

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Cherrish Castaneda v. 6939 Fair Oaks Blvd TIC LLC

Castaneda · No. 2:25-cv-02804-TLN-SCR · Decided October 24, 2025

SUMMARY

The United States District Court for the Eastern District of California grants Plaintiff Cherrish Castaneda’s motion to proceed in forma pauperis but finds that her complaint fails to state federal claims for First Amendment retaliation and ADA violations against her private landlord. The court grants leave to amend and declines to screen the state-law claims at that stage. The magistrate judge recommends denying the motion for a temporary restraining order and resolves Plaintiff’s accommodation and service-of-process motions.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Sean C. Riordan
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	October 24, 2025
DOCKET	2:25-cv-02804-TLN-SCR
DISPOSITION	other
PROCEDURAL POSTURE	Pro se plaintiff filed a civil-rights and housing-related complaint, moved to proceed in forma pauperis, and filed motions for a temporary restraining order, accommodations, and service of process. The magistrate judge screened the complaint under 28 U.S.C. § 1915(e)(2), granted in forma pauperis status, found the federal claims insufficiently pleaded, granted leave to amend, and recommended denial of the temporary restraining order.
STANDARD OF REVIEW	The court screened the complaint under 28 U.S.C. § 1915(e)(2), accepting factual allegations as true and construing them in plaintiff's favor, while disregarding legal conclusions and requiring sufficient factual content to state a facially plausible claim. The TRO request was evaluated under the likelihood-of-success, irreparable-harm, balance-of-equities, and public-interest factors, or the serious-questions alternative standard.

PRECEDENTIAL VALUE	nonprecedential
PARTIES	Cherrish Castaneda v. 6939 Fair Oaks Blvd TIC LLC

TOPICS

civil procedure pleadings section 1983 ada / disability injunctions

PRACTICE AREAS

civil procedure civil rights landlord tenant ada / disability injunctions subject matter jurisdiction

QUESTIONS PRESENTED

1. Whether the complaint stated a nonfrivolous federal claim sufficient to survive screening under 28 U.S.C. § 1915(e)(2).
2. Whether the complaint plausibly alleged that the private landlord acted under color of state law for purposes of a First Amendment retaliation claim under 42 U.S.C. § 1983.
3. Whether the complaint plausibly stated an ADA claim despite failing to identify the applicable ADA title, disability, requested accommodation, or retaliatory conduct.
4. Whether plaintiff was entitled to a temporary restraining order or preliminary injunction.
5. Whether plaintiff should be granted leave to amend the deficient complaint.

HOLDINGS

1. The complaint failed to state a First Amendment retaliation claim because it did not allege that defendant, a private landlord, acted under color of state law, and it did not plausibly establish the elements of retaliation by a state actor.
2. The complaint failed to state an ADA claim because its allegations were conclusory and did not identify the applicable ADA title, establish that plaintiff had a disability, identify a requested reasonable accommodation, or explain the alleged retaliation. The complaint also raised the issue that a residential apartment complex generally is not a public accommodation under Title III.
3. Although plaintiff failed to state a federal claim, the court did not find the claims frivolous, insubstantial, implausible, or completely devoid of merit. The court therefore retained subject matter jurisdiction at the screening stage.
4. Plaintiff was granted leave to file an amended complaint because the court could not conclude that the pleading deficiencies were incurable.
5. The magistrate judge recommended denial of the temporary restraining order because plaintiff had not demonstrated a likelihood of success on the merits or immediate and irreparable harm.

KEY QUOTATIONS

“Any non-frivolous assertion of a federal claim suffices to establish federal question jurisdiction, even if that

claim is later dismissed on the merits.” (at 17-18)

“Rather than recommending dismissal of the action, the undersigned will provide Plaintiff an opportunity to amend the complaint to allege sufficient factual content to state a claim for relief that is plausible on its face.” (at 20-24)

“A TRO may only be granted if the moving party satisfies one of two legal standards.” (at 27-28)

FACTUAL BACKGROUND

Plaintiff was a tenant at the Skylark apartment complex, allegedly owned and managed by defendant. She alleged that the apartment was burglarized, that she reported plumbing failures, sewage leaks, water damage, and mold to the Sacramento County health department, and that defendant thereafter filed an eviction action. She further alleged continuing plumbing problems, illness affecting her children, and constructive eviction, and sought relief under § 1983, the ADA, and state habitability law.

