

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Mansueto v. Brown

No. 25-cv-01859-BAS-VET (S.D. Cal. Aug. 19, 2025) · No. 25-cv-01859-BAS-VET · Decided August 19, 2025

SUMMARY

The United States District Court for the Southern District of California dismissed Joyce Mansueto’s action without prejudice. The court held that she could not proceed pro se through her brother, failed to comply with an order to show cause, failed to state a cognizable claim under 42 U.S.C. § 1983, and failed to establish personal jurisdiction over the proper habeas respondent. The court also denied appointment of counsel as unwarranted and terminated the pending motions as moot.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Cynthia Bashant
JURISDICTION	United States District Court for the Southern District of California
DECIDED	August 19, 2025
DOCKET	25-cv-01859-BAS-VET
DISPOSITION	dismissed
PROCEDURAL POSTURE	The district court sua sponte dismissed Plaintiff's civil-rights and habeas action without prejudice after issuing an order to show cause. The court also terminated several pending motions as moot.
STANDARD OF REVIEW	For dismissal based on failure to comply with a court order or prosecute, the court considered the Pagtalunan factors: the public interest in expeditious resolution, docket management, prejudice to defendants, availability of less drastic alternatives, and the public policy favoring disposition on the merits. The court also applied the Rule 12(b)(6)-type plausibility and jurisdictional standards governing the asserted § 1983 and habeas claims.
PRECEDENTIAL VALUE	unpublished_nonprecedential
PARTIES	Joyce Mansueto v. Susan Brown, Villa Bernardo OPCO, LLC, doing business as Villa Bernardo Care Facility, Does 1 through 100

TOPICS

civil procedure

pleadings

section 1983

personal jurisdiction

ada / disability

PRACTICE AREAS

civil procedure

civil rights

habeas corpus

probate

guardianships

disability law

QUESTIONS PRESENTED

1. Whether a pro se litigant may prosecute claims on another person's behalf through an unlicensed relative.
2. Whether dismissal was warranted for failure to comply with the court's order to show cause and filing-signature requirements.
3. Whether the complaint plausibly stated a 42 U.S.C. § 1983 claim against private defendants by alleging state action.
4. Whether the habeas claim was properly brought under 28 U.S.C. § 2241 and whether the named defendants were proper respondents establishing personal jurisdiction.
5. Whether Plaintiff was entitled to appointment of counsel under 28 U.S.C. § 1915(e)(1) or 18 U.S.C. § 3006A.

HOLDINGS

1. A pro se litigant may represent only herself; she may not prosecute claims on another person's behalf through a nonlawyer relative.
2. A district court may dismiss an action without prejudice for failure to comply with a court order after considering the applicable dismissal factors and less drastic alternatives.
3. The § 1983 claim fails where the complaint does not plausibly allege that the defendants acted under color of state law or jointly participated with state actors.
4. A petitioner confined pursuant to a state-court judgment must proceed under 28 U.S.C. § 2254 rather than § 2241 and must name the state officer who has immediate custody and authority to produce the petitioner; failure to do so defeats personal jurisdiction.
5. Plaintiff was not entitled to appointed counsel because she did not establish financial eligibility or exceptional circumstances under the applicable statutes.

KEY QUOTATIONS

“Nonetheless, because Plaintiff may not proceed pro se through another person, has failed to comply with the Court’s prior order, and has not stated a § 1983 claim or established jurisdiction for habeas relief, the Court DISMISSES this action without prejudice.” (at 2)

“Because Plaintiff may not proceed pro se through her brother, this procedural defect alone constitutes a sufficient basis for dismissal of the action.” (at 4)

“Accordingly, Plaintiff’s failure to plausibly allege state action requires dismissal of the § 1983 claim for failure to state a claim.” (at 7)

“Because the petition does not name the proper custodian or otherwise establish that Defendants have the power to produce Plaintiff before the Court, the Court lacks personal jurisdiction over the habeas petition.”
(at 8)

FACTUAL BACKGROUND

Joyce Mansueto resides at Villa Bernardo, an assisted-living facility, and Susan Brown serves as conservator of Joyce and her estate and trustee of Joyce's special-needs trust. The complaint alleged that Joyce was unlawfully confined and asserted civil-rights and habeas claims in the context of disputes concerning her conservatorship, estate, and trust. Robert Mansueto filed and prosecuted the action on Joyce's behalf, although he was not a licensed attorney. The named defendants were private parties, and the pleadings did not identify Joyce's immediate custodian or a state officer with authority to produce her before the court.

