

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Barfield v. Doe

No. 3:24-cv-0630-AJB-SBC (S.D. Cal. Mar. 21, 2025) · No. 3:24-cv-0630-AJB-SBC · Decided March 24, 2025

OPINION

Barfield v. Doe

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 Case No.: 3:24-cv-0630-AJB-SBC

ROBERT BARFIELD,

12

ORDER: (1) GRANTING MOTION

Plaintiff,

13 TO PROCEED IN FORMA

v. PAUPERIS [ECF No. 2]

14

15 (2) DISMISSING COMPLAINT

KELLY MARTINEZ, Sheriff, JOHN WITHOUT PREJUDICE FOR

16

DOES 1–100, FAILURE TO STATE A CLAIM

17 PURUSANT TO 28 U.S.C. §§

Defendants. 1915(e)(2)(B), 1915A(b) 18 19 20 21

22 I. INTRODUCTION

23 Plaintiff Robert Barfield (“Plaintiff” or “Barfield”), an inmate currently confined at 24 High
Desert State Prison in Nevada, is proceeding pro se with a civil action filed pursuant 25 to 42
U.S.C. § 1983. The Court dismissed Plaintiff’s original complaint for failure to state 26 a claim
and granted him leave to amend. ECF No. 3. Barfield has now filed a First 27 Amended
Complaint (“FAC”) and a Motion for Appointment of Counsel. ECF Nos. 6, 7. 1 In his FAC,
Plaintiff alleges that while being held at the San Diego Central Jail,1 prior to 2 being extradited to
Nevada, he was confined in an unsanitary holding cell with no mattress 3 several days. See ECF
No. 6. For the reasons discussed below, the Court denies the motion 4 for appointment of counsel
and dismisses the FAC without prejudice for failure to state a 5 claim.

6 II. MOTION FOR APPOINTMENT OF COUNSEL

7 Barfield seeks appointment of counsel pursuant to 28 U.S.C. § 1915(e) because he 8 is unable to afford a lawyer. ECF No. 7 at 1. He further states that he requires counsel 9 because he is confined out-of-state “with no means of investigating the facts” of his case. 10 Id. He also alleges his case is “complex” and he has “very limited” access to the law library 11 in the facility where he is confined. Id. 12 There is no constitutional right to counsel in a civil case. *Lassiter v. Dep’t of Social 13 Servs.*, 452 U.S. 18, 25 (1981); *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009). And 14 while 28 U.S.C. § 1915(e)(1) grants the district court limited discretion to “request” that 15 an attorney represent an indigent civil litigant, *Agyeman v. Corr. Corp. of America*, 390 16 F.3d 1101, 1103 (9th Cir. 2004), this discretion may be exercised only under “exceptional 17 circumstances.” Id.; see also *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). A 18 finding of exceptional circumstances requires the Court “to consider whether there is a 19 ‘likelihood of success on the merits’ and whether ‘the prisoner is unable to articulate his 20 claims in light of the complexity of the legal issues involved.’” *Harrington v. Scribner*, 21 785 F.3d 1299, 1309 (9th Cir. 2015) (quoting *Palmer*, 560 F.3d at 970). 22 Barfield’s fails to establish the requisite “exceptional circumstances” that would 23 warrant appointment of counsel. A plaintiff is only entitled to appointed counsel if he can 24 25 26 1 In his FAC, Plaintiff states he was detained at the “San Diego County Detention Center” but given the address of the facility he provides, he appears to be referencing the San Diego Central 27 Jail. See ECF No. 6 at 2. 1 show “that because of the complexity of the claims he [is] unable to articulate his 2 positions.” *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), overruled on other 3 grounds, 154 F.3d 952 (9th Cir. 1998) (en banc). Here, Barfield has adequately articulated 4 his claims and his case does not appear complex. See *Wilborn v. Escalderon*, 789 F.2d 5 1328, 1331 (9th Cir. 1986) (“If all that was required to establish successfully the 6 complexity of the relevant issues was a demonstration of the need for development of 7 further facts, practically all cases would involve complex issues.”); see also *LaMere v. 8 Risley*, 827 F.2d 622, 626 (9th Cir. 1987) (affirming denial of motion for appointment of 9 counsel where pleadings demonstrated petitioner had “a good understanding of the issues 10 and the ability to present forcefully and coherently his contentions”). 11 Furthermore, to the extent Barfield contends he requires assistance of counsel 12 because he lacks the resources to hire an attorney and has limited access to the prison law 13 library, such circumstances are typical of almost every pro se prisoner civil rights plaintiff 14 and are insufficient to demonstrate the “exceptional circumstance” required to justify 15 appointment of counsel. See, e.g., *Wood v. Housewright*, 900 F.2d 1332, 1335–36 (9th Cir. 16 1990) (upholding denial of appointment of counsel where plaintiff complained that he had 17 limited access to law library and lacked a legal education); *Marquez v. United States*, 2018 18 WL 3388098, at *3 (S.D. Cal. 2018) (“[M]any of Plaintiff’s assertions, such as limited 19 education, no legal training, and limited access to the law library, are issues common to 20 many prisoners and do not amount to exceptional circumstances.”); *Galvan v. Fox*, 2017 21 WL 1353754, at *8 (E.D. Cal. 2017) (“Circumstances common to most prisoners, such as 22 lack of legal education and limited law library access, do

