by a peace officer); 16 *Jimenez v. City of Sacramento*,
No. 2:22-CV-2004 DJC CSK, 2025 WL 1344371, at *3 (E.D. 17 Cal. May 8, 2025) ("[F]ormerly
incarcerated individuals who participate in California's PRCS 18 program are subject to search or
seizure without warrant."). Because plaintiff appears to have 19 waived his Fourth Amendment
protections, he has not stated a cognizable claim regarding the 20 seizure of his property that
might have occurred during his arrest. 21 Moreover, to the extent that Plaintiff's phones were
seized from his jail cell, he has not 22 pleaded facts showing he maintained an expectation of
privacy in those phones such that a 23 warrant was required. "[T]he Fourth Amendment

proscription against unreasonable searches 24 does not apply within the confines of the prison cell.” *Hudson v. Palmer*, 468 U.S. 517, 526 25 (1984). Plaintiff has not alleged whether and to what extent the cell phones contained 26 information for which he might retain an expectation of privacy while in custody (for example, 27 confidential attorney-client communications) or the reason for the seizure of those phones. As a 28 result, plaintiff has not stated a cognizable claim regarding the seizure of his property that might 1 have occurred in jail. 2 III. Eighth Amendment Conditions of Confinement 3 Plaintiff’s “basic necessities” claim challenges the conditions of his confinement under the 4 Fourteenth Amendment. (ECF No. 1 at 7.) Because plaintiff was arrested for violating terms of 5 his PRCS terms (ECF No. 1 at 12), the court instead applies the Eighth Amendment. See *Flores v. Cty. of Fresno*, No. 1:19-cv-1477 DAD BAM, 2020 WL 4339825, at *3 n.3 (E.D. Cal. July 28, 7 2020) (Eighth Amendment provided the proper conditions of confinement standard where 8 plaintiff alleged she was incarcerated in county jail for parole violation) (citations omitted)); 9 *United States v. Miller*, 694 Fed. App’x. 609, 610 (9th Cir. 2017) (“California appellate courts 10 have likened PRCS to parole.”). 11 Prison officials have a duty to ensure that prisoners are provided adequate shelter, food, 12 clothing, sanitation, medical care, and personal safety. *Johnson v. Lewis*, 217 F.3d 726, 731 (9th 13 Cir. 2000). To succeed on an Eighth Amendment conditions of confinement claim, plaintiff must

14 show that (1) the defendant jail official’s conduct deprived him of the minimal civilized measure 15 of life’s necessities and (2) that the defendant acted with deliberate indifference to the plaintiff’s 16 health or safety. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). 17 A. Cleanliness 18 “[S]ubjection of a prisoner to lack of sanitation that is severe or prolonged can constitute 19 an infliction of pain within the meaning of the Eighth Amendment.” *Anderson v. County of 20 Kern*, 45 F.3d 1310, 1314 (9th Cir. 1995). “Usually, a more offensive condition will be of 21 constitutional significance when it exists for even a short time, while a less offensive condition 22 will be of constitutional significance only when it has existed for a much longer time.” *Cockcroft 23 v. Kirkland*, 548 F. Supp. 2d 767, 775 (N.D. Cal. 2008) (denying motion to dismiss Eighth 24 Amendment claim where plaintiff alleged he endured backflushing toilets for two years and 25 officials refused to provide adequate supplies and tools to sanitize in response); see also *Johnson 26 v. Lewis*, 217 F.3d 726, 731 (9th Cir. 2000) (“The more basic the need, the shorter the time it can 27 be withheld.” (quoting *Hoptowit v. Ray*, 682 F.2d 1237, 1259 (9th Cir. 1982))). 28 Here, plaintiff alleges his cell has not been cleaned in seven days and defendant Forcino 1 has not brought him supplies. In addition, jail officials have not exchanged his utensils or bowl 2 for three weeks. Severe or prolonged conditions of this type can give rise to an Eighth 3 Amendment claim. See *Antonetti v. Skolnik*, 748 F. Supp. 2d 1201, 1211 (D. Nev. 2010) 4 (screening in Eighth Amendment claim where plaintiff was “regularly deprived” of toilet paper 5 and soap and his housing unit was “filthy and littered with food and urine.”) But given the short 6 duration of the conditions in his cell, plaintiff has not plead enough factual detail to support an 7 inference that

