

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
CALIFORNIA

Whitfield v. Saleh

No. 1:22-cv-00141-KES-CDB (E.D. Cal. June 6, 2025) · No. 1:22-cv-00141-KES-CDB · Decided June 6, 2025

SUMMARY

The document contains findings and recommendations by a United States magistrate judge regarding individual defendants’ unopposed motion to dismiss in an action involving alleged ADA violations and related California claims. The court recommends declining supplemental jurisdiction over the state-law claims against the individual defendants because they do not share a common nucleus of operative fact with the ADA claims. It further recommends dismissal of those claims without leave to amend and dismissal of the individual defendants from the action.

CASE DETAILS

|                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|--------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT              | United States District Court for the Eastern District of California                                                                                                                                                                                                                                                                                                                                                                                                                           |
| JURISDICTION       | United States District Court for the Eastern District of California                                                                                                                                                                                                                                                                                                                                                                                                                           |
| DECIDED            | June 6, 2025                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| DOCKET             | 1:22-cv-00141-KES-CDB                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| DISPOSITION        | other                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| PROCEDURAL POSTURE | Findings and recommendations on individual defendants' unopposed Rule 12(b)(6) motion to dismiss and plaintiff's motion for leave to amend.                                                                                                                                                                                                                                                                                                                                                   |
| STANDARD OF REVIEW | Under Federal Rule of Civil Procedure 12(b)(6), the court accepts well-pleaded factual allegations as true and construes facts and reasonable inferences in favor of the nonmoving party, but need not accept conclusory allegations, unwarranted deductions, unreasonable inferences, or allegations contradicted by exhibits or matters subject to judicial notice. Pro se pleadings are construed liberally. Leave to amend is required only when the complaint can be saved by amendment. |
| PRECEDENTIAL VALUE | nonprecedential                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| PARTIES            | Steven Whitfield v. Khalib Saleh, Kimberly Long, Darrell Long                                                                                                                                                                                                                                                                                                                                                                                                                                 |

TOPICS

motions to dismiss

subject matter jurisdiction

motion to amend

ada / disability

civil procedure

## PRACTICE AREAS

civil procedure

civil rights

Americans with Disabilities Act

supplemental jurisdiction

torts

## QUESTIONS PRESENTED

1. Whether the state-law vehicle-accident, premises-liability, negligence, res ipsa loquitur, and emotional-distress claims against Kimberly Long and Darrell Long share a common nucleus of operative fact with Whitfield's ADA claims such that supplemental jurisdiction exists under 28 U.S.C. § 1367(a).
2. Whether the complaint should be dismissed against the individual defendants for failure to state a claim.
3. Whether Whitfield should be granted leave to amend to add a defendant and cure the defects in his claims against the individual defendants.

## HOLDINGS

1. The claims against Kimberly Long and Darrell Long do not share a common nucleus of operative fact with the ADA claims concerning alleged accessibility barriers at CaliMex Supermarket; therefore, the court recommended declining to exercise supplemental jurisdiction over those claims.
2. The proposed amendment would not cure the lack of a common nucleus of operative fact between the state-law claims against the individual defendants and the ADA claims; therefore, the court recommended dismissal without leave to amend.

## KEY QUOTATIONS

*“The sole evidentiary overlap alleged—the situs of accident—is not a sufficient basis to find that the state law personal injury claims arise from a common nucleus of operative fact of the purported ADA violations.”*

(Discussion III.A.3)

*“Plaintiff's claims against individual Defendants Kelly Long and Darrell Long (Doc. 1 at 12-13) (Counts 4, 5, 6, 7, and supplemental state law negligence claim) be DISMISSED without leave to amend and Defendants Kelly Long and Darrell Long be DISMISSED from this action.”* (Conclusion and Recommendations)

## FACTUAL BACKGROUND

Whitfield alleged that he has significant mobility limitations and encountered inaccessible restrooms and a lack of designated accessible parking at CaliMex Supermarket. He also alleged that he was involved in a February 5, 2021 automobile accident at or near the supermarket involving Kimberly Long's vehicle, with Darrell Long allegedly owning the vehicle. The complaint asserted ADA and related California disability claims against the supermarket's owner and lessee, and asserted vehicle-accident, premises-liability, negligence, res ipsa loquitur, and emotional-distress claims against the individual defendants.

## PROCEDURAL HISTORY

Whitfield filed a pro se, in forma pauperis complaint asserting Title III ADA, California civil-rights, premises-liability, negligence, and emotional-distress claims. Kimberly Long and Darrell Long moved to dismiss. Whitfield did not oppose the motion and instead moved for leave to file an amended complaint. The magistrate judge recommended granting the motion to dismiss, dismissing the claims against the individual defendants without leave to amend, and dismissing those defendants from the action, subject to review by the assigned district judge after a 14-day objection period.

