

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Light v. County of Fresno

No. 1:24-cv-01508-HBK (PC) (E.D. Cal. Feb. 27, 2025) · No. 1:24-cv-01508-HBK (PC) · Decided February 27, 2025

SUMMARY

The United States District Court for the Eastern District of California screened Thurl H. Light’s pro se 42 U.S.C. § 1983 complaint concerning an inmate assault at the Fresno County Jail. The court found that the complaint failed to state claims against the Fresno County Jail, Fresno County, the Fresno County Sheriff’s Office, and Officer Sotaso, including failure-to-protect, failure-to-train, and negligence claims. The court allowed Plaintiff until March 28, 2025, to file an amended complaint, stand on the complaint, or voluntarily dismiss the action.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Helena M. Barch-Kuchta
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	February 27, 2025
DOCKET	1:24-cv-01508-HBK (PC)
DISPOSITION	other
PROCEDURAL POSTURE	Screening of a pro se prisoner civil-rights complaint under 28 U.S.C. § 1915A before service of process. The court found that the complaint failed to state a claim and directed plaintiff to choose between amending the complaint, standing on the complaint subject to a recommendation of dismissal, or voluntarily dismissing without prejudice.
STANDARD OF REVIEW	Under 28 U.S.C. § 1915A, the court screens the complaint and dismisses it or any portion that is frivolous, malicious, fails to state a claim, or seeks monetary relief from an immune defendant. At screening, factual allegations are accepted as true, construed liberally, and doubts are resolved in the plaintiff’s favor, but conclusory allegations, unreasonable inferences, and unwarranted factual deductions are not accepted. The complaint must contain sufficient factual matter to state a plausible claim for relief.

PRECEDENTIAL VALUE	nonprecedential
PARTIES	Thurl H. Light v. County of Fresno, Fresno County Sheriff's Office, Fresno County Jail, Officer Sotaso, Two unidentified inmates

TOPICS

section 1983 prisoners rights pleadings civil procedure government liability

PRACTICE AREAS

civil rights prisoner civil rights constitutional law civil procedure torts

QUESTIONS PRESENTED

1. Whether the Fresno County Jail is a suable person under 42 U.S.C. § 1983.
2. Whether the complaint plausibly alleged municipal liability against the County of Fresno and the Fresno County Sheriff's Office based on failure to train.
3. Whether a pretrial detainee plausibly alleged a Fourteenth Amendment failure-to-protect claim against Officer Sotaso.
4. Whether the complaint stated state-law negligence claims despite failing to allege compliance with California's Government Claims Act.

HOLDINGS

1. The Fresno County Jail is not a person or suable entity under § 1983 because it is an inanimate building rather than a governmental entity capable of being sued.
2. The complaint failed to state a plausible Monell failure-to-train claim because it offered only conclusory assertions and alleged no facts showing a need for additional training, deliberate indifference, or a causal connection between inadequate training and the constitutional injury.
3. The complaint failed to state a Fourteenth Amendment failure-to-protect claim because it did not allege that Officer Sotaso knew or should have recognized a substantial risk of harm, had time to take reasonable measures, or caused the assault by objectively unreasonable conduct.
4. The complaint failed to state a cognizable state-law negligence claim because it did not affirmatively allege compliance with California's Government Claims Act.

KEY QUOTATIONS

“To state a cognizable claim for failure to protect against an individual officer, a plaintiff must specifically plead as follows: (1) the defendant made an intentional decision regarding the conditions of the plaintiff’s confinement; (2) those conditions exposed the plaintiff to a substantial risk of serious harm; (3) the defendant failed to take reasonable measures to abate that risk, despite a reasonable officer in the same situation recognizing the high degree of risk—making the consequences of the defendant’s actions apparent; and (4) by neglecting to take such measures, the defendant caused the plaintiff’s injuries.” (at 6)

