

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

**Cherrish Castaneda v. State of California Department of Motor
Vehicles, et al.**

No. 2:24-cv-0788-DC-SCR · No. 2:24-cv-00788 · Decided October 28, 2025

OPINION

Cherrish Castaneda v. State of California Department of Motor Vehicles, et al.

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 CHERRISH CASTANEDA, No. 2:24-cv-0788-DC-SCR

12 Plaintiff, 13 v. ORDER

14 STATE OF CALIFORNIA

DEPARTMENT OF MOTOR VEHICLES,

15 et al., 16 Defendants. 17 18 Plaintiff is proceeding pro se in this matter, which is referred to the undersigned pursuant 19 to Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). Plaintiff filed a motion for leave to proceed 20 in forma pauperis (“IFP”), which was granted. ECF No. 6 at 13. The undersigned issued a 21 screening order pursuant to 28 U.S.C. § 1915, and concluded that Plaintiff’s complaint was 22 legally deficient. Id. The District Judge subsequently dismissed with prejudice all claims against 23 Defendant Department of Motor Vehicles (“DMV”), as well as claims brought under 18 U.S.C. 24 §§ 241-242 as against all Defendants. ECF No. 7 at 2-3. 25 However, the Court granted Plaintiff leave to amend claims brought under § 1983 and the 26 Americans with Disabilities Act (“ADA”) as against Defendant Steve Gordon in his capacity as 27 Director of the DMV. Id. at 2. Plaintiff filed a First Amended Complaint (“FAC”). The Court 28 now concludes that although some of Plaintiff’s claims in the FAC are cognizable for screening 1 purposes only, others are either factually deficient or not appropriate as against a named 2 Defendant. Leave to amend these claims is therefore granted, and service will not be directed 3 until after the opportunity to so amend the FAC has passed.

4 I. PROCEDURAL MATTERS

5 The Court begins by addressing two procedural matters. First, the undersigned previously 6 filed Findings and Recommendations recommending that this action be dismissed without 7 prejudice. ECF No. 9. That recommendation followed Plaintiff’s failure to timely file an 8 amended complaint as directed by the Court on February 6, 2025 and failure to respond to an 9 order to

show cause issued on June 11, 2025 as to why this case should not be dismissed for 10 failure to file an amended complaint. ECF Nos. 7 & 8. Now that Plaintiff has filed the FAC, the 11 order to show cause will be discharged and the Findings and Recommendations withdrawn. 12 Second, Plaintiff's FAC was filed as a motion for leave to amend the complaint. ECF No. 13 10. While Plaintiff's FAC was not timely, in light of Plaintiff's pro se status, that motion for 14 leave to amend is granted and the FAC is deemed properly filed.

15 II. SCREENING

16 A. Legal Standards 17 The federal IFP statute requires federal courts to dismiss a case if the action is legally 18 "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks 19 monetary relief from a defendant who is immune from such relief. 20 U.S.C. § 1915(e)(2). In 21 reviewing the complaint, the Court is guided by the requirements of the Federal Rules of Civil 22 Procedure. 23 Under the Federal Rules of Civil Procedure, the complaint must contain (1) a "short and 24 plain statement" of the basis for federal jurisdiction (that is, the reason the case is filed in this 25 court, rather than in a state court), (2) a short and plain statement showing that plaintiff is entitled 26 to relief (that is, who harmed the plaintiff, and in what way), and (3) a demand for the relief 27 sought. Fed. R. Civ. P. 8(a). Plaintiff's claims must be set forth simply, concisely and directly. 28 Fed. R. Civ. P. 8(d)(1). 29 A claim is legally frivolous when it lacks an arguable basis either in law or in fact. 1 *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). In reviewing a complaint under this standard, the 2 court will (1) accept as true all factual allegations contained in the complaint, unless they are 3 clearly baseless or fanciful, (2) construe those allegations in the light most favorable to the 4 plaintiff, and (3) resolve all doubts in the plaintiff's favor. See *Neitzke*, 490 U.S. at 327; *Von 5 Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010), cert. 6 denied, 564 U.S. 1037 (2011). 7 The court applies the same rules of construction in determining whether the complaint 8 states a claim on which relief can be granted. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (court 9 must accept the allegations as true); *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974) (court must 10 construe the complaint in the light most favorable to the plaintiff). Pro se pleadings are held to a 11 less stringent standard than those drafted by lawyers. *Erickson*, 551 U.S. at 94. However, the 12 court need not accept as true legal conclusions, even if cast as factual allegations. See *Moss v. 13 U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). A formulaic recitation of the elements of 14 a cause of action does not suffice to state a claim. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 15 555-57 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). 16 To state a claim on which relief may be granted, the plaintiff must allege enough facts "to 17 state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. "A claim has 18 facial plausibility when the plaintiff pleads factual content that allows the court to draw the 19 reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 20 678. A pro se litigant is entitled to notice of the deficiencies in the complaint and an opportunity 21 to amend, unless the complaint's deficiencies could not be cured by amendment. See *Akhtar v. 22 Mesa*, 698 F.3d 1202, 1213 (9th