PROCEDURAL HISTORY

Plaintiff filed the complaint on September 29, 2025, alleging First Amendment retaliation under 42 U.S.C. § 1983, an ADA claim, and related state-law habitability claims. The matter was referred to the magistrate judge under Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). The magistrate judge granted IFP status, denied or partially granted the miscellaneous motions, allowed 30 days to file an amended complaint, and issued findings and recommendations that the TRO motion be denied.

DISPOSITION

other

CASES CITED

- *Neitzke v. Williams*, 490 U.S. 319, 325, 327 (1989)
- *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010), cert. denied, 564 U.S. 1037 (2011)
- *Erickson v. Pardus*, 551 U.S. 89, 94 (2007)
- *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)
- *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009)
- *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-57, 570 (2007)
- *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
- *Benavidez v. County of San Diego*, 993 F.3d 1134, 1144 (9th Cir. 2021)
- *O’Handley v. Weber*, 62 F.4th 1145, 1155-56 (9th Cir. 2023)
- *Sampson v. County of Los Angeles*, 974 F.3d 1012, 1019 (9th Cir. 2020)
- *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 674-75 (2001)
- *Estavillo v. Cortese*, No. 23-CV-04032-VKD, 2024 WL 2808651, at *3 (N.D. Cal. May 30, 2024)
- *Cook v. Doe*, No. 21-CV-01720-JSC, 2021 WL 2444959, at *2 (N.D. Cal. May 17, 2021)

- Cook Inlet Region, Inc. v. Rude, 690 F.3d 1127, 1131 (9th Cir. 2012)
- Foster v. Wilson, 504 F.3d 1046, 1051-52 (9th Cir. 2007)
- Campos v. Fresno Deputy Sheriff's Assoc., 535 F. Supp. 3d 913, 930 (E.D. Cal. 2021)
- Religious Tech. Ctr. v. Wollersheim, 971 F.2d 364, 367-68 (9th Cir. 1992)
- Akhtar v. Mesa, 698 F.3d 1202, 1212-13 (9th Cir. 2012)
- McHenry v. Renne, 84 F.3d 1172, 1177-80 (9th Cir. 1996)
- Pacific Bell Tel. Co. v. Linkline Communications, Inc., 555 U.S. 438, 456 n.4 (2009)
- Winter v. NRDC, Inc., 555 U.S. 7, 22 (2008)
- Garcia v. Google, Inc., 786 F.3d 733, 740 (9th Cir. 2015)
- All. for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1134-35 (9th Cir. 2011)
- Arc of Cal. v. Douglas, 757 F.3d 975, 993-94 (9th Cir. 2014)
- E & J Gallo Winery v. Andina Licores S.A., 446 F.3d 984, 990 (9th Cir. 2006)
- Brewer v. Loancare, LLC, No. 2:25-cv-01157-DC-CSK, 2025 WL 1400288, at *2 (E.D. Cal. May 14, 2025)
- Martinez v. Yist, 951 F.2d 1153 (9th Cir. 1991)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
 CALIFORNIA 10 11 CERRISH CASTANEDA, No. 2:25-cv-02804-TLN-SCR 12 Plaintiff, 13
 v. ORDER AND FINDINGS AND RECOMMENDATIONS 14 6939 FAIR OAKS BLVD TIC
 LLC, 15 Defendant. 16 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 her complaint on September 20 29, 2025, and has filed five motions. Plaintiff filed a
 motion for leave to proceed in forma 21 pauperis (“IFP”) and a declaration, including a statement
 of income and expenses, averring she is 22 unable to pay the costs of these proceedings. See 28
 U.S.C. § 1915(a)(1).

The motion to proceed 23 IFP will therefore be granted. However, for the reasons provided below,
 the Court finds 24 Plaintiff’s complaint is legally deficient and will grant Plaintiff leave to file an
 amended 25 complaint.

The Court herein addresses the remaining motions and recommends the motion for 26 temporary
 restraining order be denied. 27 //// 28 //// 1 I. SCREENING 2 A. Legal Standard 3 The federal IFP
 statute requires federal courts to dismiss a case if the action is legally 4 “frivolous or malicious,”
 fails to state a claim upon which relief may be granted, or seeks 5 monetary relief from a
 defendant who is immune from such relief.