not establish exceptional circumstances that warrant a request for voluntary assistance of counsel.”); *Taa v. Chase Home Fin.*, 2012 WL 507430, at *2 (N.D. Cal. 2012) (noting that plaintiffs’ lack of legal training and poverty did not constitute exceptional circumstances, as these are the types of difficulties many other litigants face in proceeding in pro se). Finally, that Barfield is confined in Nevada does not make pursuing his case materially more difficult than if he were confined in California and therefore it does not constitute “exceptional circumstances.” In sum, the Court finds no “exceptional circumstances” currently exist and therefore Plaintiff’s Motion to Appoint Counsel is denied.

III. SCREENING

A. Legal Standards Pursuant to U.S.C. § 1915(e)(2)(B) and § 1915A(b), the Court must screen a prisoner’s IFP FAC and sua sponte dismiss it to the extent that it is frivolous, malicious, fails to state a claim, or seeks damages from defendants who are immune. See *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010). “The standard for determining whether Plaintiff has failed to state a claim upon which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watson v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). Rule 12(b)(6) requires that a complaint “contain sufficient factual matter . . . to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). And while detailed factual allegations are not required, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice” to state a claim. *Id.* The “mere possibility of misconduct” or “unadorned, the defendant-unlawfully-harmed me accusation[s]” fall short of the plausibility standard. *Id.*

Title 42 U.S.C. § 1983 “creates a private right of action against individuals who, acting under color of state law, violate federal constitutional or statutory rights.” *Devereaux v. Abbey*, 263 F.3d 1070, 1074 (9th Cir. 2001). Section 1983 “is not itself a source of substantive rights, but merely provides a method for vindicating federal rights elsewhere conferred.” *Graham v. Connor*, 40 U.S. 386, 393–94 (1989) (internal quotation marks omitted). “To establish liability under section 1983, a plaintiff must show both (1) deprivation of a right secured by the Constitution and laws of the United States, and (2) that the deprivation was committed by a person acting under color of state law.” *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1138 (9th Cir. 2012).

B. Plaintiff’s Allegations Plaintiff alleges that on December 18, 2023, he was “delivered” to the custody of the San Diego Central Jail (“SDCJ”), to be detained while awaiting extradition to Nevada. ECF

No. 6 at 4. After Barfield was processed, Doe #1 “made the command decision” to place him in a “holding cell” in the booking area. *Id.* The cell did not have a bed or mattress, was poorly ventilated and “filthy,” with urine and feces in and on the toilet and “unknown foreign substances” on the floors and walls. *Id.* at 4–5. Barfield was forced to sleep on the floor that night. *Id.* at 4. The next morning, Barfield was escorted to court by Doe #2 for a hearing