Cir. 2012). 23 B. The FAC 24 The FAC alleges that Plaintiff was a DMV employee for twelve years as of the events 25 underlying this action. ECF No. 10 at 13. When the COVID-19 pandemic began in 2020, 26 Plaintiff was eight months pregnant and therefore “high risk.” Id. at 14. Rather than offer 27 telework or “Administrative Time Off” per executive guidance, Plaintiff was sent home on 28 involuntary leave. Id. Plaintiff did eventually receive compensation for an initial period, but was 1 still forced to remain on unpaid leave through pregnancy, postpartum, and nursing. Id. 2 By the time Plaintiff was ready to return to work in June 2021, Governor Gavin Newsom 3 had purportedly issued a workplace mandate requiring all government employees to wear masks 4 and be vaccinated for COVID-19 as a condition of employment. Id. Plaintiff had religious 5 objections to the vaccine and medical documentation from her physician exempting her from 6 masking, both of which the California Department of Public Health (“CDPH”) recognized at the 7 time. Id. at 14-15. Plaintiff’s union, SEIU 1000, subsequently negotiated a Side Letter 8 Agreement (“SLA”) that further required government agencies to accommodate employees who 9 have such exemptions without retaliating against them. Id. at 15-16. 10 Plaintiff’s attempts to negotiate with the DMV through October 2021, including a “fee 11 schedule” warning the DMV of the liability it would incur by continuing to deprive her of 12 employment, were allegedly “met with silence or cursory rejection.” Id. at 15. As part of these 13 efforts, Plaintiff requested a reasonable accommodation under the ADA and the California Fair 14 Employment and Housing Act (“FEHA”). Id. This would permit her to telework from home or 15 work in a sequestered part of her worksite, both of which DMV policy permitted at the time. Id. 16 The DMV categorically denied her request without explanation or any interactive process to find 17 a suitable accommodation. Id. Managers also threatened to fire Plaintiff if she did not abandon 18 her stance on the exemptions, in blatant violation of the SLA. Id. at 16. 19 The DMV then created what Plaintiff alleges was a hostile work environment. Id. at 17. 20 In late 2021, the DMV compelled Plaintiff to wear a large plastic “splash shield” over her face in 21 lieu of a mask. Id. at 16-17. Given that a splash shield stood out more, the FAC alleges that this 22 was designed to dehumanize Plaintiff and use her as an example to others who attempted to resist 23 the mask and vaccination mandates. Id. at 17. She was also prohibited from interacting with 24 coworkers because management alleged she “posed a threat” to their safety, despite the fact that 25 she was healthy and willing to test regularly. Id. 26 Although COVID-19 testing was required of all unvaccinated employees, the DMV 27 insisted that Plaintiff use third-party contractors like Color Genomics, Inc., with invasive consent 28 requirements regarding the ability to share her DNA data. Id. From November 2021 onward, the 1 DMV began pressuring her daily to sign the consent form, eventually threatening to fire her if she 2 did not so sign. Id. at 17-18. Beyond privacy concerns as to how her data could be used by 3 “foreign entities,” Plaintiff believed that allowing her genetic information to be harvested and 4 experimented on would violate religious beliefs. Id. The DMV rejected her repeat offer to 5 instead have her personal physician test her. Id. at 18. 6 Between November 2021 and March 2022, Plaintiff contacted multiple agencies and 7 officials