the conditions were offensive enough to support a constitutional violation. 8 Moreover, to satisfy the second prong of the Eighth Amendment analysis, plaintiff must 9 allege facts sufficient to support a claim that jail officials knew of and disregarded a substantial 10 risk of serious harm. Farmer, 511 U.S. at 834, 847. Plaintiff does not allege facts regarding any 11 defendant's, including Forcino's, knowledge of the conditions in his cell. Thus, plaintiff has not 12 stated an Eighth Amendment claim regarding the cleanliness of his cell. Plaintiff will be given an 13 opportunity to amend to develop facts regarding the conditions in his cell and plead a defendant's 14 subjective deliberate indifference to those conditions. 15 B. Temperature 16 "The Eighth Amendment guarantees adequate heating." Keenan v. Hall, 83 F.3d 1083, 17 1091 (9th Cir. 1996) (citation omitted). "One measure of an inadequate, as opposed to merely 18 uncomfortable, temperature is that it poses 'a substantial risk of serious harm.'" Graves v. 19 Arpaio, 623 F.3d 1043, 1049 (9th Cir. 2010) (per curiam) (quoting Farmer, 511 U.S. at 834). 20 Plaintiff claims his cell is "freezing" and that he became sick as a result. Even assuming 21 this condition is "sufficiently serious" for Eighth Amendment purposes, plaintiff again has not 22 alleged any defendants' deliberate indifference to his health or safety. Farmer, 511 U.S. at 834. 23 Accordingly, plaintiff has not stated an Eighth Amendment claim regarding cell temperature. 24 C. Food 25 Plaintiff's final conditions claim concerns meals, namely that the jail is not providing a 26 wide variety of food or two hot meals a day as required by Cal. Code Regs., tit. 15, § 3050. "The 27 Eighth Amendment requires only that prisoners receive food that is adequate to maintain health; it 28 need not be tasty or aesthetically pleasing." LeMaire v. Maass, 12 F.3d 1444, 1456 (9th Cir. 1 1993). "The fact that the food occasionally contains foreign objects or sometimes is served cold, 2 while unpleasant, does not amount to a constitutional deprivation." Id. (citation and internal 3 quotation marks omitted). 4 Even assuming the jail is out of compliance with § 3050, the complaint does not 5 adequately allege that the meals are inadequate to maintain health. Plaintiff's allegations that the 6 food lacks nutrition are conclusory and he does not allege that the meals have adversely affected 7 his health. See Foster v. Runnels, 554 F.3d 807, 813 (9th Cir. 2009) (reversing grant of summary 8 judgment to defendant on inadequate food claim where plaintiff alleged he lost weight and 9 suffered headaches and dizziness due to inadequate nutrition). Moreover, plaintiff again does not 10 allege any defendants' deliberate indifference regarding prison meals. For these reasons, plaintiff 11 has not stated an Eighth Amendment claim regarding the jail's meals. 12 Plaintiff will be given leave to amend his Eighth Amendment claims and is advised to 13 consider the authorities provided above regarding the basic necessities at issue in his complaint. 14 IV. First Amendment Access to Legal Mail 15 Plaintiff alleges defendants opened his outgoing legal mail and searched his legal 16 paperwork in violation of the Fourth Amendment. (ECF No. 1 at 8.) "[T]he Fourth Amendment 17 proscription against unreasonable searches does not apply within the confines of the prison cell." 18 Hudson, 468 U.S. at 526. Instead, the undersigned construes this claim as alleging a violation of 19 his First Amendment rights concerning legal mail. 20 Under the First Amendment, prisoners have a right to