PROCEDURAL HISTORY

Joyce Mansueto filed a complaint under 42 U.S.C. § 1983 and 28 U.S.C. § 2241 concerning her alleged confinement at an assisted-living facility. The complaint and subsequent filings were signed and prosecuted by her brother, Robert Mansueto, rather than by Joyce personally or by licensed counsel. After the court ordered Plaintiff to show cause why the action should not be dismissed, the filings did not cure the representation defect or establish a viable federal claim or habeas jurisdiction. The court dismissed the action without prejudice and closed the case.

DISPOSITION

dismissed

CASES CITED

- Simon v. Hartford Life, Inc., 546 F.3d 661, 664 (9th Cir. 2008)
- Russell v. United States, 308 F.2d 78, 79 (9th Cir. 1962)
- Dennis ex rel. Butko v. Budge, 378 F.3d 880, 888 (9th Cir. 2004)
- Hells Canyon Pres. Council v. U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005)
- Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002)
- Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)
- In re Eisen, 31 F.3d 1447, 1451 (9th Cir. 1994)
- Hernandez v. City of El Monte, 138 F.3d 393, 399 (9th Cir. 1998)
- West v. Atkins, 487 U.S. 42, 49 (1988)
- Ove v. Gwinn, 264 F.3d 817, 824 (9th Cir. 2001)
- United States v. Classic, 313 U.S. 299, 326 (1941)
- Sutton v. Providence St. Joseph Med. Ctr., 192 F.3d 826, 835 (9th Cir. 1999)
- Kirtley v. Rainey, 326 F.3d 1088, 1093 (9th Cir. 2003)
- Collins v. Womancare, 878 F.2d 1145, 1154 (9th Cir. 1989)

- O’Handley v. Weber, 62 F.4th 1145, 1159 (9th Cir. 2023)
- Tsao v. Desert Palace, Inc., 698 F.3d 1128, 1140 (9th Cir. 2012)
- Witte v. Young, No. 2:14-cv-2439-TLN-EFB PS, 2015 WL 5232681, at *4 (E.D. Cal. Sept. 8, 2015)
- Polk County v. Dodson, 454 U.S. 312, 325 (1981)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Rumsfeld v. Padilla, 542 U.S. 426, 435 (2004)
- Brittingham v. United States, 982 F.2d 378, 379 (9th Cir. 1993)
- Smith v. Idaho, 392 F.3d 350, 354-55 (9th Cir. 2004)
- White v. Lambert, 370 F.3d 1002, 1009-10 (9th Cir. 2004)
- Hayward v. Marshall, 603 F.3d 546 (9th Cir. 2010)
- Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996)
- Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009)
- Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997)
- Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983)
- Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986)
- Dickey v. Strayhorn, No. 17-cv-00546-JLS (JLB), 2017 WL 3118797, at *1 (S.D. Cal. July 21, 2017)
- Torbert v. Gore, No. 3:14-cv-02991-BEN-NLS, 2016 WL 1399230, at *1 (S.D. Cal. Apr. 8, 2016)

OPINION

Mansueto v. Brown

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 JOYCE MANSUETO, Case No. 25-cv-01859-BAS-VET 12 Plaintiff,

ORDER DISMISSING ACTION

13 v. WITHOUT PREJUDICE AND

TERMINATING PENDING

14 SUSAN BROWN, et al.,

MOTIONS AS MOOT

15 Defendants. (ECF Nos. 3, 5, 12, 13, 15, 16) 16 17 18 Plaintiff Joyce Mansueto, proceeding pro
se, initiated this action by filing the 19 Complaint “by and through her next friend and brother,
Robert F. Mansueto.” (Compl., 20 ECF No. 1.) Plaintiff brings this action pursuant to 42 U.S.C. §
1983, alleging violations 21 of her civil rights, and seeks habeas relief under 28 U.S.C. § 2241,
both of which are based 22 on the allegedly unlawful confinement of Plaintiff at her assisted living
facility. (Id.) 23 These claims arise in the context of ongoing conflict between Plaintiff’s siblings
and 24 related state court proceedings pertaining to Plaintiff’s conservatorship, the administration
25 of her estate, and the management of her special needs trust. (Id.) Nonetheless, because 26

Plaintiff may not proceed pro se through another person, has failed to comply with the Court's prior order, and has not stated a § 1983 claim or established jurisdiction for habeas relief, the Court DISMISSES this action without prejudice.