about the purported privacy violations the DMV committed by coercing employees to agree to third-party testing. *Id.* Those so contacted included the CDPH, SEIU 1000, and Defendant Gordon as the DMV director. *Id.* During such efforts, while responding to a Public Records Act request in December 2021, a spokesperson from Governor Newsom's office asserted that he never issued a mandate or executive order requiring vaccination or testing. *Id.* at 19. Later that month, Plaintiff's eighth request for a transfer to a position that would allow her to telework as a reasonable accommodation was denied. *Id.* 14 The DMV terminated Plaintiff on March 17, 2022, purportedly for insubordination via refusal to consent to COVID-19 testing by the state's chosen contractor. *Id.* at 20. The FAC 16 frames this as retaliation for refusal to submit to a policy that was never issued via lawful order, 17 and as discrimination for Plaintiff's lawfully held beliefs, her medical conditions, and 18 whistleblowing activities. *Id.* at 20. Only in January 2023, after Plaintiff's termination, did the 19 DMV concede that Plaintiff had the right to have her doctor test her for COVID-19 like she 20 requested, albeit on her own time and expense. *Id.* at 18. 21 In September 2022, the DMV approached Plaintiff with a settlement agreement that 22 awarded her a sum of money in exchange for waiving her right to sue and resigning. *Id.* at 21. 23 The FAC alleges that Plaintiff signed the settlement agreement while under duress and in a 24 vulnerable state of mind. *Id.* She had been without income for two years at this point, throughout 25 which she was either pregnant or a mother. *Id.* The union lawyer assigned to her case admitted 26 that he represented the union, not her, and dissuaded her from seeking discovery on the issues 27 encompassed in the settlement. *Id.* Plaintiff had compiled 1,000 documents relevant to the 28 matter, which were "lost" or never properly reviewed by the union. *Id.* Plaintiff repudiates the 1 settlement agreement in part by filing this action. *Id.* at 22. 2 Based on these allegations, the FAC alleges violations of the ADA for failure to provide 3 reasonable accommodations for Plaintiff's inability to wear a mask, including by letting her 4 telework as others did during the pandemic. *Id.* The FAC further alleges religious discrimination 5 under Title VII of the Civil Rights Act, retaliation under Title VII and FEHA, breach of the SLA, 6 and violation of medical privacy. *Id.* at 23-26. Plaintiff also brings a cause of action against 7 Defendant Gordon under 42 U.S.C. § 1983 for violations of her First and Fourteenth Amendment 8 rights. *Id.* at 24-25. Finally, Plaintiff broadly invokes "Natural Law and Fundamental Human 9 Rights." *Id.* at 27-28. Plaintiff seeks reinstatement of her employment with backpay and service 10 credit; declaratory judgment that the mandate was not valid and the settlement agreement void as 11 signed under duress; rescission of the settlement agreement; injunctive relief prohibiting further 12 discrimination or retaliation and expunging Plaintiff's termination; \$1,250,000 in compensatory 13 and punitive damages; and attorney's fees and costs. *Id.* at 30-32. 14 C. Analysis 15 1. The DMV Continues to Enjoy Eleventh Amendment Immunity 16 The Eleventh Amendment protects states from being sued without their consent, unless 17 Congress has validly abrogated this immunity as to the specific causes of action. *Alaska v. EEOC*, 564 F.3d 1062, 1065-66 (9th Cir. 2009). Accordingly, the Court has already dismissed 19 Plaintiff's claims against the DMV with prejudice. ECF No. 6 at 6,

8. Yet the FAC still 20 identifies the DMV as a defendant. ECF No. 10 at 11, 13. When determining whether Plaintiff 21 has pled sufficient facts to state each claim, the Court must also address against whom she may 22 pursue such a claim. This includes whether any of Plaintiff's new claims—i.e., those claim not 23 raised against the DMV in the initial complaint before being dismissed—can be asserted against 24 the DMV in the FAC because Congress has abrogated the DMV's sovereign immunity as to such 25 claims. 26 //// 27 //// 28 //// 1 2. Federal Causes of Action 2 a. Title VII 3 The FAC alleges two forms of religious discrimination under Title VII of the Civil Rights 4 Act.¹ First, it alleges that the DMV failed to accommodate Plaintiff's religious objection to the 5 COVID-19 vaccine and genetic testing, instead compelling her to wear a stigmatizing shield on 6 her face and labeling her a threat. ECF No. 10 at 23. Second, it alleges that when Plaintiff 7 engaged in protected activities to protest said discrimination, including by reporting it to superiors 8 and other agencies, she was fired in retaliation. *Id.* at 23-24. 9 Title VII prohibits the discharge of any employee based on race, color, religion, sex, or 10 national origin. 42 U.S. Code § 2000e-2(a)(1). Congress validly abrogated state immunity as to 11 discrimination claims under Title VII. *Nevada Dept. of Human Resources v. Hibbs*, 538 U.S. 12 721, 729-90 (2003); see also *Alaska*, 564 F.3d at 1068-69 (abrogating state immunity as against 13 discrimination claims under the equivalent Government Employee Rights Act). The DMV is 14 therefore an appropriate Defendant for this claim if adequately pled. 15 However, Plaintiff does not explain the religious basis for her objection to the vaccine, 16 beyond saying that "her body is sacred and God-given" and she cannot be compelled to have her 17 DNA "harvested" and "tested on" because it is "the code of life given by God." *Id.* at 18, 23. 18 The Ninth Circuit recently held that "[i]nvocations of broad, religious tenets cannot, on their own, 19 convert a secular preference into a religious conviction" for purposes of a discrimination claim. 20 *Detwiler v. Mid-Columbia Medical Center*, -- F.4th --, Case No. 23-3710, 2025 WL 2700000 at 21 *6 (9th Cir. Sep. 23, 2025). To allow Plaintiff's claim simply because she invokes the concepts 22 of bodily autonomy and God in the same sentence "would destroy the pleading standard for 23 religious discrimination claims, allowing complainants to invoke magic words and survive a 24 dismissal without stating a prima facie case." *Id.* 25 Plaintiff has failed to adequately plead a causal nexus between a sincerely held religious 26 1 Analysis of religious discrimination issues under FEHA would be identical to those under Title 27 VII. See *Allbright v. Southern Calif. Permanent Medical Group Inc.*, --- F.Supp.3d ---, 2025 WL 2205812, at *10-11 (C.D. Cal. July 30, 2025). The Court thus incorporates Plaintiff's FEHA 28 claims into the Title VII screening in this section. 1 belief and her refusal to vaccinate against COVID-19 or consent to COVID-19 testing. Her claim 2 for religious discrimination and retaliation under the Title VII therefore fails. Plaintiff may, 3 however, amend her claim to articulate more concrete details as to which religious principles the 4 DMV violated. If so, she may also amend her claim to more explicitly direct it against the DMV 5 as a defendant. 6 b. Americans with Disabilities Act 7 To state a Title I ADA employment discrimination claim, a plaintiff must allege that she is 8 (1) disabled under the ADA, (2) a