“To prevail on a Monell claim against any of the defendant entities based on a failure to train theory, Plaintiff must demonstrate that a municipality’s failure to train amounts to deliberate indifference to the rights of persons with whom the untrained employees come into contact.”” (at 5)

FACTUAL BACKGROUND

Thurl H. Light, a pretrial detainee at the Fresno County Jail, alleged that Officer Sotaso opened an elevator from central control while monitoring it by camera. After the elevator doors reopened, two unidentified inmates entered and assaulted Light, ripping out his colostomy bag and striking him in the face, head, and upper torso. Light alleged that Officer Sotaso, the County of Fresno, the Fresno County Sheriff's Office, and the Fresno County Jail failed to protect him or provide adequate training, and he sought \$50 million in damages.

PROCEDURAL HISTORY

Plaintiff filed a § 1983 complaint alleging that jail officials and entities failed to protect him from an assault by other detainees, failed to train employees, and were negligent. The matter was referred to Magistrate Judge Barch-Kuchta under 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. On screening, the court found no cognizable federal or state-law claim but allowed plaintiff an opportunity to amend or voluntarily dismiss before recommending dismissal to the district judge.

DISPOSITION

other

CASES CITED

- Jenkins v. McKeithen, 395 U.S. 411, 421 (1969)
- Bernhardt v. L.A. County, 339 F.3d 920, 925 (9th Cir. 2003)
- Petrie v. Elec. Game Card, Inc., 761 F.3d 959, 966 (9th Cir. 2014)
- Western Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981)
- Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989)
- Franklin, 745 F.2d at 1227
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009)
- Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)
- Mkhitaryan v. Las Vegas Metropolitan Police, No. 2:20-CV-2169-JAD-NJK, 2021 WL 6622257, at *2 (D. Nev. July 21, 2021)
- Wilson v. Pelican Bay State Prison, 2018 WL 5850213, at *4 (N.D. Cal. Nov. 6, 2018)
- Jessen v. County of Fresno, 808 F. App'x 432, 434-35 (9th Cir. 2020)
- Horton by Horton v. City of Santa Maria, 915 F.3d 592, 602-03 (9th Cir. 2019)
- Monell v. Department of Social Services, 436 U.S. 658, 694 (1978)
- Perez v. City of Fresno, 98 F.4th 919, 931 (9th Cir. 2024)

- *Connick v. Thompson*, 563 U.S. 51, 61, 63-64 (2011)
- *Castro v. County of Los Angeles*, 833 F.3d 1060, 1067-68, 1070-71 (9th Cir. 2016) (en banc)
- *Mendiola-Martinez v. Arpaio*, 836 F.3d 1239, 1246 n.5 (9th Cir. 2016)
- *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2005)
- *Kingsley v. Hendrickson*, 576 U.S. 389 (2015)
- *Davidson v. Cannon*, 474 U.S. 344, 347-48 (1986)
- *Darbouze v. Los Angeles County Sheriff*, No. 2:18-cv-2964-CJC-JDE, 2019 WL 8012684, at *7 (C.D. Cal. Sept. 18, 2019)
- *Karim-Panahi v. Los Angeles Police Department*, 839 F.2d 621, 627 (9th Cir. 1988)
- *Smithee v. California Correctional Institute*, 2019 WL 3842854, at *8 (E.D. Cal. Aug. 15, 2019), report and recommendation adopted, 2019 WL 4260140 (E.D. Cal. Sept. 9, 2019)
- *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1990)
- *Pliler v. Ford*, 542 U.S. 225, 231 (2004)
- *Lopez v. Smith*, 203 F.3d 1122, 1127-29, 1131 n.13 (9th Cir. 2000) (en banc)
- *Lucas v. Department of Corrections*, 66 F.3d 245, 248 (9th Cir. 1995)
- *Carvalho v. Equifax Information Services, LLC*, 629 F.3d 876, 892 (9th Cir. 2010)
- *Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1723, 1727 (2020)
- *Andrews v. Cervantes*, 493 F.2d 1047, 1052 (9th Cir. 2007)