## DISPOSITION

other

## CASES CITED

- N. Star Int'l v. Ariz. Corp. Comm'n, 720 F.2d 578, 581 (9th Cir. 1983)
- Peck v. Hoff, 660 F.2d 371, 374 (8th Cir. 1981)
- Balistreri v. Pacifica Police Department, 901 F.2d 696, 699 (9th Cir. 1990)
- Robertson v. Dean Witter Reynolds, Inc., 749 F.2d 530, 533-34 (9th Cir. 1984)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Erickson v. Pardus, 551 U.S. 89, 94 (2007)
- Hebbe v. Pliler, 627 F.3d 338, 340 (9th Cir. 2010)
- Seven Arts Filmed Entertainment, Ltd. v. Content Media Corp. PLC, 733 F.3d 1251, 1254 (9th Cir. 2013)
- Daniels-Hall v. National Education Association, 629 F.3d 992, 998 (9th Cir. 2010)
- Boag v. MacDougall, 454 U.S. 364, 365 (1982)
- Hughes v. Rowe, 449 U.S. 5, 9 (1980)
- Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th Cir. 2012)
- Oliver v. Ralphs Grocery Co., 654 F.3d 903, 905 (9th Cir. 2011)
- Lentini v. California Center for the Arts, Escondido, 370 F.3d 837, 846 (9th Cir. 2004)
- Bahrampour v. Lampert, 356 F.3d 969, 978 (9th Cir. 2004)
- Carne v. Stanislaus County Animal Services Agency, 445 F. Supp. 3d 772, 774, 776 (E.D. Cal. 2020)
- Executive Software North America, Inc. v. U.S. District Court for the Central District of California, 24 F.3d 1545, 1556 (9th Cir. 1994)
- Acri v. Varian Associates, 114 F.3d 999, 1000 (9th Cir. 1997) (en banc)
- St. Paul Mercury Insurance Co. v. Del Webb California Corp., 2017 WL 7661491, at \*3 (C.D. Cal. Nov. 7, 2017)
- Apparel Art International, Inc. v. Amertex Enterprises Ltd., 48 F.3d 576, 584 (1st Cir. 1995)
- Lei v. City of Lynden, 2014 WL 6611382, at \*4 (W.D. Wash. Nov. 20, 2014)
- U.S. ex rel. Hill v. Teledyne, Inc., 103 F.3d 143, at \*1 (9th Cir. 1996) (unpublished)
- NetApp, Inc. v. Nimble Storage, Inc., 41 F. Supp. 3d 816, 836 (N.D. Cal. 2014)
- Titan Global, LLC v. Organo Gold International, Inc., 2012 WL 6019285, at \*11 (N.D. Cal. Dec. 2, 2012)
- Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000)

- Ismail v. County of Orange, 693 F. App'x 507, 511-12 (9th Cir. 2017)
- Rosati v. Igbinoso, 791 F.3d 1037, 1039 (9th Cir. 2015)
- Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)

## OPINION

1 2 3 4 5 UNITED STATES DISTRICT COURT 6 EASTERN DISTRICT OF CALIFORNIA 7 8  
STEVEN WHITFIELD, Case No. 1:22-cv-00141-KES-CDB 9 Plaintiff, FINDINGS AND  
RECOMMENDATIONS TO GRANT INDIVIDUAL DEFENDANTS' 10 v. MOTION TO  
DISMISS WITHOUT LEAVE TO AMEND 11 KHALIB SALEH, et al., (Doc. 23) 12 Defendants.  
14-DAY OBJECTION PERIOD 13 14 Pending before the undersigned is the unopposed motion of  
individual Defendants 15 Kimberly Long and Darrell Long ("individual Defendants") to dismiss  
the complaint against them, 16 filed on June 2, 2023.<sup>1</sup> (Doc.

23). The undersigned deems the motion suitable for the preparation 17 of findings and  
recommendations without hearing and oral argument. See E.D. Cal. Local Rule 18 230(g). For the  
reasons set forth below, the undersigned will recommend the individual 19 Defendants' motion to  
dismiss be granted without leave to amend. 20 I. BACKGROUND<sup>2</sup> 21 A. Procedural History 22  
Plaintiff Steven Whitfield, proceeding pro se and in forma pauperis, initiated this action 23 with  
the filing of a complaint on February 2, 2022.

(Docs. 1, 4). On February 24, 2023, the Court 24 directed the United States Marshal to serve upon  
individual Defendants and Defendant Khalib 25 Saleh, purported owner of CaliMex Supermarket  
(collectively, "Defendants") service documents. 26 27 1 On May 14, 2025, the assigned district  
judge referred the pending motion to dismiss to the undersigned for the preparation of findings and  
recommendations.