“qualified individual with a disability,” and (3) discriminated 9 against “because of” the disability. See 42 U.S.C. § 12112(a) (“No covered entity shall 10 discriminate against a qualified individual on the basis of disability in regard to job application, 11 procedures, the hiring, advancement, or discharge of employees, employee compensation, job 12 training, and other terms, conditions, and privileges of employment.”); *Bates v. United Parcel 13 Serv., Inc.*, 511 F.3d 974, 988 (9th Cir. 2007). The ADA defines disability with respect to an 14 individual as (1) “a physical or mental impairment that substantially limits one or more major life 15 activities of such individual”; (2) “a record of such an impairment”; or (3) “being regarded as 16 having such an impairment.” 42 U.S.C. § 12102(1). Upon establishing a disability, the plaintiff 17 must then “allege that [s]he was subjected to harassment because of [her] disability, and that the 18 harassing ‘conduct was sufficiently severe or pervasive to alter the conditions of [her] 19 employment and create an abusive work environment.’” *Mattoida v. Nelson*, 98 F.4th 1164, 1174 20 (9th Cir. 2024) (quoting *Mannatt v. Bank of Am., N.A.*, 339 F.3d 792, 798 (9th Cir. 2003)). 21 Unlike Title VII claims, Title I ADA claims against the DMV are barred by the Eleventh 22 Amendment. See *Bd. of Trustees of Univ. of Ala. v. Garrett*, 531 U.S. 356, 374 (2001); *Thomas v. 23 Nakatani*, 309 F.3d 1203, 1205 (9th Cir. 2002) (Congress did not validly abrogate the state’s 24 sovereign immunity under Title I of the ADA). Nor can Plaintiff bring Title I ADA claims 25 against state officials in their official capacities for any remedy other than prospective declaratory 26 or injunctive relief. *Walsh v. Nevada Dep’t of Human Resources*, 471 F.3d 1033, 1036 (9th Cir. 27 2006) (emphasis in original) (citing *Garrett*, 531 U.S. at 374 n.9, and *Ex parte Young*, 209 U.S. 28 123 (1908)); see also *Mohsin v. California Dep’t of Water Res.*, 52 F. Supp. 3d 1006, 1012 (E.D.

1 Cal. 2014). Plaintiff does seek such injunctive relief via reinstatement to her former position in 2 the DMV, including seniority rights and backpay, and expungement of her termination from the 3 record. ECF No. 10 at 30-31. Whether Defendant Gordon is the appropriate Defendant for such 4 relief, when Plaintiff’s direct superiors were responsible for not accommodating any disabilities 5 and eventually terminating her, is unclear. 6 In any case, this Court previously held that Plaintiff did not establish the basis for her 7 disability. ECF No. 6 at 9. Aside from a vague and unexplained reference to “respiratory/mental 8 health issues,” the FAC cites complications related to her pregnancy as the basis of her disability 9 and the reason she could not wear a mask per COVID-19 mandates. ECF No. 10 at 14, 22. 10 Courts in the Ninth Circuit have held that pregnancy does not qualify as a disability under the 11 ADA unless circumstances arise that are “not a function of normal pregnancy,” like pre-term 12 labor and weeks of bed rest. *Hogan v. Ogden*, Case No. CV-06-5078-EFS, 2008 WL 2954245, at 13 *4-5 (E.D. Wash. July 30, 2008). A complaint’s pleadings are inadequate if, as here, they fail to 14 articulate how a plaintiff’s “pregnancy or related medical condition rendered or currently renders 15 her disabled or how her condition limits one or more of her major life activities.” *Coates v. 16 Washoe Cnty. Sch. Dist.*, No. 3:20-cv-00182-LRH-CLB, 2020 WL 7186746, at *5 (E.D. Nev. 17 Dec. 4, 2020).