OPINION

(PC) Light v. County of Fresno

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 THURL H. LIGHT, Case No. 1:24-cv-01508-HBK (PC) 12 Plaintiff, SCREENING ORDER
FINDING

COMPLAINT FAILS TO STATE A CLAIM

13 v. AND DIRECTING PLAINTIFF TO FILE AN

AMENDED COMPLAINT, STAND ON

14 FRESNO COUNTY, et al., COMPLAINT, OR FILE VOLUNTARY

DISMISSAL 1

15 Defendants. (Doc. No. 1) 16

MARCH 28, 2025 DEADLINE

17 18 Pending before the Court for screening under 28 U.S.C. § 1915A is the pro se civil rights 19
complaint filed under 42 U.S.C. § 1983 by Thurl Light—a pretrial detainee. (Doc. No. 1, 20
“Complaint”). Upon review, the Court finds the Complaint fails to state any claim. The Court 21
affords Plaintiff the option to file an amended complaint or voluntarily dismiss his Complaint 22

before recommending the district court dismiss this action.

23 SCREENING REQUIREMENT

24 A plaintiff who commences an action while in prison is subject to the Prison Litigation 25 Reform Act (“PLRA”), which requires, inter alia, the court to screen a complaint that seeks relief 26 against a governmental entity, its officers, or its employees before directing service upon any 27 1 This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 28 (E.D. Cal. 2022). 1 defendant. 28 U.S.C. § 1915A. This requires the court to identify any cognizable claims and 2 dismiss the complaint, or any portion, if is frivolous or malicious, if it fails to state a claim upon 3 which relief may be granted, or if it seeks monetary relief from a defendant who is immune from 4 such relief. See 28 U.S.C. §§ 1915A(b)(1), (2). 5 At the screening stage, the court accepts the factual allegations in the complaint as true, 6 construes the complaint liberally, and resolves all doubts in the plaintiff’s favor. *Jenkins v. 7 McKeithen*, 395 U.S. 411, 421 (1969); *Bernhardt v. L.A. County*, 339 F.3d 920, 925 (9th Cir. 8 2003). The Court’s review is limited to the complaint, exhibits attached, and materials 9 incorporated into the complaint by reference, and matters of which the court may take judicial 10 notice. *Petrie v. Elec. Game Card, Inc.*, 761 F.3d 959, 966 (9th Cir. 2014); see also Fed. R. Civ. 11 P. 10(c). A court does not have to accept as true conclusory allegations, unreasonable inferences, 12 or unwarranted deductions of fact. *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 13 1981). Critical to evaluating a constitutional claim is whether it has an arguable legal and factual 14 basis. See *Jackson v. Arizona*, 885 F.2d 639, 640 (9th Cir. 1989); *Franklin*, 745 F.2d at 1227. 15 The Federal Rules of Civil Procedure require only that a complaint include “a short and 16 plain statement of the claim showing the pleader is entitled to relief. . .” Fed. R. Civ. P. 8(a)(2). 17 Nonetheless, a claim must be facially plausible to survive screening. This requires sufficient 18 factual detail to allow the court to reasonably infer that each named defendant is liable for the 19 misconduct alleged. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Moss v. U.S. Secret Service*, 20 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully is not 21 sufficient, and mere consistency with liability falls short of satisfying the plausibility standard. 22 *Iqbal*, 556 U.S. at 678; *Moss*, 572 F.3d at 969. Although detailed factual allegations are not 23 required, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory 24 statements, do not suffice,” *Iqbal*, 556 U.S. at 678 (citations omitted), and courts “are not required 25 to indulge unwarranted inferences,” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 26 2009) (internal quotation marks and citation omitted). 27 The Rules permit a complaint to include all related claims against a party and permit 28 joinder of all defendants alleged to be liable for the “same transaction, occurrence, or series of 1 transactions or occurrences” where “any question of law or fact common to all defendants will 2 arise in the action.” Fed. R. Civ. P. 18(a) and 20(a)(2) (emphasis added). But the Rules prohibit 3 conglomeration of unrelated claims against unrelated defendants in a single lawsuit. A litigant 4 must file unrelated claims in separate lawsuits. 5 If an otherwise deficient pleading can be