28 U.S.C. § 1915(e)(2). In 6 reviewing the complaint, the Court is guided by the requirements of
 the Federal Rules of Civil 7 Procedure. The Federal Rules of Civil Procedure are available online
 at [www.uscourts.gov/rules-](http://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-) 8 [policies/current-rules-practice-procedure/federal-rules-civil-](http://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-)

procedure. 9 Under the Federal Rules of Civil Procedure, the complaint must contain (1) a “short and 10 plain statement” of the basis for federal jurisdiction (that is, the reason the case is filed in this 11 court, rather than in a state court), (2) a short and plain statement showing that plaintiff is entitled 12 to relief (that is, who harmed the plaintiff, and in what way), and (3) a demand for the relief 13 sought.

Fed. R. Civ. P. 8(a). Plaintiff’s claims must be set forth simply, concisely and directly. 14 Fed. R. Civ. P. 8(d)(1). Forms are available to help pro se plaintiffs organize their complaint in 15 the proper way. They are available at the Clerk’s Office, 501 I Street, 4th Floor (Rm. 4-200), 16 Sacramento, CA 95814, or online at www.uscourts.gov/forms/pro-se-forms.

17 A claim is legally frivolous when it lacks an arguable basis either in law or in fact. 18 *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). In reviewing a complaint under this standard, the 19 court will (1) accept as true all of the factual allegations contained in the complaint, unless they 20 are clearly baseless or fanciful, (2) construe those allegations in the light most favorable to the 21 plaintiff, and (3) resolve all doubts in the plaintiff’s favor.

See *Neitzke*, 490 U.S. at 327; *Von 22 Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010), cert. 23 denied, 564 U.S. 1037 (2011). 24 The court applies the same rules of construction in determining whether the complaint 25 states a claim on which relief can be granted. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (court 26 must accept the allegations as true); *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974) (court must 27 construe the complaint in the light most favorable to the plaintiff).

Pro se pleadings are held to a 28 less stringent standard than those drafted by lawyers. *Erickson*, 551 U.S. at 94. However, the 1 court need not accept as true legal conclusions, even if cast as factual allegations. See *Moss v. 2 U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). A formulaic recitation of the elements of 3 a cause of action does not suffice to state a claim.

Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 4 555-57 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). 5 To state a claim on which relief may be granted, the plaintiff must allege enough facts “to 6 state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A claim has 7 facial plausibility when the plaintiff pleads factual content that allows the court to draw the 8 reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 9 678.

A pro se litigant is entitled to notice of the deficiencies in the complaint and an opportunity 10 to amend, unless the complaint’s deficiencies could not be cured by amendment. See *Akhtar v. 11 Mesa*, 698 F.3d 1202, 1213 (9th Cir. 2012). 12 B. The Complaint 13 Plaintiff’s complaint names one Defendant, 6939 Fair Oaks Blvd TIC LLC (herein 14 “Defendant”). Defendant is alleged to be the property owner and responsible for the management 15 and operations of Skylark apartments.

ECF No. 1 at ¶ 6. Plaintiff is a tenant at Skylark. Id. at ¶ 16 4. Plaintiff alleges this Court has jurisdiction because she is bringing a claim for First Amendment retaliation under 42 U.S.C. § 1983. Id. at ¶ 1. Plaintiff alleges the Court has supplemental jurisdiction over her related state law claims concerning habitability. Id. at ¶ 2. 19 Plaintiff alleges her apartment was burglarized in March 2025, and that on May 2, 2025 20 she reported plumbing failures including sewage leaks, water damage, and mold.

Id. at ¶¶ 8-9. 21 Plaintiff then filed a public health complaint with Sacramento County around May 26, 2025. Id. 22 at ¶ 10. Thereafter, on June 16, 2025, Defendant filed an eviction action. Id. at ¶ 11. Plaintiff 23 alleges that in June/July 2025, plumbing related problems continued, and that her children 24 became sick. Id. at ¶¶ 12-13.

On September 8, 2025, Plaintiff issued a “formal lease termination 25 notice” citing constructive eviction. Id. at ¶ 15. 26 Plaintiff asserts eight causes of action, two of which are based in federal law. In Count I, 27 Plaintiff alleges First Amendment retaliation and claims that Defendant retaliated against her 28 when she reported the plumbing problems to Sacramento County’s health department.