1 FACTUAL AND PROCEDURAL BACKGROUND

2 The deceased parents of Joyce and Robert Mansueto created a trust for their three 3 surviving children: Joyce, Robert, and Susan Brown. (ECF No. 1-3 at 19.) Defendant 4 Brown currently serves as the conservator of Joyce Mansueto and her estate, as well as the 5 trustee of Joyce Mansueto's special needs trust. (Id. at 32.) The Complaint names as 6 Defendants: Brown, in both her individual and official capacities as court-appointed 7 conservator of Plaintiff and her estate; Villa Bernardo OPCO, LLC, doing business as Villa 8 Bernardo Care Facility ("Villa Bernardo"); and Does 1 through 100. (Compl. ¶¶ 7–10.) 9 The Complaint seeks, inter alia, habeas relief pursuant to 28 U.S.C. § 2241, alleging 10 unlawful confinement of Plaintiff, and further asserts civil rights violations pursuant to 42 11 U.S.C. § 1983. (Id. at 6:15–24.) Along with the Complaint, a motion for leave to proceed 12 in forma pauperis ("IFP"), meaning without prepaying court fees or costs, and an ex parte 13 motion for a temporary restraining order ("TRO") were initially submitted. (ECF Nos. 2, 14 3.) The IFP application was later withdrawn and the filing fee paid. (ECF Nos. 6, 7.) 15 Shortly after the initial filing, the Court issued an order to show cause ("OSC") as to 16 why the case should not be dismissed. (ECF No. 10.) The Court observed that pro se 17 litigants may only represent themselves and thus cannot assert claims on behalf of others 18 in a representative capacity; however, Robert Mansueto asserts claims on his sister's 19 behalf. (Id.) In addition, the Court found no basis for jurisdiction because § 1983 claims 20 require state action, yet the named Defendants are private parties. (Id.) The Court 21 explained that the matter could proceed if Plaintiff personally signed the filings or obtained 22 counsel, and it required Plaintiff to show cause why the case should not be dismissed for 23 lack of jurisdiction. (Id.) Plaintiff was given until August 28, 2025, to respond, with a 24 warning that "failure to comply will constitute an additional reason for dismissal of this 25 action." (Id. at 3:18–19.) 26 In the interim between the initial filing and the Court's OSC, an emergency motion 27 to expedite review of lodged video testimony and motion for declaratory relief was filed 28 (ECF No. 5), and the Summons was issued for Defendants Brown and Villa Bernardo (ECF

1 No. 8). Additionally, within a week of the Court's OSC—and in the days that followed—

2 a preliminary response to the OSC (ECF No. 14) and several additional motions were 3 submitted, including: a second application to proceed in forma pauperis (ECF No. 15); a 4 motion to appoint counsel pursuant to 28 U.S.C. § 1915(e)(1) and 18 U.S.C. 5 § 3006A(a)(2)(B) (ECF No. 16); a second application for a temporary restraining order and 6 order to show cause regarding preliminary injunction (ECF No. 12); and a notice of 7 imminent eviction and request for emergency ruling on the pending TRO (ECF No. 13). 8 A supplemental declaration and a letter in support of the requested relief were also filed. 9 (ECF Nos. 17, 18.)