remedied by alleging other facts, a pro se litigant is entitled to an opportunity to amend their complaint before dismissal of the action. See *Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc); *Lucas v. Department of Corr.*, 66 F.3d 824, 248 (9th Cir. 1995). However, it is not the role of the court to advise a pro se litigant on how to cure the defects. Such advice “would undermine district judges’ role as impartial decisionmakers.” *Pliler v. Ford*, 542 U.S. 225, 231 (2004); see also *Lopez*, 203 F.3d at 1131 n.13. Furthermore, the court in its discretion may deny leave to amend due to “undue delay, bad faith or dilatory motive of the part of the movant, [or] repeated failure to cure deficiencies by amendments previously allowed . . .” *Carvalho v. Equifax Info. Svcs., LLC*, 629 F.3d 876, 892 (9th Cir. 2010).

SUMMARY OF THE COMPLAINT

Plaintiff, a pretrial detainee at the Fresno County Jail, filed a civil rights action under 42 U.S.C. § 1983, alleging violations of the Eighth Amendments due to failure to protect, deliberate indifference, and negligence. (Doc. No. 1 at 1-6). Plaintiff asserts Defendant Sotaso (“Officer Sotaso”) failed to protect him when he was assaulted by two other inmates in an elevator on May 20, 2024. (Id. at 3-6). Specifically, at approximately 5:10 p.m., Plaintiff was returning from the jail yard, which is located on the roof of the facility to return to his cell and Officer Sotaso operated and opened the elevator from “central control,” to allow Plaintiff to enter while she monitored the incident on camera. (Id. at 3-8). After entering the elevator, the doors closed, but “randomly and wrongfully” reopened after 2-3 minutes. (Id. at 3, 8). Plaintiff states that the two inmates then entered the elevator and assaulted him for “reasons unknown.” (Id. at 8). Plaintiff’s colostomy bag was ripped out and he was struck “several times” in the face, head and upper torso by the unidentified inmates. (Id.). Additionally, Plaintiff alleges that defendants County of Fresno, the Fresno County Sheriff’s Office, and the Fresno County Jail failed to protect him or provide training. (Id.). The Complaint seeks \$50 million in damages for the injuries Plaintiff sustained from the elevator assault. (Id. at 7).

APPLICABLE LAW AND ANALYSIS

A. Defendant Fresno County Jail Not a Person Initially, defendant Fresno County Jail is not sui juris. Section 1983 only allows inmates to file civil rights actions against a “person.” See 42 U.S.C. § 1983. Because the Fresno County Jail is “an inanimate building [and] . . . not a person who can be sued [under Section 1983],” the complaint fails to assert a cognizable claim against it. See *Mkhitarian v. Las Vegas Metro. Police*, No. 2:20-CV-2169-JAD-NJK, 2021 WL 6622257, at *2 (D. Nev. July 21, 2021); see also *Wilson v. Pelican Bay State Prison*, 2018 WL 5850213, *4 (N.D. Cal. Nov. 6, 2018) (dismissing *Pelican Bay State Prison* because it is “simply a building, not a government entity.” B. Defendants County of Fresno and Fresno County Sheriff -Failure to Train Pursuant to Federal Rule of Civil Procedure 8, a complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not