(Doc. 39). 1 (Doc. 16). Summons returned executed were filed on May 3, 2023, with all responses  
to the 2 complaint due on May 16, 2023. (Doc. 18). Individual Defendants timely filed the pending  
motion 3 to dismiss on June 6, 2023. (Doc. 23).

To date, Defendant Saleh has failed to timely file a 4 responsive pleading or otherwise appear in  
this action. Plaintiff filed a motion for leave to amend 5 (Doc. 37) and therewith lodged a proposed  
first amended complaint (Doc. 38) on May 6, 2025. 6 Individual Defendants opposed the motion  
to amend on May 19, 2025.<sup>3</sup> (Doc. 40). 7 B. Operative Complaint 8 In the operative complaint,  
Plaintiff asserts seven claims for relief, including: disability 9 discrimination under the Americans  
with Disabilities Act ("ADA"), 42 U.S.C. § 12181 et seq.

10 (Count 1); violation of California's Unruh Civil Rights Act ("Unruh Act") (Count 2); violation  
of 11 California's Disabled Persons Act ("CDPA") (Count 3); respondeat superior (Count 4);  
premises 12 liability (Count 5); res ipsa loquitur (Count 6); and intentional/negligent infliction of

emotional 13 distress (Count 7). (Doc. 1 at 11-13). Plaintiff also asserts supplemental state law personal injury 14 claims under California Civil Code Section 714 against Defendants.

(Id. at 13-15). 15 Plaintiff alleges that, as an individual “with significant related mobility[,]” he was denied 16 “the full and equal enjoyment of the goods” and “services” of CaliMex Supermarket on the basis 17 of his disability due to “architectural barriers” and Defendants’ policies and practices “that result 18 in a[n inaccessible] supermarket ... in violation of the [ADA] and [the CDPA].” (Id. at 3).

He 19 alleges that Defendants “have ha[d] substantial notice that the issues alleged in [his c]omplaint 20 violates the ADA and various state disability laws” and “as of the date of filing [the c]omplaint 21 Defendants have not taken any corrective actions towards remedying the problem as ... alleged.” 22 (Id.).

The complaint indicates the basis for jurisdiction in this Court is federal question in asserting 23 a claim under Title III of the ADA and that the Court “has supplemental [jurisdiction] over the state 24 law claims pursuant to 28 U.S.C. Section 1367, because these claim[s] are so related to the ADA 25 claims[.]” (Id. at 7).

The complaint alleges that the Court has personal jurisdiction over Defendants 26 “because [CaliMex] Supermarket, lessee [and] lessor are both citizens of the County of Kern[.]” 27 3 The undersigned will address Defendant Saleh’s defaulted status, the screening of the operative complaint’s federal claims (Doc. 1 at 11) (Counts 1, 2, and 3), and Plaintiff’s pending 1 (Id.).

The complaint alleges that CaliMex Supermarket violates the ADA based on its inaccessible 2 restrooms and lack of designated handicap parking spaces at the facility. (Id. at 8, 11). 3 Counts 1, 2, and 3 are asserted against Defendant “lessee and lessor” of CaliMex 4 Supermarket for discrimination on the basis of disability under the ADA (Count 1), violation of the 5 Unruh Act (Count 2), and for violation of the CDPA (Count 3).

(Id. at 11). The complaint identifies 6 Defendant Khalib Saleh as the owner of CaliMex Supermarket and also an unknown Defendant as 7 “lessee to [Defendant] Khalib Saleh—[l]essor and owner and operator [of CaliMex].” (Id. at 2). 8 In Count 4, Plaintiff asserts that Defendant Kimberly Long is liable under the doctrine of 9 res ipsa loquitor as Long “was in exclusive control of her vehicle that caused Plaintiff’s injuries 10 and damages” which “would not have ordinarily occurred but for [her] negligence and” were “not 11 due to [Plaintiff’s] actions or contribution.” (Id. at 12).

12 In Count 5, Plaintiff asserts a premises liability claim against Defendant lessee and lessor 13 of CaliMex Supermarket and alleges that the “premises was a dangerous and/or a hazardous 14 condition at the time of the injuries and damages and were the cause[] or contributed to Plaintiff’s

15 injuries and damages” and “Plaintiff has sustained grievous injury to his body and mind ... as a 16 direct result[.]” (Id.).

17 In Count 6, Plaintiff asserts Defendants lessee and lessor of CaliMex Supermarket and Long 18 are liable under the doctrine of *res ipsa loquitor* and reasserts allegations in Count 4 that Long “was 19 in exclusive control of the vehicle ... that caused Plaintiff’s injuries and damages.” (Id.). 20 In Count 7, Plaintiff asserts an intentional/negligent infliction of emotional distress claim 21 against Defendants lessee and lessor and alleges both Defendants “were negligent” and their 22 conduct “was reckless and outrageous.” (Id.).