10 DISCUSSION

11 The Court again concludes that Plaintiff Joyce Mansueto, proceeding pro se, may 12 not have claims asserted on her behalf by her brother. Plaintiff has also failed to comply 13 with the Court's OSC. Finally, even if she were permitted to proceed, the record shows 14 she has not pleaded sufficient facts to state a claim or establish jurisdiction. 15 I. Ms. Mansueto Cannot Proceed Pro Se Through Mr. Mansueto 16 A. Legal Standard

17 Under 28 U.S.C. § 1654, pro se plaintiffs "may plead and conduct their own cases
18 personally." However, "the privilege to represent oneself pro se provided by § 1654 is 19 personal to the litigant and does not extend to other parties or entities." *Simon v. Hartford* 20 Life, Inc., 546 F.3d 661, 664 (9th Cir. 2008) (collecting cases "adher[ing] to the general 21 rule prohibiting pro se plaintiffs from pursuing claims on behalf of others in a 22 representative capacity"); *Russell v. United States*, 308 F.2d 78, 79 (9th Cir. 1962) ("A 23 litigant appearing [pro se] has no authority to represent anyone other than himself."); 24 CivLR 83.11(a) ("Any person who is appearing propria persona (without an attorney) (i.e., 25 pro se) must appear personally for such purpose and may not delegate that duty to any other 26 person, . . . or another party on the same side appearing without an attorney."). 27 Additionally, Federal Rule of Civil Procedure ("Rule") 11(a) provides: "Every pleading, 28 1 written motion, and other paper must be signed by at least one attorney of record in the 2 attorney's name—or by a party personally if the party is unrepresented." 3 B. Analysis 4 The Court made clear in its OSC that, "to the extent Robert Mansueto asserts claims 5 on his sister's behalf, he cannot represent her." (ECF No. 10 at 2:14–15.) Nevertheless, 6 the filings continue to assert claims on behalf of Ms. Mansueto, and are signed and 7 prosecuted exclusively by Mr. Mansueto, who is not a licensed attorney. (See ECF Nos. 8 11–18.) Under § 1654, Rule 11(a), relevant case law, and CivLR 83.11(a), this is 9 procedurally impermissible.¹ Because Plaintiff may not proceed pro se through her 10 brother, this procedural defect alone constitutes a sufficient basis for dismissal of the 11 action. 12 II. Ms. Mansueto Has Failed to Comply with the Court's OSC 13 A. Legal Standard 14 A district court may dismiss an action for failure to prosecute or to comply with a 15 court order. See Fed. R. Civ. P. 41(b); *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 16 403 F.3d 683, 689 (9th Cir. 2005) ("[C]ourts may dismiss under Rule 41(b) sua sponte, at 17 least under certain circumstances."); CivLR 83.1(a) (providing that failure "to comply with 18 . . . any order of the Court may be grounds for imposition by the Court of . . . sanctions 19 authorized by statute or rule or within the inherent power of the Court, including, without 20 21 1 However, Mr. Mansueto purports to bring a habeas petition via "next friend" standing; 22 nevertheless, he does not meet the prerequisites. *Dennis ex rel. Butko v. Budge*, 378 F.3d 880, 888 (9th Cir. 2004) (explaining "next friend" standing requires both (1) an explanation why the real party cannot 23 litigate personally (e.g., incompetence or inaccessibility), and (2) true dedication to that party's best interests, with some courts further suggesting a significant relationship requirement). Here, it is unclear 24 at best whether Mr. Mansueto is "truly dedicated to the best interests of" Plaintiff. See *id.* For example, 25 in October 2024, a probate court investigator observed that Lynn Drummond, the CEO and