suffice.” *Iqbal*, 556 U.S. at 17 678 (citation omitted). Plaintiff must set forth “sufficient factual matter, accepted as true, to 18 ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 19 550 U.S. at 570). While factual allegations are accepted as true, legal conclusions are not. 20 *Id.*; see also *Twombly*, 550 U.S. at 556–57. 21 While Plaintiff’s Complaint is indeed short, it fails to plausibly state a claim against 22 defendants County of Fresno and the Fresno County Sheriff’s Office. As to these defendants, 23 Complaint merely asserts in a conclusory manner that these entities failed to protect him by 24 failing to train. (See Doc. No. 1 at 3-6). As noted, this bald and conclusory statement without 25 any factual specificity is not entitled to the presumption of truth. *Iqbal*, at 678. 26 “[M]unicipalities may be liable under § 1983 for constitutional injuries pursuant to (1) an 27 official policy; (2) a pervasive practice or custom; (3) a failure to train, supervise, or discipline; or 28 (4) a decision or act by a final policymaker.” *Jessen v. Cnty. of Fresno*, 808 F. App’x 432, 434–35 1 (9th Cir. 2020) (citing *Horton v. City of Santa Maria*, 915 F.3d 592, 602–03 (9th Cir. 2 2019) (citing *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 694, 98 S.Ct. 2018, 56 L.Ed.2d 611 3 (1978))). To prevail on a *Monell* claim against any of the defendant entities based on a failure to 4 train theory, Plaintiff “must demonstrate that a municipality’s failure to train amounts to 5 deliberate indifference to the rights of persons with whom the untrained employees come into 6 contact.” *Perez v. City of Fresno*, 98 F.4th 919, 931 (9th Cir. 2024) (cleaned up). In this context, 7 deliberate indifference requires “proof that a municipal actor disregarded a known or obvious 8 consequence of his action.” *Connick v. Thompson*, 563 U.S. 51, 61 (2011). Generally, “a pattern 9 of similar constitutional violations, rather than proof of a single incident, is necessary to 10 demonstrate deliberate indifference.” *Perez*, 98 F.4th at 931 (cleaned up). However, “single- 11 incident liability may exist in the rare case where ‘the unconstitutional consequences of failing to 12 train’ are ‘patently obvious.’” *Id.* (quoting *Connick*, 563 U.S. 51, 63-64). 13 Throughout the Complaint, Plaintiff alleges without any factual specificity that defendants 14 County of Fresno and the Fresno County Sheriff’s Office “failed to train.” (Doc. No. 1 at 3-6). 15 Beyond these bare, conclusory statements, however, the Complaint fails to assert any facts 16 establishing the need for more or better training, such that the inadequacy was likely to result in 17 constitutional harm, nor that defendants’ failure to provide additional training in fact resulted in 18 the violation of Plaintiff’s constitutional rights. Without more than Plaintiff’s mere conclusory 19 assertion that defendants “failed to train,” fall far short of alleging a cognizable federal claim. 20 C. Defendant Sotaso - Failure to Protect 21 Plaintiff was a pretrial detainee at the county jail when the incident giving rise to his 22 Complaint occurred. Therefore, Plaintiff’s rights as a pretrial detainee, as opposed to a convicted 23 prisoner, arise under the Fourteenth Amendment instead of the Eighth Amendment; however, the 24 standard of review is largely the same. *Castro v. County of Los Angeles*, 833 F.3d 1060, 1067-68 25 (9th Cir. 2016) (en banc) (under both the Eighth and Fourteenth Amendments, the plaintiff must 26 show that the defendants acted with deliberate indifference); see also *Mendiola–Martinez v. 27 Arpaio*, 836 F.3d 1239, 1246 n. 5 (9th Cir. 2016) (“Eighth Amendment protections apply only 28