18 Plaintiff's broad references to respiratory issues and a complication-free pregnancy are 19 inadequate to show that she was disabled under the ADA, that such disability prevented her from 20 wearing a mask, and that the DMV violated the ADA by refusing to let her work from home 21 instead of masking. Plaintiff has failed to state a claim under the ADA, but may amend her FAC 22 if she can plead additional facts plausibly showing that abnormal complications of her pregnancy 23 constituted a disability. If Plaintiff so amends her claim, she shall also name as Defendants any 24 DMV employees who participated in the denial of any accommodations for such a disability. 25 c. Section 1983 26 A plaintiff may bring an action under 42 U.S.C. § 1983 to redress violations of "rights, 27 privileges, or immunities secured by the Constitution and [federal] laws" by a person or entity, 28 including a municipality, acting under the color of state law. 42 U.S.C. § 1983. To state a claim 1 under 42 U.S.C. § 1983, a plaintiff must show that (1) a defendant acting under color of state law 2 (2) deprived plaintiff of rights secured by the Constitution or federal statutes. *Benavidez v. 3 County of San Diego*, 993 F.3d 1134, 1144 (9th Cir. 2021). To allege a claim based on an equal 4 protection violation, the plaintiff must allege that while acting under such color of law, the 5 defendant intentionally discriminated against her as a member of an identifiable class. *Flores v. 6 Morgan Hill Unified School District*, 324 F.3d 1130, 1134 (9th Cir. 2003). 7 Plaintiff argues that Defendant Gordon violated her First and Fourteenth Amendment 8 rights to free exercise of religion, free speech, and equal protection under the law. ECF No. 10 at 9 24-25. As to freedom of religion, Plaintiff argues that the DMV failed to use the "least restrictive 10 means" possible to address the COVID-19 pandemic, instead requiring her to vaccinate or submit 11 to testing despite her claim to a religious exemption. *Id.* at 24. As to equal protection, she asserts 12 that she was treated differently despite the DMV promising under the SLA to accommodate both 13 her religious and medical exemptions. *Id.* at 25. 14 These arguments lack merit. As discussed above, Plaintiff failed to adequately plead that 15 she has either a medical disability based on her pregnancy or a religious belief exempting her 16 from vaccination, masking, or testing. See *supra* C.2.a-b. Aside from Plaintiff not pleading 17 sufficient facts to demonstrate that her belief in bodily autonomy is a bona fide religious one, the 18 right to refuse vaccination is not a fundamental right. See *Johnson v. Brown*, 567 F.Supp.3d 19 1230, 1251 (D. Or. 2021). Compulsory vaccination is an established police power of a state, and 20 public health laws in general "further the concept of ordered liberty" by balancing individual 21 freedoms against public safety. *Id.* at 1250 (citing *Zucht v. King*, 260 U.S. 174, 176 (1922)). 22 Such policies are therefore subject to only rational basis review instead of strict scrutiny, and 23 upheld if "rationally related to a legitimate state interest." *Johnson*, 567 F.Supp.3d at 1251 24 (quoting *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985)). Monitoring and 25 preventing the spread of a disease amidst a pandemic through masking, vaccination, and testing, 26 particularly among public service employees, is a legitimate interest. 27 The FAC provides more support for the allegation that DMV employees retaliated against 28 Plaintiff for exercising her First Amendment right to freedom of speech. Plaintiff argues that the 1 DMV penalized her for