COO of Villa Bernardo and someone familiar with the familial discord, “does not believe that either of the siblings . . . 26 appears to have the [Plaintiff’s] best interest in mind.” (ECF No. 14-3 at 15.) Furthermore, in July 2025, a guardian ad litem noted that Plaintiff provided Ms. Drummond a letter from Mr. Mansueto instructing 27 Plaintiff regarding what to say to visitors in connection with the probate proceedings. (ECF No. 9 ¶ 18) Consequently, the Court is not persuaded that Mr. Mansueto has established that he should be permitted 28 1 limitation, dismissal of any actions”). Before doing so, a court should weigh: “(1) the 2 public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its 3 docket; (3) the risk of prejudice to defendants/respondents; (4) the availability of less 4 drastic alternatives; and (5) the public policy favoring disposition of cases on their merits.” 5 *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) (citing *Ferdik v. Bonzelet*, 963 6 F.2d 1258, 1260–61 (9th Cir. 1992)). Moreover, “[a]lthough beneficial to the reviewing 7 court, a district court is not required to make specific findings on each of the essential 8 factors.” *In re Eisen*, 31 F.3d 1447, 1451 (9th Cir. 1994). 9 B. Analysis 10 The Court previously ordered that, should Plaintiff wish to proceed, Joyce Mansueto 11 must “elect[] to represent herself and sign[] the Complaint and all documents filed with the 12 Court on her own behalf, or, alternatively, retain[] an attorney to represent her interests and 13 counsel appear[] in this action on her behalf.” (ECF No. 10 at 3:11–15.) The Court 14 expressly cautioned that “failure to comply will constitute an additional reason for 15 dismissal of this action.” (Id. at 3:18–19.) Despite the Court’s explicit requirement that 16 Ms. Mansueto either sign the Complaint and all subsequent filings or retain counsel, she 17 has not complied. (See ECF Nos. 11–18.) 18 Moreover, upon consideration of the *Pagtalunan* factors, the Court finds that 19 dismissal is warranted. The public’s interest in expeditious resolution and the Court’s need 20 to manage its docket favor dismissal, as Plaintiff’s noncompliance has stalled this case. 21 Her failure to obey the Court’s order also prejudices Defendants by leaving them subject 22 to unresolved litigation, and the Court has already pursued less drastic alternatives through 23 its OSC and warning of dismissal. Although public policy favors resolution on the merits, 24 that factor is outweighed by the others, which together support dismissal without prejudice. 25 See *Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998) (citation omitted) 26 (“We may affirm a dismissal where at least four factors support dismissal . . .”). Because 27 Plaintiff has not complied with the Court’s OSC, dismissal is warranted under the Court’s 28 inherent authority, Rule 41(b), and CivLR 83.1(a). 1 III. Ms. Mansueto’s Claims Are Not Cognizable 2 Plaintiff seeks habeas relief pursuant to, inter alia, 28 U.S.C. § 2241, alleging 3 unlawful confinement, and further asserts civil rights violations pursuant to 42 U.S.C. 4 § 1983. (Compl. at 6:15–24.) The Complaint also advances a broad array of additional 5 causes of action;2 nonetheless, the gravamen of the Complaint is that Ms. Mansueto, an 6 elderly and disabled woman, is being confined against her will at the assisted living facility 7 where she currently resides, Villa Bernardo. (Id. at 1:25–2:6.) The Court addresses both 8 causes of action in turn. 9 A. Ms. Mansueto Has Failed to State a Claim 10 i. Legal Standard 11 To state a claim under § 1983, a

plaintiff must allege that a defendant acted under 12 color of state law to deprive the plaintiff of a constitutionally protected right. See *West v. Atkins*, 487 U.S. 42, 49 (1988); *Ove v. Gwinn*, 264 F.3d 817, 824 (9th Cir. 2001). A person 14 acts under color of law only when exercising power “possessed by virtue of state law and 15 2 Plaintiff claims violations of her rights under the Fourteenth Amendment and the Americans with 16 Disabilities Act. (Compl. at 6:15–24.) Nonetheless, Plaintiff’s vague and conclusory allegations fail to 17 state any cognizable constitutional or statutory claim. See *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (pleading standard “demands more than an unadorned, the-defendant-unlawfully-harmed-me 18 accusation”); see also *Halet v. Wend Inv. Co.*, 672 F.2d 1305, 1309 (9th Cir. 1982) (“To maintain an action under the fourteenth amendment or § 1983, [Plaintiff] must show state involvement. The under-color-of- 19 state-law requirement of §1983 is equivalent to the state action requirement of the fourteenth amendment.” (citing *Arnold v. IBM Corp.*, 637 F.2d 1350, 1355 n.2 (9th Cir. 1981))); *Boe v. Mead Sch. Dist.*, No. 2:23- 20 CV-0319-TOR, 2025 WL 727902, at *15 (E.D. Wash. Mar. 6, 2025) (“To recover monetary damages 21 under Title II of the ADA or Section 504 of the Rehabilitation Act, the plaintiff must show intentional discrimination or deliberate indifference” (quoting *Duvall v. Cnty. of Kitsap*, 260 F.3d 1124, 1138 (9th 22 Cir. 2001))). Absent such allegations, Plaintiff’s claims are insufficient as a matter of law and therefore