Id. at ¶¶ 1 17-19. In Count VII, Plaintiff alleges violation of the Americans with Disabilities Act (“ADA”), 2 that her health was impaired by unsafe conditions, and that Defendant “failed to accommodate 3 disabilities and instead retaliated.” Id. at ¶¶ 32-34. 4 Plaintiff seeks a declaratory judgment that her rights were violated, and also injunctive 5 relief “halting eviction, preventing retaliation, and compelling repairs.” ECF No. 1 at 4.

Plaintiff 6 additionally seeks monetary damages. 7 C. Analysis 8 Plaintiff’s complaint contains a jurisdictional statement and request for relief. However, it 9 fails to contain a “short and plain statement of the claim showing that the pleader is entitled to 10 relief.” Fed. R. Civ. P. 8(a)(2).

In order to state a claim under section 1983, a plaintiff is required 11 to plead that (1) a defendant acting under color of state law, (2) deprived plaintiff of rights 12 secured by the Constitution or federal statutes. *Benavidez v. County of San Diego*, 993 F.3d 1134, 13 1144 (9th Cir. 2021). Defendant is Plaintiff’s landlord and is alleged to own the Skylark 14 Apartments.

ECF No. 1 at ¶ 6. There is no allegation that the company which owns and manages 15 Plaintiff’s apartment complex is a state actor or was acting under color of state law. Generally, 16 private parties are not acting under color of state law. See *O’Handley v. Weber*, 62 F.4th 1145, 17 1155-56 (9th Cir. 2023) (stating that only in “exceptional cases” will a private entity be treated as 18 a state actor for constitutional purposes).

19 If Plaintiff could successfully plead state action, she would also need to plead facts to 20 plausibly meet the elements of her claim for First Amendment retaliation. Generally, a plaintiff 21 must show: 1) she engaged in a constitutionally protected activity; 2) defendants’ actions would 22

chill a person of ordinary firmness from continuing to engage in protected conduct; and 3) the 23 protected activity was a substantial or motivating factor in defendants' conduct.

Sampson v. 24 County of Los Angeles, 974 F.3d 1012, 1019 (9th Cir. 2020). A plaintiff must establish that 25 defendant's retaliatory animus was the but-for cause of her injury, meaning that the adverse 26 action against her would not have been taken absent retaliatory motive. *Id.* (internal citations and 27 quotations omitted). 28 /// 1 Plaintiff alleges that she made a complaint to the Sacramento County health department, 2 and that Defendant, her landlord, retaliated.

ECF No. 1 at ¶¶ 17-19. There is no claim that the 3 health department retaliated against Plaintiff in response to her complaint. Rather, the allegation 4 is that her landlord, a private actor did. Plaintiff fails to state a claim of First Amendment 5 retaliation. 6 Plaintiff's other federal claim is under the ADA.

The ADA allegations are conclusory. 7 Plaintiff alleges her health was impaired by unsafe conditions on the property, and Defendant 8 "failed to accommodate disabilities and instead retaliated." ECF No. 1 at ¶¶ 32-34. Plaintiff does 9 not allege under what Title of the ADA she brings her claim.

The ADA has been described as 10 containing a "broad mandate" designed to "remedy widespread discrimination against disabled 11 individuals." *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 674-75 (2001). "To effectuate its 12 sweeping purpose, the ADA forbids discrimination against disabled individuals in major areas of 13 public life, among them employment (Title I of the Act), public services (Title II), and public 14 accommodations (Title III)." *Id.* at 675.

Plaintiff does not cite to any of these provisions, nor 15 does she clearly allege that she has a disability, but rather seems to claim that the housing 16 conditions damaged her health. There are no factual allegations explaining what reasonable 17 accommodation was denied, or the manner of retaliation.

In other portions of the complaint, 18 Plaintiff appears to claim that the retaliatory action was the filing of an eviction action. *Id.* at ¶ 19 11. However, Plaintiff also alleges that she gave notice she was terminating the lease based on 20 her own belief that she had been constructively evicted. *Id.* at ¶15. 21 Additionally, "[r]esidential apartment complexes generally do not do not constitute public 22 accommodations within the meaning of the [ADA]." *Estavillo v. Cortese*, No. 23-CV-04032- 23 VKD, 2024 WL 2808651, at *3 (N.D.