voicing her objections with its policies to various organizations and 2 officials, including through her termination. ECF No. 10 at 25. She asserts that her objections 3 were “protected speech” insofar as they touched on policy matters like public health, data 4 privacy, and government overreach. Id. She further asserts that trying to force her to sign Color 5 Genomics’ consent form was a type of compelled speech. Id. 6 A First Amendment retaliation claim requires that the plaintiff engaged in protected 7 speech, the defendant took adverse action against her employment, and said speech was a 8 “‘substantial or motivating’ factor for the adverse employment action.” Dodge v. Evergreen 9 School District #114, 56 F.4th 767, 776 (9th Cir. 2022) (quoting Howard v. City of Coos Bay, 871 10 F.3d 1032, 1044 (9th Cir. 2017)). Whether specific speech is protected under the First 11 Amendment depends on whether it was on a “matter of public concern” and spoken “as a private 12 citizen or public employee.” Dodge, 56 F.4th at 777 (quoting Johnson v. Poway Unified Sch. 13 Dist., 658 F.3d 954, 961 (9th Cir. 2011)). 14 Speech reflects an issue of public concern if it reflects a “matter of political, social, or 15 other concern to the community” or a “‘subject of legitimate news interest.’” Dodge, 56 F.4th at 16 777 (quoting Lane v. Franks, 573 U.S. 228, 241 (2014)). Plaintiff is correct that the measures a 17 public agency implements to protect its employees during a pandemic, including those that could 18 infringe any privacy right she has in her genetic information, are a matter of public concern. This 19 is particularly true if, as Plaintiff alleges, the DMV implemented these measures without a 20 mandate from the Governor’s office and without respecting the exemptions contemplated in the 21 SLA. ECF No. 10 at 16, 19. 22 The speech at issue must also be spoken as a private citizen rather than a public employee, 23 based on whether a plaintiff has an official duty to make the statements at issue. Dodge, 56 F.4th 24 at 778 (internal quotations omitted). A plaintiff who reports policies that she objects to, as here, 25 is inherently engaging in speech that exceeds the scope of her employment. 26 Plaintiff has therefore alleged sufficient facts to find that the speech she engaged in was 27 protected under the First Amendment. She further alleges adverse employment action, including 28 but not limited to her termination, that the DMV may have taken in response to such 1 whistleblowing. ECF No. 10 at 20, 25. Although the DMV could argue that it terminated her 2 employment because of her refusal to submit to COVID-19 testing, this is a factual dispute not 3 appropriate for screening. 4 These allegations, however, do not sufficiently state a claim as to Defendant Gordon. His 5 only connection to this cause of action is that Plaintiff contacted him, among others, about her 6 privacy-based objections to Color Genomics’ test and her supervisors pressuring her to consent to 7 it. Id. at 18. Plaintiff pleads no facts to suggest that Gordon was one of the DMV employees who 8 partook in the retaliation that followed, including her termination. Why Plaintiff does not bring 9 this action against her direct supervisors, those who terminated her for insubordination in March 10 2022, is unclear. See id. at 20. 11 Plaintiff has generally pled sufficient facts to support a claim under 42 U.S.C. § 1983, 12 based solely on alleged retaliation against protected speech under the First Amendment. She 13 must, however, amend this claim to name as defendants employees within the DMV who partook 14 in such

retaliation. Failure to do so will lead the undersigned to recommend this claim's dismissal. 16

d. Genetic Privacy 17 The FAC alleges that both federal and state law recognize "a right to keep ... personal 18 medical and genetic information private," such that "collection and disclosure of such 19 information" requires consent. ECF No. 10 at 26. As to federal authority, Plaintiff alleges that 20 the Genetic Information Nondiscrimination Act ("GINA") categorically prohibits employers from 21 requesting employees to provide genetic information. *Id.* The DMV allegedly did this by 22 requiring employees to consent to Color Genomics' COVID-19 tests. *Id.* 23 GINA prohibits employers from requesting or requiring genetic information from any 24 employees or their family members, with exceptions inapplicable to the current action. 42 U.S.C. 25 § 2000ff-1(b). The term "genetic information" includes the genetic tests of the individual and 26 members of their family, as well as "the manifestation of a disease or disorder in family members 27 of such individual." 42 U.S.C. § 2000ff(4)(A). A genetic test, in turn, is a test on "human DNA, 28 RNA, chromosomes, proteins, or metabolites," and only to the extent that it "detects genotypes, 1 mutations, or chromosomal changes." 42 U.S.C. § 2000ff(7)(A)-(B) (emphasis added). Those 2 who fit under the Civil Rights Act of 1964's definition of "employee" may use the same remedies 3 therein, including litigation, for any unlawful employment practice in violation of GINA. See 42 4 U.S.C. § 2000ff-6(a)(1). 5 The Ninth Circuit has not ruled on whether GINA abrogates a state's sovereign immunity. 6 Although courts in other circuits have ruled that it does not, some acknowledge that Congress 7 may have intended to do so by incorporating Title VII's definition of employees, including 8 government employees. See *Witherspoon v. New York State Department of Corrections and 9 Community Supervision*, Case No. 1:19-CV-01440, 2022 WL 2209565 at *5 (N.D.N.Y. June 21, 10 2022). At minimum, the applicability of sovereign immunity is sufficiently ambiguous to allow 11 this claim against Defendant DMV for screening purposes. 12 Whether Color Genomics' test results include "genetic information" under GINA is also 13 unclear. A test that only detects the RNA of a temporary virus, one that does not permanently 14 alter human genes, does not alone qualify as a genetic test. The FAC alleges, however, that the 15 consent form would give Color Genomics the right to collect, store, or sell "DNA and personal 16 data" for later use. ECF No. 10 at 17. This implies that the information may include Plaintiff's 17 DNA, a form of genetic information. Nor is it clear that an employer may avoid liability under 18 GINA by outsourcing the collection and storage of such information if the employer compels the 19 employee to agree to the underlying test. 20 Plaintiff has pled sufficient facts to state a claim for breach of genetic information privacy 21 against Defendant DMV. Should Plaintiff choose to amend the FAC as to her other claims, she 22 may also add as defendants to this claim any DMV employees who attempted to coerce Plaintiff 23 into consenting to Color Genomics' test, including any supervisors who retaliated against her for 24 refusing to do so. 25 e. Medical Privacy (California Constitutional Right to Privacy) 26 The Court construes this claim as falling under California's constitutional right to privacy, 27 which Plaintiff references. ECF No. 10 at 26. However, the DMV and its officers acting in their 28 official capacities are immune from