subject to dismissal. 23 Plaintiff’s remaining claims are either not cognizable as criminal actions, provide no private right 24 of action, or, insofar as they arise under state law, fail for lack of federal jurisdiction. See *Bainbridge 25 Taxpayers Unite v. City of Bainbridge Island*, No. 3:22-cv-05491-TL, 2022 WL 17176843, at *12 (W.D. Wash. Nov. 23, 2022) (“In the absence of subject matter jurisdiction over any federal claims, a federal 26 court cannot retain jurisdiction over any remaining state law claims.” (citing *Scott v. Pasadena Unified Sch. Dist.*, 306 F.3d 646, 664 (9th Cir. 2002))). These claims include those purportedly brought under 18 27 U.S.C. §§ 242 and 371, 42 U.S.C. §§ 407 and 408, California Penal Code § 368, the Elder Justice Act, 42 U.S.C. § 1397j, California Welfare and Institutions Code § 15610.43, and the Federal Uniformed Services 28 1 made possible only because the wrongdoer is clothed with the authority of state law.” 2 *United States v. Classic*, 313 U.S. 299, 326 (1941). 3 Generally, private parties are not state actors for purposes of § 1983. See *Sutton v. 4 Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 835 (9th Cir. 1999). But private parties 5 may act under color of state law if they engage in joint action with state actors or agents. 6 See *id.* at 835. The joint-action inquiry focuses on whether “the state has so far insinuated 7 itself into a position of interdependence with the private entity that it must be recognized 8 as a joint participant in the challenged activity,” *Kirtley v. Rainey*, 326 F.3d 1088, 1093 9 (9th Cir. 2003) (citation omitted), and thus requires “a substantial degree of cooperative 10 action,” *Collins v. Womancare*, 878 F.2d 1145, 1154 (9th Cir. 1989). “A plaintiff can show 11 joint action either ‘by proving the existence of a conspiracy or by showing that the private 12 party was a willful participant in joint action with the State or its agents.’” *O’Handley v. 13 Weber*, 62 F.4th

1145, 1159 (9th Cir. 2023) (quoting *Tsao v. Desert Palace, Inc.*, 698 F.3d 14 1128, 1140 (9th Cir. 2012)). Allegations that a private party was court-appointed or 15 participated in court proceedings are insufficient. See *Witte v. Young*, No. 2:14-cv-2439- 16 TLN-EFB PS, 2015 WL 5232681, at *4 (E.D. Cal. Sept. 8, 2015) (citing *Polk Cnty. v. 17 Dodson*, 454 U.S. 312, 325 (1981)). 18 ii. Analysis 19 The response to the OSC avers that Plaintiff’s “monthly income is controlled by 20 Defendant Susan Brown, the current conservator recommended to be removed 9 months 21 ago by Probate Court appointed Investigator[,] but remains in this position of control.” 22 (ECF No. 14 at 2:19–21.) It also avers that “the Guardian ad Litem and court-appointed 23 attorney have falsely represented to the Probate Court that Joyce wants to remain in the 24 assisted living facility, and NOT return to her family home. They have deliberately 25 withheld her letters and refused to truthfully present Joyce’s true statements or live 26 testimony to be presented to the Probate Judge” (ECF No. 16-1 ¶ 4.) However, these 27 assertions are conclusory and fail to plead specific facts showing the existence of a 28 conspiracy or willful participation in joint action with state officials. See *Franklin v. Fox*, 1 312 F.3d 423, 445 (9th Cir. 2002). Furthermore, neither Brown’s role as conservator nor 2 Villa Bernardo’s operation as a private facility establishes that they acted under color of 3 state law, and nothing in the record supports a reasonable inference of joint action with the 4 state or its agents. Accordingly, Plaintiff’s failure to plausibly allege state action requires 5 dismissal of the § 1983 claim for failure to state a claim. 6 B. Ms. Mansueto Does Not Establish Personal Jurisdiction 7 i. Legal Standard 8 In general, there is only one proper respondent to a habeas petition: the person with 9 the power to immediately “produce” the petitioner before the Court. *Rumsfeld v. Padilla*, 10 542 U.S. 426, 435 (2004); see *Brittingham v. United States*, 982 F.2d 378, 379 (9th Cir. 11 1992) (per curiam) (“The proper respondent . . . is the petitioner’s ‘immediate 12 custodian’”—that is, “‘the person having day-to-day control over the [petitioner]’”— 13 because “[t]hat person is the only one who can produce ‘the body’ of the petitioner.” 14 (citations omitted)). Failure to name the petitioner’s immediate custodian as respondent 15 deprives the district court of personal jurisdiction over the custodian. See *Smith v. Idaho*, 16 392 F.3d 350, 354–55 (9th Cir. 2004). 17 Furthermore, although 28 U.S.C. § 2241 authorizes habeas relief for persons “in 18 custody” in violation of the U.S. Constitution or another federal law, § 2254 provides the 19 exclusive vehicle for petitions brought by individuals “in custody pursuant to the judgment 20 of a State court.” 28 U.S.C. § 2254(a). Thus, where a petitioner is confined under a state 21 court judgment, § 2254 is the only habeas remedy, regardless of the nature of the challenge. 22 See *White v. Lambert*, 370 F.3d 1002, 1009–10 (9th Cir. 2004), overruled on other grounds 23 by *Hayward v. Marshall*, 603 F.3d 546 (9th Cir. 2010) (holding § 2254 was a state 24 prisoner’s exclusive remedy when he sought to challenge his transfer from a state prison 25 to a privately-run prison in another state). Under § 2254, a petitioner must name as the 26 respondent the “state officer having custody” over the petitioner. *Ortiz-Sandoval v. Gomez*, 27 81 F.3d 891, 894 (9th Cir. 1996) (citing Rule 2(a), 28 U.S.C. foll. § 2254). 28 1 ii. Analysis 2 The filings, submitted by Plaintiff’s brother, assert that Plaintiff is being