regarding 12 his extradition. Id. at 5. Plaintiff complained to Doe #2 about condition of his cell. Id. At 13 some point during the court the proceedings, Barfield also complained to the judge about 14 conditions at SDCJ. Id. at 6. He alleges the judge “ordered” he be provided a mattress and 15 bedding upon his return to SDCJ. Id. 16 Upon Barfield’s return to SDCJ from court, he was placed in the “same or similar” 17 cell, which also lacked a mattress or bedding, for four more days. Id. He also alleges he 18 was denied access to a shower during this time. Id. At some point, Plaintiff developed a 19 “pimple” on the back of his head, which he alleges eventually turned into a “staph 20 infection.” Id. at 7. Barfield claims the infection was caused by his being forced to rest his 21 “bald head” on the unsanitary concrete floor. Id. In addition, Barfield alleges on the “third 22 day” he woke up disoriented, became dizzy and fell backward. Id. at 8–9. He tried to break 23 his fall by grabbing a wooden bench and injured his bicep. Id. at 9. He complained to other 24 “Doe Defendants assigned to his housing area” but “no corrective action was taken.” Id. 25 After ten days at SDCJ, Barfield was extradited to Nevada. Id. 26 C. Discussion 27 Plaintiff alleges Defendants Martinez and Does #1–100 violated his Eighth 1 Amendment rights when he was confined to an unclean cell without a bed or mattress and 2 forced to sleep on the floor. Id. at 10–11. Barfield also raises state tort claims of negligence 3 and “malfeasance.” Id. at 11–12. He seeks compensatory and punitive damages. Id. at 12. 4 1. Eighth Amendment 5 “The Eighth Amendment’s prohibition against cruel and unusual punishment 6 protects prisoners not only from inhumane methods of punishment but also from inhumane 7 conditions of confinement.” Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2006). 8 To challenge conditions of confinement under the Eighth Amendment,² a plaintiff must 9 show: (1) objectively, the official’s act or omission must be so serious such that it results 10 in the denial of the minimal civilized measure of life’s necessities; and (2) subjectively, the 11 prison official must have acted with a “sufficiently culpable of mind,” which is “one of 12 deliberate indifference,” in conditions of confinement claims. See Farmer. Brennan, 511 13 U.S. 825, 834 (1994). 14 The objective prong requires a showing that the deprivation was sufficiently serious 15 to form the basis for an Eighth Amendment violation. See Johnson v. Lewis, 217 F.3d 726, 16 731 (9th Cir. 2000). “[E]xtreme deprivations are required to make out a conditions-of- 17 confinement claim.” Hudson v. McMillian, 503 U.S. 1, 9 (1992). When determining 18 whether the conditions of confinement are sufficiently severe to meet the objective prong, 19 the court must analyze each condition to determine whether that specific condition violates 20 21 2 Because Barfield was in custody pursuant to a parole violation (ECF No. 6 at 2), the Eighth Amendment applies. See, e.g. Flores v. Mesenbourg, No. 95-17241, 1997 WL 303277, at *1 (9th 22 Cir. 1997) (holding that a convicted prisoner who was incarcerated for a parole violation “must 23 rely on the Eighth Amendment to support his claim” because “[h]is original conviction is the authority under which he was confined after his parole violation”); Flores v. Cnty. of Fresno, 2020 24 WL 4339825, at *3, n.3 (E.D. Cal. 2020) (noting that individuals incarcerated in a county jail for a parole violation must raise claims alleging inadequate medical care under the Eighth 25 Amendment); Jensen v. Cnty. of Los