Cal. May 30, 2024) (collecting cases); see also 24 *Cook v. Doe*, No. 21-CV-01720-JSC, 2021 WL 2444959, at *2 (N.D. Cal. May 17, 2021); 25 ("[Plaintiff] fails to state a valid ADA claim because her residential apartment building is not a 26 place of public accommodation covered by the ADA's disability discrimination laws."). 27 Plaintiff fails to state a federal claim for First Amendment retaliation or for violation of 28 the ADA.

The failure to state a federal claim may implicate the Court’s jurisdiction. If a federal 1 claim is “obviously frivolous,” insubstantial, implausible, or completely devoid of merit then the 2 Court lacks subject matter jurisdiction. *Cook Inlet Region, Inc. v. Rude*, 690 F.3d 1127, 1131 (9th Cir. 2012).

However, “[a]ny non-frivolous assertion of a federal claim suffices to establish 4 federal question jurisdiction, even if that claim is later dismissed on the merits.” *Id.* Although 5 Plaintiff fails to allege state action on the part of Defendant, and the ADA claim is entirely 6 conclusory, the Court does not find at this point that the claim is frivolous, and thus the Court has 7 subject matter jurisdiction.

8 The in forma pauperis statute, 28 U.S.C. § 1915(e) provides that this Court “shall dismiss 9 the case at any time” if it determines that the action fails to state a claim on which relief may be 10 granted. The Court finds that Plaintiff fails to state a federal claim.

The Court will not screen 11 Plaintiff’s remaining state law causes of action, as they assert claims under state law and the 12 Court would decline supplemental jurisdiction if the federal claims are dismissed. The decision 13 of whether to exercise supplemental jurisdiction over state law claims after the federal claims 14 have been dismissed lies within the district court’s discretion.

See *Foster v. Wilson*, 504 F.3d 15 1046, 1051-52 (9th Cir. 2007). Generally, when federal claims are dismissed well before trial, 16 pendent state law claims should be dismissed as well. See *Campos v. Fresno Deputy Sheriff’s 17 Assoc.*, 535 F.Supp.3d 913, 930 (E.D. Cal. 2021), citing *Religious Tech. Ctr. v. Wollersheim*, 971 18 F.2d 364, 367-68 (9th Cir. 1992).

19 The Court has considered that Plaintiff is proceeding pro se and a pro se litigant should be 20 given leave to amend unless it is absolutely clear that the deficiencies cannot be cured by 21 amendment. *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012).

As Plaintiff’s allegations are 22 at times conclusory, the Court cannot conclude that leave to amend would be futile. Rather than 23 recommending dismissal of the action, the undersigned will provide Plaintiff an opportunity to 24 amend the complaint to allege sufficient factual content to state a claim for relief that is plausible 25 on its face. 26 II. AMENDING THE COMPLAINT 27 If plaintiff chooses to amend the complaint, it must contain a short and plain statement of 28 Plaintiff’s claims.

The allegations of the complaint must be set forth in sequentially numbered 1 paragraphs, with each paragraph number being one greater than the one before, each paragraph 2 having its own number, and no paragraph number being repeated anywhere in the complaint. 3 Each paragraph should be limited “to a single set of circumstances” where possible. Rule 10(b).

4 As noted above, forms are available to help plaintiffs organize their complaint in the proper way. 5 They are available at the Clerk's Office, 501 I Street, 4th Floor (Rm. 4-200), Sacramento, CA 6 95814, or online at www.uscourts.gov/forms/pro-se-forms. 7 The amended complaint must not force the Court or the defendant to guess at what is 8 being alleged against whom.

See *McHenry v. Renne*, 84 F.3d 1172, 1177-80 (9th Cir. 1996) 9 (affirming dismissal of a complaint where the district court was "literally guessing as to what 10 facts support the legal claims being asserted against certain defendants").

The amended 11 complaint should contain specific allegations as to the actions of the named defendant rather than 12 making conclusory allegations. 13 Also, the amended complaint must not refer to a prior pleading in order to make plaintiff's 14 amended complaint complete. An amended complaint must be complete in itself without 15 reference to any prior pleading.

Local Rule 220. This is because, as a general rule, an amended 16 complaint supersedes the original complaint. See *Pacific Bell Tel. Co. v. Linkline* 17 *Communications, Inc.*, 555 U.S. 438, 456 n.4 (2009) ("[n]ormally, an amended complaint 18 supersedes the original complaint") (citing 6 C. Wright & A. Miller, *Federal Practice & 19 Procedure* § 1476, pp. 556-57 (2d ed.