prospective injunctive relief and damages for state law claims 1 brought in federal court. See *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 2 (1984) (“[I]t is difficult to think of a greater intrusion on state sovereignty than when a federal 3 court instructs state officials on how to conform their conduct to state law.”); see also *Spoklie v. 4 Montana*, 411 F.3d 1051, 1060 (9th Cir. 2005) (citing *Pennhurst* in dismissing plaintiff’s state 5 law claims for damages as barred by the Eleventh Amendment). Plaintiff has not identified a 6 defendant who can properly be sued based on an alleged violation of the right to privacy, but will 7 be granted leave to amend to attempt to do so. 8 f. Breach of Contract (Side Letter Agreement) 9 Plaintiff alleges that the SLA required the DMV to accommodate employees “with 10 documented medical or religious exemptions.” ECF No. 10 at 25-26. The Court therefore 11 understands that a breach of contract claim under the SLA would be require Plaintiff to first show 12 that she warranted such a medical or religious accommodations. For the reasons provided above 13 as to her Title VII, Free Exercise, and ADA claims, she has not done so, but will be granted leave 14 to amend this claim to attempt to do so as well. 15 Plaintiff also has not identified a proper defendant for this claim. The DMV would be 16 immune to any state law claim for injunctive relief or damages. See *supra* C.e. Plaintiff will be 17 granted leave to amend to attempt to name a proper defendant for this claim.2 18 D. Leave to Amend 19 As discussed above, for screening purposes only, the Court concludes that Plaintiff has 20 stated a claim under GINA against the DMV. See *supra* C.2.d. Plaintiff has not, however, stated 21 claims under Title VII or the ADA. See *supra* C.2.a-b. Plaintiff’s First Amendment retaliation 22 claim is sufficiently cognizable, but only if it identifies individual defendants involved in the 23 alleged retaliation. See *supra* C.2.c. Plaintiff has also not stated state law claims. 24 Plaintiff is proceeding pro se, and a pro se litigant should be given leave to amend unless 25 it is absolutely clear that the deficiencies cannot be cured by amendment. See *Akhtar v. Mesa*, 26 2 Plaintiff’s claims under “Natural Law and Fundamental Human Rights” do not state a claim 27 enforceable in federal court. See *Johnson*, 567 F.Supp.3d at 1247-1248 (holding that requiring COVID-19 vaccination for public employees did not violate enforceable principles of 28 international law). 1 698 F.3d 1202, 1212 (9th Cir. 2012). The nature of the failed claims suggest that their 2 deficiencies may be cured. 3 As discussed above, the Title VII and Free Exercise claims fails because Plaintiff relies 4 solely on “broad, religious tenets” to argue that requiring her to mask, vaccinate, or consent to 5 genetic testing discriminates against her faith. See *supra* C.2.a; *Detwiler*, 2025 WL 2700000 at 6 *6. In theory, Plaintiff may cure this defect by providing more concrete details as to which 7 religious principles the DMV violated. 8 Similarly, the ADA claim fails in part because the FAC does not suggest that Plaintiff 9 suffered any conditions that were “not a function of normal pregnancy.” See *supra* C.2.b; *Hogan*, 10 2008 WL 2954245, at *4-5. Plaintiff may have suffered such conditions, particularly as her 11 physician asked to excuse her from masking requirements, and should receive an opportunity to 12 plead them. ECF No. 10 at 14. Because the DMV itself is immune from such a claim, however, 13 Plaintiff must also amend her complaint to name as defendants the employees responsible for 14 denying accommodations.