Angeles, 2017 WL 10574058, at *7 (C.D. Cal. 2017) 26 (“Claims by those who have been incarcerated for parole violations arise under the Eighth Amendment.”). 27 1 the Eighth Amendment. See *Toussaint v. McCarthy*, 801 F.2d 1080, 1107 (9th Cir. 1986). 2 In doing so, courts also consider the amount of time to which the prisoner was subjected to 3 the condition. See *Hearns v. Terhune*, 413 F.3d 1036, 1042 (9th Cir. 2005). Temporarily 4 unconstitutional conditions of confinement do not necessarily rise to the level of 5 constitutional violations. See *Anderson v. Cnty. of Kern*, 45 F.3d 1310, 1315 (9th Cir. 1995) 6 Deliberate indifference is shown where a prison official subjectively “knows that 7 inmates face a substantial risk of serious harm and disregards that risk by failing to take 8 reasonable measures to abate it.” *Farmer*, 511 U.S. at 847. Deliberate indifference is a high 9 legal standard. *Toguchi v. Chung*, 391 F.3d 1051, 1060 (9th Cir. 2004). To meet it, “the 10 prison official must not only ‘be aware of the facts from which the inference could be 11 drawn that a substantial risk of serious harm exists,’ but that person ‘must also draw the 12 inference.’” *Id.* at 1057 (quoting *Farmer*, 511 U.S. at 837). Even if a prison official should 13 have been aware of the risk but was not, there is no Eighth Amendment violation, no matter 14 how severe the risk. *Peralta v. Dillard*, 744 F.3d 1076, 1086 (9th Cir. 2014). 15 a. Sheriff Martinez 16 Barfield alleges San Diego Sheriff Martinez violated his Eighth Amendment rights 17 by being “complicit” in depriving him of a mattress, bedding and other hygiene materials 18 “such as soap, a toothbrush and toothpaste.” ECF No. 6 at 10. Supervisors are not 19 vicariously liable for the constitutional violations of other persons under § 1983; rather, 20 only for their own conduct. *Peralta*, 744 F.3d at 1085. Specifically, a supervisory official 21 is liable under § 1983 when “there exists either (1) his or her personal involvement in the 22 constitutional deprivation, or (2) a sufficient causal connection between the supervisor’s 23 wrongful conduct and the constitutional violation.” *Rodriguez v. County of Los Angeles*, 24 891 F.3d 776, 798 (9th Cir. 2018) (quoting *Keates v. Koile*, 883 F.3d 1228, 1242–43 (9th 25 Cir. 2018). “The requisite causal connection can be established . . . by setting in motion a 26 series of acts by others or by knowingly refus[ing] to terminate a series of acts by others, 27 which [the supervisor] knew or reasonably should have known would cause others to inflict 1 a constitutional injury.” *Starr v. Baca*, 652 F.3d at 1207–08 (internal quotation marks and 2 citations omitted) 3 Here, Barfield does not plausibly allege Martinez directed, or was personally aware 4 of and disregarded, the conditions he alleges violated his Eighth Amendment rights. See 5 *Fayle v. Stapley*, 607 F.2d 858, 862 (9th Cir. 1979) (state that when a named defendant 6 holds a supervisory position, the causal link between that defendant and the claimed 7 constitutional violation must be specifically alleged). At most, Barfield alleges that at a 8 December 19, 2023 hearing related to his extradition, he complained to the judge about the 9 conditions at the jail. He alleges the judge stated from the bench that Barfield should be 10 provided with a mattress and bedding³ and presumes Martinez “would [have been] 11 delivered” a “copy” of the judge’s “order” later that day. ECF No. 6 at 6. But this allegation 12 is based on no more than Barfield’s own speculation. There is nothing to suggest the judge 13 issued a written

order or that Martinez received and read it. Such speculative allegations 14 are insufficient to support a claim that Martinez had knowledge of the conditions. *Bell 15 Atlantic Corp., v. Twombly*, 550 U.S. 544, 555 (2007) (“Factual allegations must be enough 16 to raise a right to relief above the speculative level.”); see also *Ivey v. Bd. of Regents of 17 Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982) (noting conclusory allegations 18 concerning the involvement of supervisory personnel in civil rights violations are not 19 sufficient); *Keates v. Koile*, 883 F.3d 1228, 1243 (9th Cir. 2018) (affirming dismissal of 20 supervisory liability claim based on conclusory and speculative allegations); see also 21 22 23 3 The FAC contains no allegation that Martinez had knowledge of anything beyond a lack of bed or mattress. For instance, while Barfield also states he was denied access to the shower and was 24 without soap and a toothbrush (see ECF No. 6 at 6, 10), he does not allege Martinez had subjective knowledge of this. Moreover, the deprivation of oral hygiene items and soap for five days is 25 insufficient to rise to the level of an Eighth Amendment violation. See e.g. *Lopez v. Cate*, 2013 26 WL 239097, at *8 (E.D. Cal. Jan. 22, 2013) (stating deprivation of towel and soap for approximately four days, and the deprivation of toilet paper, a toothbrush, and tooth powder for 27 approximately seven days do not rise to the level of an Eighth Amendment violation). 1 *Sullivan v. Biter*, 2017 WL 1540256, at *1 (E.D. Cal. 2017) (“Conclusory allegations that 2 various prison officials knew or should have known about constitutional violations 3 occurring against plaintiff simply because of their general supervisory role are insufficient 4 to state a claim under 42 U.S.C. § 1983.”); see also *Blantz v. Cal. Dep’t of Corr. & Rehab.*, 5 727 F.3d 917, 926–27 (9th Cir. 2013) (concluding that “conclusory allegations” that a 6 supervisory defendant “directed” other defendants, without factual assertions to support 7 the allegation, were insufficient to defeat a motion to dismiss). 8 Furthermore, even if the Court presumes that on December 19, 2023, Martinez 9 somehow became aware that Barfield had been confined in a cell without a mattress or 10 bedding, Barfield has failed to plausibly allege such conditions amounted to a violation of 11 the Eighth Amendment. First, at the time Barfield claims Martinez could have learned 12 about the conditions of his cell, he had only been confined at SDCJ for one night. And the 13 full length of time Barfield alleges he was without a mattress or bedding appears to be, at 14 most, five nights.⁴ See ECF No. 6 at 6. Federal courts have held sleeping on a floor without 15 a mattress for a short number of days does not amount to a sufficiently serious deprivation 16 to support an Eighth Amendment violation. See *Alfred v. Bryant*, 378 Fed. Appx. 977, 980, 17 2010 WL 1881064 (11th Cir. 2010) (concluding prisoner’s claim that he had to live in a 18 cell for 18 days without a mattress and properly functioning toilet did not rise to the level 19 of an Eighth Amendment violation, where there was no evidence the prisoner faced an 20 unreasonable risk of serious harm to his health or safety); *Centeno v. Wilson*, 2011 WL 21 836747, at *3 (E.D. Cal. 2011) (finding claims insufficient when inmate was “forced to 22 sleep on a cold floor without a mattress or blanket for 7 days and was unable to shower”); 23 *Guillory v. Tilton*, 2011 WL 400847, at * 6 (E.D. Cal. 2011) (failing to provide prisoner a 24 25 26 4 Barfield states he was without a mattress