unlawfully 3 confined in an assisted living facility under 28 U.S.C. § 2241. (Compl. at 6:14–19.) 4 However, the response to the OSC avers that Plaintiff “is being . . . effectively imprisoned 5 by [the] Conservator, appointed by Probate Court” (ECF No. 16 at 1:24–25.) 6 Accordingly, § 2254, not § 2241, provides the exclusive vehicle for Plaintiff’s habeas 7 claim. See *White*, 370 F.3d at 1009–10. 8 Nevertheless, even if construed under § 2254, the petition fails because Plaintiff has 9 not named her immediate custodian as the respondent. Neither Brown, in her role as 10 conservator, nor Villa Bernardo, as a private care facility, is alleged to be the state officer 11 with custody to produce Plaintiff before the Court. Nor do the filings explain how either 12 qualify as Plaintiff’s “immediate custodian” or how they have “day-to-day control” over 13 her person. See *Brittingham*, 982 F.2d at 379. Because the petition does not name the 14 proper custodian or otherwise establish that Defendants have the power to produce Plaintiff 15 before the Court, the Court lacks personal jurisdiction over the habeas petition. 16

IV. Ms. Mansueto Has Not Shown Entitlement to Appointed Counsel 17

Mr. Mansueto requests an appointment of counsel pursuant to 28 U.S.C. 18 § 1915(e)(1) and 18 U.S.C. § 3006A(a)(2)(B), contending that Ms. Mansueto is unable to 19 “retain[] independent legal counsel” because she is under the “control” of a “court- 20 appointed fiduciary.” (ECF No. 16 at 1:26–2:2.) The Court addresses each statutory basis. 21

A. Legal Standard 22

“Generally, a person has no right to counsel in civil actions.” *Palmer v. Valdez*, 560 23 F.3d 965, 970 (9th Cir. 2009) (affirming denial of appointment of counsel). Although most 24 pro se litigants would benefit from representation by an attorney, that alone does not 25 warrant the appointment of counsel. See *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 26 1997) (affirming denial of appointment of counsel), overruled on other grounds, 154 F.3d 27 952 (9th Cir. 1998) (en banc). However, a court may request an attorney to represent an 28 indigent civil litigant under “exceptional circumstances,” pursuant to 28 U.S.C. 1 § 1915(e)(1). See *Palmer*, 560 F.3d at 970. When determining whether “exceptional 2 circumstances” exist, a court must at least consider “the likelihood of success on the merits 3 as well as the ability of the [plaintiff] to articulate [her] claims pro se in light of the 4 complexity of the legal issues involved.” *Id.* (quoting *Weygandt v. Look*, 718 F.2d 952, 5 954 (9th Cir. 1983)). Neither of these considerations is dispositive; they must be viewed 6 together. *Id.* 7 Additionally, with respect to habeas relief, counsel may be appointed when the 8 “interests of justice so require.” 18 U.S.C. § 3006A(a)(2). However, “[u]nless an 9 evidentiary hearing is required, the decision to appoint counsel is within the discretion of 10 the district court.” *Knaubert v. Goldsmith*, 791 F.2d 722, 728 (9th Cir. 1986). 11