1990)). Therefore, in an amended complaint, as in an 20 original complaint, each claim and the involvement of each defendant must be sufficiently 21 alleged. 22 Plaintiff's amended complaint must address the issues set forth herein. It must plead facts 23 demonstrating that Defendant was a state actor or acting under color of law. Plaintiff must allege 24 additional facts to support her ADA claim, including whether she is an individual with a 25 disability, what reasonable accommodation she requested, and in what manner and at what time 26 did Defendant retaliate against her for exercising her rights under the ADA.

Plaintiff must allege 27 enough facts in support of her claims to state a claim to relief that is plausible on its face. 28 *///* 1 III. Plaintiff's Motion for Temporary Restraining Order 2 Plaintiff has filed a motion seeking a temporary restraining order ("TRO") and 3 preliminary injunction. ECF No. 4. Plaintiff requests that the Court issue a TRO that enjoins 4 Defendant from proceeding with eviction and halts further retaliation.

ECF No. 4 at 2. Plaintiff 5 has submitted a declaration in support of her motion. ECF No. 4 at 3-4. Plaintiff has also 6 submitted several exhibits in support of her motion. Plaintiff submitted an email she sent on May 7 21, 2025, stating that all of the drains in her apartment were backing up and clogged. *Id.* at 12. 8 On May 27, 2025, Plaintiff submitted an email titled "Unit 59 Habitability Violations and Legal 9 Escalation Notice." *Id.* at 15.

On September 8, 2025, Plaintiff submitted an email to her landlord 10 stating that she considered herself constructively evicted, and stating: "I hereby rescind and 11 terminate the lease effective immediately due to your material breaches and unlawful conduct." 12 *Id.* at 43. 13 A TRO is an

extraordinary measure of relief that a federal court may impose without 14 notice to the adverse party if, in an affidavit or verified complaint, the movant “clearly show[s] 15 that immediate and irreparable injury, loss, or damage will result to the movant before the adverse 16 party can be heard in opposition.” Fed.

R. Civ. P. 65(b)(1)(A); see also *Winter v. NRDC, Inc.*, 17 555 U.S. 7, 22, 129 S. Ct. 365, 375-76 (2008). A TRO may only be granted if the moving party 18 satisfies one of two legal standards. A plaintiff seeking a TRO must generally establish all four 19 of the following elements: (1) likely success on the merits of his underlying case; (2) he is likely 20 to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in 21 his favor; and (4) an injunction is in the public interest.

Garcia v. Google, Inc., 786 F.3d 733, 22 740 (9th Cir. 2015). A plaintiff may also be entitled to a TRO by showing serious questions 23 going to the merits, irreparable harm, and a balance of equities that tips strongly in the plaintiff's 24 favor. All.

For the *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011). 25 While the undersigned sympathizes with any tenant living in an uninhabitable dwelling, 26 Plaintiff has not demonstrated a likelihood of success on the merits.

As set forth above, the 27 complaint fails to state a federal claim. At a minimum, Plaintiff is not entitled to a TRO because 28 she has not stated a federal claim upon which relief can be granted. Failure to state a claim 1 dooms a motion for preliminary injunctive relief. See *Arc of Cal. v. Douglas*, 757 F.3d 975, 993– 2 94 (9th Cir.2014) (citing *E & J Gallo Winery v. Andina Licores S.A.*, 446 F.3d 984, 990 (9th 3 Cir.2006)).

4 Additionally, although Plaintiff has made serious allegations concerning plumbing 5 failures, sewage leaks, and mold, she has not demonstrated the need for immediate relief or 6 irreparable harm. Plaintiff alleges that she began experiencing these plumbing issues on May 2, 7 2025, and she did not file the motion for TRO until nearly five months later. She also pleads that 8 the day before she filed this lawsuit, “Sacramento County code enforcement called to have 9 plumbing fixed.” ECF No. 1 at ¶ 16.

Undue delay in seeking injunctive relief may serve as 10 grounds for denying a temporary restraining order. *Brewer v. Loancare, LLC*, No. 2:25-cv- 11 01157-DC-CSK, 2025 WL 1400288, *2 (E.D. Cal. May 14, 2025); see also Local Rule 231(b) 12 (“[T]he Court may conclude that the delay constitutes laches or contradicts the applicant's 13 allegations of irreparable injury and may deny the motion solely on either ground.”).