and bedding on December 18, 2023, his first day in custody. The next day he went to court and when he returned, he was placed the “same or similar 27 cell” for “four more full calendar days.” ECF No. 6 at 4, 6. 1 mattress for three nights does not violate Eighth Amendment); *Desroche v. Strain*, 507 F.

2 Supp. 2d 571, 579 (E.D. La. 2007) (finding plaintiff who complained he had to “sleep on 3 the floor for ten days in the crowded holding tank” failed to state a constitutional violation). 4 Finally, while Barfield claims he acquired an infection from having to sleep on the floor, 5 he presents no evidence Martinez was subjectively aware of any serious risk to his health 6 or safety. See *Peralta*, 744 F.3d at 1086. 7 In sum, Plaintiff has failed to plausibly allege Martinez was aware of 8 unconstitutional conditions and/or aware of wrongful conduct by specific subordinates and 9 failed to act. Therefore, Barfield has failed to state a claim against Martinez. See 28 U.S.C. 10 §§ 1915(e)(2)(B) and 1915A(b). 11 b. Doe Defendants 12 Barfield also names 100 “Doe” Defendants. The use of fictitiously named or “Doe” 13 defendants is generally not favored. *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980) 14 (citation omitted). However, amendment is allowed to substitute true names for fictitiously 15 named defendants. *Merritt v. County of Los Angeles*, 875 F.2d 765 (9th Cir. 1989). To 16 successfully state a claim for relief, Plaintiff must identify each Doe defendant individually 17 (e.g. Doe 1, Doe 2, etc.) and explain the specific actions taken by each defendant that 18 deprived him of his constitutional rights. See *Barren v. Harrington*, 152 F.3d 1193, 1194 19 (9th Cir. 1998) (“A plaintiff must allege facts, not simply conclusions, t[o] show that [each 20 defendant] was personally involved in the deprivation of his civil rights.”); *Keavney v. 21 Cnty. of San Diego*, 2020 WL 4192286, at *4 (S.D. Cal. 2020) (“A plaintiff may refer to 22 unknown defendants as Defendant John Doe 1, John Doe 2, John Doe 3, and so on, but he 23 must allege specific facts showing how each particular doe defendant violated his rights.”). 24 Of the 100 Doe Defendants named in the FAC, Barfield describes specific conduct 25 by only Doe #1 and Doe #2. Barfield identifies Doe #1 as an individual “in charge” of 26 housing placement at the jail. ECF No. 6 at 3. He alleges that on the day he was booked 27 into SDCJ, Doe # 1 made a “command decision to house him in a holding cell” rather than 1 in the housing unit. *Id.* Plaintiff remained in that cell for the night until he was taken to 2 court the next day. But this is insufficient to state a claim against Doe #1. There are no 3 allegations that Doe #1 was aware of the condition of the specific cell assigned to Barfield. 4 And even assuming Doe #1 was aware the cell lacked a bed, as discussed above, the failure 5 to provide a mattress and bedding for a short period of time does not rise to the level of an 6 Eighth Amendment violation. See e.g., *Centeno*, 2011 WL 836747, at *3. 7 Barfield also fails to state a claim against Doe #2. He alleges only that Doe #2 8 escorted him to court on December 19, 2023 for a hearing regarding his extradition. ECF