15 Plaintiff will also be granted leave to attempt to assert state law claims against proper 16 defendants. 17 Finally, although Plaintiff has not alleged facts showing that Defendant Gordon retaliated 18 against Plaintiff for engaging in protected speech, the allegations indicate that her supervisors 19 within the DMV did. See supra C.2.c. Leave to amend this claim to name such supervisors as 20 Defendants is granted. Similar leave to add Defendants to Plaintiff's claim under GINA is 21 granted, notwithstanding the undersigned's finding that this claim may proceed against Defendant 22 DMV. See supra C.2.d. 23 It is not absolutely clear that the deficiencies in Plaintiff's ADA, Title VII, Free Exercise, 24 First Amendment, and state law claims cannot be cured. The undersigned will provide Plaintiff 25 an opportunity to amend the FAC to attempt to cure these defects. Service to Defendant DMV 26 will not be addressed until after the deadline for such amendment has passed. If Plaintiff chooses 27 to amend the FAC, the Court will then screen that amended complaint. If Plaintiff chooses not to 28 amend the FAC, the Court will then order service against Defendant DMV as to Plaintiff's GINA 1 claim and recommend that the remaining claims be dismissed for failure to state a claim upon 2 which relief can be granted.

3 II. AMENDING THE COMPLAINT

4 If plaintiff chooses to amend the complaint, the amended complaint shall be clearly 5 labeled as the Second Amended Complaint. In addition, it must contain a short and plain 6 statement of Plaintiff's claims. The allegations of the complaint must be set forth in sequentially 7 numbered paragraphs, with each paragraph number being one greater than the one before, each 8 paragraph having its own number, and no paragraph number being repeated anywhere in the 9 complaint. Each paragraph should be limited "to a single set of circumstances" where 10 possible. Rule 10(b). As noted above, forms are available to help plaintiffs organize their 11 complaint in the proper way. They are available at the Clerk's Office, 501 I Street, 4th Floor 12 (Rm. 4-200), Sacramento, CA 95814, or online at www.uscourts.gov/forms/pro-se-forms. 13 The amended complaint must not force the Court or the defendants to guess at what is 14 being alleged against whom. See *McHenry v. Renne*, 84 F.3d 1172, 1177-80 (9th Cir. 1996) 15 (affirming dismissal of a complaint where the district court was "literally guessing as to what 16 facts support the legal claims being asserted against certain defendants"). The amended 17 complaint should contain specific allegations as to the actions of each named defendant. 18 Also, the amended complaint must not refer to a prior pleading in order to make plaintiff's 19 amended complaint complete. An amended complaint must be complete in itself without 20 reference to any prior pleading. Local Rule 220. This is because, as a general rule, an amended 21 complaint supersedes the original complaint. See *Pacific Bell Tel. Co. v. Linkline 22 Communications, Inc.*, 555 U.S. 438, 456 n.4 (2009) ("[n]ormally, an amended complaint 23 supersedes the original complaint") (citing 6 C. Wright & A. Miller, *Federal Practice & 24 Procedure* § 1476, pp. 556-57 (2d ed. 1990)). Therefore, in an amended complaint, as in an 25 original complaint, each claim and the involvement of each defendant must be sufficiently 26 alleged. This includes any claims in the FAC that the undersigned has found sufficiently 27 cognizable. 28 ////] Plaintiff's amended

complaint must address the issues set forth herein as to inadequately 2 || pled claims. 3 Ill.
CONCLUSION 4 Accordingly, IT IS HEREBY ORDERED that: 5 1. The Court's Findings and
Recommendations (ECF No. 9) are WITHDRAWN in light of 6 the filing of the FAC; 7 2.
Plaintiffs motion for leave to amend the complaint (ECF No. 10) is GRANTED, for 8 screening
purposes only; 9 3. Plaintiff may, within 28 days from the date of this order, file a second
amended 10 complaint that addresses the defects in her claims, as set forth above. 11 4. Plaintiffs
failure to comply with this order will result in a recommendation that this 12 action be dismissed
except as against Defendant DMV for violations of GINA. 13 SO ORDERED. 14 | DATED:
October 28, 2025 md 15)

16 SEAN C. RIORDAN

UNITED STATES MAGISTRATE JUDGE

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