once a prisoner has been convicted of a crime, while pretrial detainees are entitled to the 1 potentially more expansive protections of the Due Process Clause of the Fourteenth 2 Amendment.”). “[P]re-adjudication detainees retain greater liberty protections than convicted 3 ones.” *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004) (citations omitted). As a pretrial 4 detainee, Plaintiff has the right to be protected from assault by other detainees. *Castro*, 833 F.3d 5 at 1068. 6 To state a cognizable claim for failure to protect against an individual officer, a plaintiff 7 must specifically plead as follows: (1) the defendant made an intentional decision regarding the 8 conditions of the plaintiff’s confinement; (2) those conditions exposed the plaintiff to a 9 substantial risk of serious harm; (3) the defendant failed to take reasonable measures to abate that 10 risk, despite a reasonable officer in the same situation recognizing the high degree of risk— 11 making the consequences of the defendant’s actions apparent; and (4) by neglecting to take such 12 measures, the defendant caused the plaintiff’s injuries. *Id.* at 1071. For the third element, the 13 defendant’s conduct must be “objectively unreasonable.” *Id.* (citing *Kingsley v. Hendrickson*, 14 576 U.S. 389 (2015)). Mere negligence or carelessness does not violate the Constitution. 15 *Davidson v. Cannon*, 474 U.S. 344, 247-48 (1986). 16 The Complaint fails to provide any specificity as to any inmate that posed a serious risk of 17 harm to Plaintiff. According to the Complaint, Officer Sotaso opened the elevator door from 18 “central control,” allowing the Plaintiff to enter the elevator where the assault occurred. (Doc.

19 No. 1 at 5). Because of this act, as Plaintiff contends, Officer Sotaso “allowed two inmates to 20 attack [him] and [] did not do anything to stop [the attack].” (*Id.*). Without more, the Complaint 21 fails to aver that Officer Sotaso was aware of facts from which the Officer could infer that 22 Plaintiff was under a substantial risk of harm or had time to intervene to stop the attack. 23 Moreover, Plaintiff’s own admission, the two inmates assaulted him for “unknown reasons.” (*Id.* 24 at 6). Thus, the Complaint fails to indicate that the Officer Sotaso, or even Plaintiff, was aware of 25 any potential risk of harm. Thus, “in conceding he does not know why he was assaulted, 26 Plaintiff has not alleged, and presumably cannot allege” that Officer Sotaso’s operation of the 27 elevator in reopening the door “‘caus[ed] the injury that the plaintiff suffered’ are required to 28 state a Fourteenth Amendment failure to protect claim.” *Darbouze v. Los Angeles Cnty. Sheriff*,

1 No. 2:18-cv-2964-CJC-JDE, 2019 WL 8012684, at *7 (C.D. Cal. Sept. 18, 2019) (citing *Castro*, 2 833 F.3d at 1070-71). Accordingly, the Complaint falls woefully short of articulating a 3 constitutional failure to protect claim. 4 D. Negligence State Law Claims 5 Although Plaintiff states that he exhausted his administrative remedies, the Complaint 6 does not allege that Plaintiff complied with the exhaustion requirements of the Government 7 Claims Act (“GCA”) as to his pendent state law claims. Cal. Gov’t Code §§ 905, 905.2, 910, 8 911.2, 945.4, 950–950.2. Under the GCA, a claimant may not maintain a state law tort cause 9 action for damages against a public employee or “local public entity”² unless he has first 10 presented a written claim to the state Victim Compensation and Government Claims Board, and 11 the Board has acted on it. See Cal.

Gov't.Code §§ 900.4, 905, 905.2, 945.4, & 950.2. State law 12 claims are subject to dismissal for failure to comply with GCA. See *Karim–Panahi v. L.A. Police 13 Dep't*, 839 F.2d 621, 627 (9th Cir.1988). If Plaintiff has not done so, he must submit any such 14 claim “not later than six months after the accrual of the cause of action.” See Cal. Gov't.Code § 15 911.2. Because Plaintiff does not affirmatively allege compliance with the GCA, the Complaint 16 facially fails to state a tort claim for negligence. 17 Additionally, because Plaintiff has not stated a cognizable claim for relief under federal 18 law, the Court need not analyze Plaintiff's state claims. See, e.g., *Smithee v. California Corr. 19 Inst.*, 2019 WL 3842854, at *8 (E.D. Cal. Aug. 15, 2019) (“because Plaintiffs failed to state a 20 cognizable claim under federal law [] the Court declines to expend limited judicial resources 21 analyzing the merits of the state law claims”), report and recommendation adopted, 2019 WL 22 4260140 (E.D. Cal. Sept. 9, 2019).