9 No. 6 at 5. At some point, Barfield complained to Doe #2 about the condition of his cell.

10 *Id.* When Barfield returned to SDCJ from court, he was placed in “the same or similar cell” 11 where he stayed for four more days. *Id.* at 6. But there are no facts suggesting it was Doe 12 #2

who placed Barfield in the cell or that Doe #2 had subjective knowledge of the 13 conditions of that cell. And even if he did, as discussed above, Barfield has failed to allege 14 sufficient facts to show those conditions were sufficiently serious to have violated his 15 Eighth Amendment rights. 16 Finally, Barfield has failed to state a claim the remaining Does #3–100 because he 17 has not alleged any specific facts to show what each, unnamed individual did to violate his 18 rights. See generally, *id.* 19 Therefore, the Court concludes Plaintiff has failed to state an Eighth Amendment 20 claim against Doe Defendants #1–100. See 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b). 21 2. State Tort Claims 22 Barfield also raises state tort claims of negligence, gross negligence, and 23 “malfeasance” against Martinez and the Doe Defendants. ECF No. 6 at 11–12. Although a 24 federal court may exercise supplemental jurisdiction over state law claims, it may decline 25 to do so over state law claims where it “has dismissed all claims over which it has original 26 jurisdiction.” 28 U.S.C. § 1367(c)(3); see also *Carnegie–Mellon Univ. v. Cohill*, 484 U.S. 27 343, 351 (1998) (“[I]n the usual case in which all federal-law claims are eliminated before 1 trial, the balance of factors to be considered under the pendant jurisdiction doctrine judicial 2 economy, convenience, fairness, and comity-will point toward declining to exercise 3 jurisdiction over the remaining state-law claims.”). Thus, because Plaintiff has not stated a 4 cognizable claim for relief under § 1983, the Court declines to exercise jurisdiction over 5 Plaintiff’s purported state law claims.⁵ 6 D. No Leave to Amend 7 Plaintiff was previously provided a short and plain statement of his pleading 8 deficiencies (ECF No. 3) and given an opportunity to amend those claims to no avail. The 9 Court therefore finds granting further leave to amend would be futile. See *Gonzalez v. 10 Planned Parenthood*, 759 F.3d 1112, 1116 (9th Cir. 2014) (“‘Futility of amendment can, 11 by itself, justify the denial of . . . leave to amend.’”) (quoting *Bonin v. Calderon*, 59 F.3d 12 815, 845 (9th Cir. 1995)); *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 1007 13 (9th Cir. 2009) (“[W]here the plaintiff has previously been granted leave to amend and has 14 subsequently failed to add the requisite particularity to its claims, [t]he district court’s 15 discretion to deny leave to amend is particularly broad.” (internal quotation marks omitted) 16 (second alteration in original)). As such the action is dismissed without leave to amend.

17 IV. CONCLUSION AND ORDER

18 For the above reasons, the Court: 19 (1) DENIES Plaintiff’s Motion for Appointment of Counsel (ECF No. 7); 20 (2) DISMISSES this civil action without further leave to amend for failure to state 21 a claim upon which relief can be granted pursuant to 28 U.S.C. §§ 1915(e)(2) (B)(ii) and 22 1915A(b)(1); and 23 (3) DIRECTS the Clerk of Court to enter a final judgment of dismissal and close 24 25 5 The Court further notes that state tort claims included in a federal action filed pursuant to 42 26 U.S.C. § 1983 may proceed only if the claims were first presented to the state in compliance with the claim presentation requirement. *Karim–Panahi v. Los Angeles Police Department*, 839 F.2d 27 621, 627 (9th Cir. 1988); *Butler v. Los Angeles County*, 617 F.Supp.2d 994, 1001 (C.D. Cal. 2008). 1 || the file. 2 IT IS SO ORDERED. 3 || Dated: March 21,

2025 5 United States District Judge 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26
27 12