14 Plaintiff has not demonstrated a likelihood of success on the merits or that she is likely to 15 suffer immediate and irreparable harm. The Court recommends the motion for TRO be DENIED. 16 IV. Plaintiff’s Miscellaneous Motions 17 A. Request for ADA Accommodations (ECF No. 3) 18

The motion states that Plaintiff requests “reasonable accommodation due to medically 19 documented impairments resulting from landlord negligence and unsafe housing conditions.” 20 ECF No. 3 at 1.

Plaintiff requests the Court “provide any necessary communication, hearing 21 adjustments, or grace for extensions of time” in light of her disability. Id. Plaintiff attaches a 22 letter stating that she has a mental health condition and has been in “intermittent treatment” since 23 2015. Id. at 3. Plaintiff’s motion does not seek specific relief, accordingly the motion is denied 24 without prejudice.

If Plaintiff requires accommodation at a future hearing, or an extension of 25 time, she may seek such relief in an appropriate motion. 26 B. Request for Reasonable Accommodations (ECF No. 5) 27 Plaintiff filed this motion just two days after filing her original motion requesting 28 accommodation, and this motion does seek more specific relief. Specifically, Plaintiff requests 1 that all hearings be held in person as opposed to via remote video conference due to Plaintiff’s 2 sensory-processing issues and past trauma.

ECF No. 5 at 2. No hearings are currently set, but the 3 Court would be inclined to grant such request in the event a hearing is scheduled. Plaintiff also 4 requests a blanket order allowing her at least 30 days to respond to any deadlines.

The Court will 5 not grant this blanket request, but will grant Plaintiff additional time to file any objections to these 6 Findings & Recommendations. Moreover, Plaintiff may seek additional time via motion as 7 necessary in the future. Plaintiff’s other requests pertain to accommodations for in-court 8 proceedings are held, or state she “reserves the right to request additional accommodations” in the 9 future.

The motion is granted as to the request not to be required to appear via video, but is 10 otherwise denied without prejudice to Plaintiff making a renewed motion when, and if, in-court 11 proceedings are scheduled. 12 C. Motion Requesting Service of Process (ECF No. 6) 13 Plaintiff requests that the Court direct the U.S. Marshal to effect service of her 14 complaint and summons.

This motion is denied as premature and unnecessary. If Plaintiff files a 15 first amended complaint, and that complaint passes screening under 28 U.S.C. § 1915(e), then the 16 Court will direct service. 17 V. CONCLUSION 18 Accordingly, IT IS HEREBY ORDERED that: 19 1. Plaintiff’s motion to proceed in forma pauperis (ECF No. 2) is GRANTED; 20 2. Plaintiff’s request for accommodation (ECF No. 3) is DENIED without prejudice to 21 seeking specific relief in a renewed motion; 22 3.

Plaintiff’s second motion requesting accommodations (ECF No. 5) is GRANTED IN 23 PART and DENIED IN PART as set forth herein; 24 4. Plaintiff’s motion requesting the Marshal serve

process (ECF No. 6) is DENIED; 25 5. Plaintiff shall be allowed 30 days from the date of this order to file a first amended 26 complaint that addresses the pleading deficiencies set forth herein.

If Plaintiff fails to timely 27 comply with this order, the undersigned may recommend that this action be dismissed. 28 6. Alternatively, if Plaintiff no longer wishes to pursue this action, Plaintiff may file a 1 | notice of voluntary dismissal of this action pursuant to Rule 41 of the Federal Rules of Civil 2 | Procedure. 3 IT IS FURTHER RECOMMENDED THAT: 4 1.

Plaintiffs Motion for temporary restraining order (ECF No. 2) be DENIED. 5 These findings and recommendations are submitted to the United States District Judge 6 || assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within thirty (30) 7 || days after being served with these findings and recommendations, Plaintiff may file written 8 | objections with the court.

Such document should be captioned “Objections to Magistrate Judge’s 9 || Findings and Recommendations.” Local Rule 304(d). Plaintiff is advised that failure to file 10 | objections within the specified time may waive the right to appeal the District Court’s order. 11 || Martinez v. Yist, 951 F.2d 1153 (9th Cir. 1991). 12 SO ORDERED. 13 | DATED: October 23, 2024 Emd— 15 SEAN C. RIORDAN 16 UNITED STATES MAGISTRATE JUDGE 17 18 19 20 21 22 23 24 25 26 27 28 1]