send and receive mail. *Witherow v. 21 Paff*, 52 F.3d 264, 265 (9th Cir. 1995) (per curiam). Courts have afforded greater protection to 22 legal mail than non-legal mail. See *Thornburgh v. Abbott*, 490 U.S. 401, 412 (1989)). In the 23 Ninth Circuit, prisoners have a “protected First Amendment interest in having properly marked, 24 confidential legal mail opened only in their presence.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 25 1211 (9th Cir. 2017). However, only mail from plaintiff’s lawyer or prospective lawyer is 26 protected. See *Nordstrom v. Ryan*, 762 F.3d 903, 909 (9th Cir. 2014) (describing the right at 27 issue as the right to be free from “prison officials reading mail between a prisoner and his 28 lawyer”); *Keenan*, 83 F.3d at 1094 (“mail from the courts, as contrasted with mail from a 1 prisoner’s lawyer, is not legal mail”). As to communication with counsel, a plaintiff need not 2 “show any actual injury beyond the free speech violation itself to state a constitutional claim.” 3 *Hayes*, 849 F.3d at 1212 (quoting *Al-Amin v. Smith*, 511 F.3d 1317, 1333 (11th Cir. 2008)). 4 Plaintiff does not name the state actor who interfered with his mail, instead attributing it to 5 “Defendants.” Plaintiff will be given leave to amend to fix these issues. The court recognizes 6 that it is difficult to identify the defendant responsible when the alleged mail interference does not 7 occur in plaintiff’s presence. Plaintiff is advised to plead facts, to the best of his abilities, that 8 support reasonable inferences of a person’s interference with his legal mail. Plaintiff is also 9 advised that to prove a violation regarding legal mail, he must also “clarify who sent the mail or 10 whether it was properly marked as ‘legal mail.’” *Hayes*, 849 F.3d at 1211. 11 V. Excessive Force 12 Plaintiff’s final claim alleges defendant Courtright’s application of tight handcuffs 13 constituted excessive force in violation of the Eighth Amendment. (ECF No. 1 at 9.) 14 The Eighth Amendment prohibits prison officials from inflicting cruel and unusual 15 punishment on inmates which, in excessive force cases, has been defined as “the unnecessary and 16 wanton infliction of pain.” *Whitley v. Albers*, 475 U.S. 312, 319 (1986). “[W]henever prison 17 officials stand accused of using excessive physical force ... the core judicial inquiry is ... whether 18 force was applied in a good-faith effort to maintain or restore discipline, or maliciously and 19 sadistically to cause harm.” *Hudson v. McMillan*, 503 U.S. 1, 7 (1992). The Ninth Circuit 20 applies a five-factor test to determine whether the use of force was malicious and sadistic: (1) the 21 extent of injury suffered by an inmate; (2) the need for application of force; (3) the relationship 22 between that need and the amount of force used; (4) the threat reasonably perceived by the 23 responsible officials; and (5) any efforts made to temper the severity of the forceful response.” 24 *Hughes v. Rodriguez*, 31 F.4th 1211, 1221 (9th Cir. 2022) (citation omitted). 25 It is well-established that overly tight handcuffing can constitute excessive force. *Wall v. 26 Cnty. of Orange*, 364 F.3d 1107, 1112 (9th Cir. 2004). However, here, even accepting as true 27 plaintiff’s assertion that the handcuffing caused a permanent scar and tendon damage, there are 28 insufficient facts to show that Courtright’s use of force was malicious or sadistic. “In general, in 1 cases where tight handcuffing was found to constitute excessive force, the plaintiff was in visible 2 pain, repeatedly asked the defendant to remove or loosen the handcuffs, had pre-existing injuries 3 known to the defendant, or alleged other forms of abusive

conduct by the defendant.” *Reviere v. 4 Phillips*, No. 1:11-CV-0483 AWI DLB PC, 2014 WL 711002, at *6 (E.D. Cal. Feb. 21, 2014) 5 (collecting cases). Because there are no facts from which to infer Courtright’s malicious or 6 sadistic intent, plaintiff’s complaint fails to state an Eighth Amendment excessive force claim. 7 Plaintiff will be given leave to amend this claim as well. If plaintiff chooses to amend, he 8 must provide additional context for the incident, such as facts on the extent of his injuries and any 9 other circumstances that would suggest defendant tightened the handcuffs with intent to cause 10 plaintiff unnecessary pain.

11 LEAVE TO AMEND

12 Having conducted the screening required by 28 U.S.C. § 1915A, the court finds that the 13 complaint does not state any cognizable § 1983 claims. Because of the defects identified above, 14 the court will not order the complaint to be served on defendants. However, plaintiff may try to 15 fix these problems by filing an amended complaint. In deciding whether to file an amended 16 complaint, plaintiff is encouraged to review the relevant legal standards governing his potential 17 claims for relief that the undersigned has laid out above. 18 If plaintiff chooses to file an amended complaint, he must demonstrate how the conditions 19 about which he complains resulted in a deprivation of his constitutional rights. *Rizzo*, 423 U.S. at 20 370-71. The complaint must also allege in specific terms how each named defendant is involved. 21 *Arnold v. Int’l Bus. Machs. Corp.*, 637 F.2d 1350, 1355 (9th Cir. 1981). There can be no liability 22 under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant’s 23 actions and the claimed deprivation. *Id.*; *Johnson*, 588 F.2d at 743. Furthermore, “[v]ague and 24 conclusory allegations of official participation in civil rights violations are not sufficient.” *Ivey v. 25 Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982) (citations omitted). 26 Plaintiff is also informed that the court will not refer to a prior pleading in order to make 27 his amended complaint complete. Local Rule 220 requires that an amended complaint be 28 complete in itself without reference to any prior pleading. This is because, as a general rule, an 1 amended complaint supersedes any prior complaints. *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 2 1967) (citations omitted). Once plaintiff files an amended complaint, any previous complaint no 3 longer serves any function in the case. Therefore, in an amended complaint, as in an original 4 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