“Representation may be provided for any financially eligible person who . . . is seeking 12 relief under section 2241, 2254, or 2255 of title 28.” 18 U.S.C. § 3006A(a)(2). A person 13 is financially eligible if he or she is “financially unable to obtain adequate representation.” 14 *Id.* § 3006A(a). 15

B. Analysis 16

Having carefully considered Plaintiff’s filings, the Court finds appointment of 17 counsel to be inappropriate. First, Plaintiff has not made a showing that she is “unable to 18 afford counsel” as required under 28 U.S.C. § 1915(e)(1). Although a motion to proceed 19 IFP was filed and later withdrawn, Plaintiff ultimately paid the filing fee. (ECF Nos. 2,

6, 20 7.) Moreover, in her second application to proceed IFP (ECF No. 15), the financial 21 affidavit provided indicates that she has a monthly income of \$4,950 in government 22 benefits, including disability and survivor payments (ECF No. 15-2 ¶ 2). In addition, the 23 last reported balance in her special needs trust was \$88,000. (Id.) On these facts, the Court 24 is not satisfied that Plaintiff is indigent, that is, that her financial need is sufficient to allow 25 the Court to request appointed counsel under § 1915(e)(1). Moreover, because the record 26 does not support a finding that Plaintiff is “unable to obtain adequate representation,” she 27 fails to satisfy the financial eligibility requirement of 18 U.S.C. § 3006A. 28 I Additionally, Plaintiff has not demonstrated exceptional circumstances warranting 2 ||appointment of counsel. As previously discussed, the filings fail to provide a sufficient 3 || evidentiary basis to state a claim or establish jurisdiction, let alone demonstrate a likelihood 4 ||of success on the merits. Even if Plaintiff is unable to effectively articulate her claims due 5 ||to mental or physical disorder, given the conclusory nature of the allegations, the Court is 6 unable to draw any conclusions regarding Plaintiffs likelihood of success on the merits. 7 || See *Dickey v. Strayhorn*, No. 17-cv-00546-JLS (JLB), 2017 WL 3118797, at *1 (S.D. Cal. 8 || July 21, 2017), reconsideration denied, 2017 WL 4271975, at *1 (S.D. Cal. Sept. 26, 2017) 9 || demonstrate that [she] has a likelihood of success at trial, Plaintiff must do more than 10 ||merely allege that . . . [her] constitutional rights [were] violated. [She] must provide 11 ||evidence to the effect that [she] has a likelihood of success on the merits of [her] 12 ||allegations.”); *Torbert v. Gore*, No. 3:14-cv-02991-BEN-NLS, 2016 WL 1399230, at *1 13 ||(S.D. Cal. Apr. 8, 2016) (‘A plaintiff that provides no evidence of [her] likelihood of 14 || success at trial fails to satisfy the first factor of the [exceptional circumstances] test.”). 15 In sum, Plaintiff has not established either an inability to afford counsel or the 16 || exceptional circumstances necessary to warrant appointment of counsel.

17 CONCLUSION

18 For the foregoing reasons, the Court finds that Plaintiff may not proceed pro se 19 || through another person, has failed to comply with the Court’s prior OSC, has failed to state 20 claim upon which relief can be granted, and has not established personal jurisdiction over 21 ||the habeas claim. Accordingly, this action is DISMISSED WITHOUT PREJUDICE. 22 || All pending motions in this case (ECF Nos. 3, 5, 12, 13, 15, 16) are TERMINATED AS 23 ||MOOT. The Clerk of Court is directed to close the case. 24 IT IS SO ORDERED. 25 26 ||DATED: August 19, 2025 (yatta Bahar te 17 H n. Cynthia Bashant, Chief Judge United States District Court 28 -_111-