23 OPTIONS

24 To continue the prosecution of this action, Plaintiff must take one of the following three 25 options no later than March 28, 2025. 26 27 2 “Local public entity” is defined as “a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the State, but does not include the State.” Cal. Gov't Code § 28 900.4. 1 First Option: Because the Court cannot determine that the filing of an amended 2 complaint cannot cure the deficiencies identified above, the Court will afford Plaintiff an 3 opportunity to file an amended complaint if he chooses. An amended complaint supersedes 4 (replaces) the original complaint and, thus, the amended complaint must be free-standing and 5 complete. See *Hal Roach Studios, Inc. v. Richard*

Feiner & Co., Inc., 896 F.2d 1542, 1546 (9th 6 Cir. 1989). Plaintiff should use the Court's approved Prisoner Civil Rights Complaint Form to 7 file his amended complaint and he must title it “First Amended Complaint.” For each cause of 8 action and each defendant, Plaintiff must allege facts sufficient to show that the defendant 9 violated his civil rights. Plaintiff may not amend the complaint to add unrelated claims. 10 Second Option: Plaintiff may file a “Notice to Stand” on his current complaint subject to 11 the undersigned recommending the district court dismiss for the reasons stated in this Order. If 12 the Court dismisses this case finding that the complaint fails to state claim, the dismissal will 13 count as a strike under the PLRA.3 14 Third Option: Because no defendant has yet been served, Plaintiff may file a “Notice of 15 Voluntarily Dismissal without prejudice under Federal Rule of Civil Procedure 41(a)(1)” which 16 would preclude this action as counting a strike under the PLRA. 17 Alternatively, if Plaintiff fails to timely respond to this Court Order, i.e. fails to perform 18 any of the three options, the undersigned will instead recommend that the district court dismiss 19 this case as a sanction for Plaintiff's failure to comply with a court order and for failing to 20 prosecute this action after its determination that the complaint failed to state a claim, which will 21 count as strike under the PLRA. See Local Rule 110; Fed. R. Civ. P. 41(b). 22 Accordingly, it is ORDERED: 23 1. No later than March 28, 2025, Plaintiff must elect one of the three aforementioned 24 options and deliver to correctional officials for mailing: (a) a First Amended

Complaint; (b); a 25 3 Under § 1915(g), “the three-strikes bar,” prisoners who have had on three or more prior occasions a case 26 dismissed as frivolous, malicious, or for failure to state a claim may be barred from proceeding in forma pauperis in future civil actions and required to prepay the filing fee in full. Lomax v. Ortiz-Marquez, 140 27 S. Ct. 1721, 1723 (2020); see also Andrews v. Cervantes, 493 F.2d 1047, 1052 (9th Cir. 2007). Regardless of whether the dismissal was with or without prejudice, a dismissal for failure to state a claim qualifies as 28 a strike under § 1915(g). Lomax, 140 S. Ct. at 1727. 1 | “Notice to Stand on Complaint” as screened subject to the undersigned recommending the district 2 | court to dismiss this complaint for the reasons stated in this Order; or (c) a “Notice to Voluntarily 3 | Dismiss Action” without prejudice under Fed. R. Civ. P. 41 to avoid a strike. 4 2. If Plaintiff fails to timely comply with this Court Order or seek an extension of 5 | time to comply, the Court will recommend that the district court dismiss this action for 6 | failure to comply with this Court Order and prosecute this action. 7 3. The Clerk of Court shall include a blank civil rights complaint form for 8 || use as appropriate. 9 Dated: _ February 27, 2025 Wiha Th fares Zack
11 HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE
13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28