5 MOTIONS FOR THE APPOINTMENT OF COUNSEL

6 Plaintiff filed two motions for the appointment of the counsel under 28 U.S.C. § 1915(e). 7 (ECF Nos. 3, 7.) In the first motion, plaintiff states that he is unable to afford counsel. (ECF No. 8 3 at 1.) He adds that the issues in his case are complex and will require significant research and 9 investigation, yet he has limited law library access and knowledge of the law. (*Id.*) Plaintiff has 10 asked prison officials to provide him a list of attorneys, but they declined to assist. (*Id.* at 1-2.) 11 In his second motion, plaintiff repeats the reasons in his first motion and attaches a letter from an 12 attorney declining to take on plaintiff’s case. (ECF No. 7 at 1-2.) 13 District courts lack authority under 28 U.S.C. § 1915 to require counsel to represent 14 indigent prisoners in section

1983 cases. *Mallard v. United States Dist. Court*, 490 U.S. 296, 298 15 (1989). In exceptional circumstances, the court may request that an attorney voluntarily represent 16 such a plaintiff. See 28 U.S.C. § 1915(e)(1); *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 17 1991); *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990). The test for exceptional 18 circumstances requires the court to evaluate the plaintiff's likelihood of success on the merits and 19 the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal 20 issues involved. See *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986); *Weygandt v. 21 Look*, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances common to most prisoners, such as lack 22 of legal education and limited law library access, do not establish exceptional circumstances that 23 would warrant a request for voluntary assistance of counsel. *Wood*, 900 F.2d at 1335; *Riley v. 24 Franke*, 340 F. Supp. 3d 783, 787 (E.D. Wis. 2018). 25 Beyond § 1915(e)(1), other sources of law may implicate a request for counsel. For 26 example, appointed counsel may be required in a civil proceeding as an accommodation for a 27 litigant who is disabled. See *Franco-Gonzalez v. Holder*, No. 10-cv-2211 DMG (DTBx), 2013 28 WL 3674492, at *3-*9 (C.D. Cal. Apr. 23, 2013) (granting summary judgment to class of 1 mentally disabled individuals in civil immigration proceedings on their request for appointed 2 representatives under the Rehabilitation Act). Due process may also require appointment of 3 counsel in certain proceedings. See *Turner v. Rogers*, 564 U.S. 431, 444-45 (2011) (analyzing 4 request for appointment of counsel in civil proceeding under the *Mathews v. Eldridge*, 424 U.S. 5 319 (1976), procedural due process framework). 6 Here, plaintiff has failed to establish exceptional circumstances warranting the 7 appointment of counsel under 28 U.S.C. § 1915(e). Plaintiff's indigency, imprisonment, limited 8 library access, and limited legal knowledge are all circumstances common to most incarcerated 9 persons. Further, as explained in the screening order above, plaintiff has yet to establish any 10 likelihood of success on the merits. Nor are his claims so complex that he cannot prosecute his 11 case pro se, particularly at this early stage of the proceedings. Accordingly, plaintiff's motions 12 for appointment of counsel are denied without prejudice.

13 CONCLUSION

14 In accordance with the above, IT IS HEREBY ORDERED that: 15 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is GRANTED. 16 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff 17 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 18 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the 19 appropriate agency filed concurrently herewith. 20 3. Plaintiff's motions for appointment of counsel (ECF Nos. 3, 7) are DENIED without 21 prejudice. 22 4. Plaintiff's complaint fails to state a claim upon which relief may be granted, see 28 23 U.S.C. § 1915A, and will not be served. 24 5. Within thirty (30) days from the date of service of this order, plaintiff may file an 25 amended complaint that complies with the requirements of 42 U.S.C. § 1983, the Federal Rules of 26 Civil Procedure, and the Local Rules of Practice. The amended complaint must bear the docket 27 number assigned this case, 2:25-cv-

0904 SCR P, and must be labeled "First Amended 28 Complaint." 1 6. Failure to file an amended complaint in accordance with this order will result in a 2 || recommendation that this action be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil 3 || Procedure. 4 7. The Clerk of the Court is directed to send plaintiff a copy of the prisoner complaint 5 || form used in this district. 6

|| DATED: August 27, 2025 md

8 SEAN C. RIORDAN

9 UNITED STATES MAGISTRATE JUDGE

10 1] 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 14