23 In the claim labeled “supplemental state law personal injury claims general negligence of 24 Defendants,” Plaintiff asserts a personal injury/property damage claim against Defendants 25 Kimberly Long as the driver of the vehicle, Darrell Long as the owner of the vehicle, and CaliMex 26 Supermarket and its servants, agents, and employees. (Id. at 13). He alleges that Darrell Long 27 “had a common law duty to only ‘entrust’ his motor vehicle to be driven by another who possessed 1 Defendant Khalib Saleh “had a legal duty to make his property safe patronage and eliminate any 2 known dangerous conditions existing on the property” as the particular location of the business is 3 “overcrowded” and “a safety hazard and/or a dangerous condition to members of the general public 4 and prospective patrons” of the business.

(Id. at 13, 14). He alleges that on February 5, 2021, he 5 “suffered an automobile accident” with Defendant Kimberly Long at the place of business and that 6 prior to the accident, Plaintiff took a friend to the business “at least [four] times[.]” (Id. at 14). He 7 alleges that on the date of the accident, Defendant CaliMex Supermarket “allowed his employee(s) 8 to illegally park on the blacktop” near the business “to avoid any ... damages to their vehicles while 9 at work[.]” (Id. at 15).

10 Plaintiff seeks damages under the Unruh Civil Rights Act, the Persons with Disabilities Act, 11 declaratory and injunctive relief, \$7,500 in property damages, \$7,000 in personal injury damages, 12 \$7,000 for negligent infliction of emotional distress and negligent entrustment, and for attorney’s 13 fees and costs. (Id. at 15-16).

The complaint is signed and dated January 28, 2022. (Id. at 16). 14 II. MOTION TO DISMISS STANDARD 15 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests a complaint’s 16 sufficiency and asks a court to dismiss a plaintiff’s complaint for failing “to state a claim upon 17 which relief can be granted.” Fed. R. Civ. P. 12(b)(6); *N. Star Int’l v. Ariz. Corp. Comm’n.*, 720 18 F.2d 578, 581 (9th Cir.

1983) (citing *Peck v. Hoff*, 660 F.2d 371, 374 (8th Cir. 1981)). A complaint 19 may be dismissed as a matter of law either for lack of a cognizable legal theory or the absence of 20 sufficient facts

alleged under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990) (citing *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 533-22 34 (9th Cir. 1984)). 23 To survive a motion to dismiss under Rule 12(b)(6), a complaint must provide sufficient 24 factual matter to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 25 678 (2009); see Fed. R. Civ. P. 8(a)(2) (a complaint must contain a short and plain statement of the 26 claim showing that the pleader is entitled to relief).

A complaint satisfies the plausibility 27 requirement if it contains sufficient facts for the court to “draw [a] reasonable inference that the 1 (2007). 2 When considering a Rule 12(b)(6) motion to dismiss for failure to state a claim, the court 3 must accept as true all factual allegations put forth in the complaint and construe all facts and 4 inferences in favor of the non-moving party.

*Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (citations 5 omitted); *Hebbe v. Pliler*, 627 F.3d 338, 340 (9th Cir. 2010). The complaint need not include 6 “detailed factual allegations,” but must include “more than an unadorned, the-defendant- 7 unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678 (citations omitted).

The Court is “not 8 ‘required to accept as true allegations that contradict exhibits attached to the Complaint or matters 9 properly subject to judicial notice, or allegations that are merely conclusory, unwarranted 10 deductions of fact, or unreasonable inferences.’” *Seven Arts Filmed Entm't, Ltd. v. Content Media 11 Corp. PLC*, 733 F.3d 1251, 1254 (9th Cir.

2013) (quoting *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010)). 13 Finally, courts must construe pro se pleadings liberally and hold such pleadings to a less 14 stringent standard than those drafted by attorneys. *Boag v. MacDougall*, 454 U.S. 364, 365 (1982) 15 (per curiam); see *Hughes v. Rowe*, 449 U.S. 5, 9 (1980) (“It is settled law that the allegations of [a 16 pro se litigant’s complaint] ‘however inartfully pleaded’ are held ‘to less stringent standards than 17 formal pleadings drafted by lawyers...’” (quoting *Haines v. Kerner*, 404 U.S. 519, 520 (1972))).

18 A court should dismiss a pro se complaint if “it is absolutely clear that the deficiencies of the 19 complaint could not be cured by amendment.” *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 20 2012). 21 III. DISCUSSION 22 A. Motion to Dismiss 23 1. Individual Defendants’ Contentions 24 Individual Defendants Kimberly Long and Darrell Long assert in their unopposed motion 25 that the complaint must be dismissed against them for lack of subject matter jurisdiction and for 26 failure to state a claim.

(Doc. 23). Individual Defendants argue that the complaint does not state a 27 claim nor pleads facts under any causes of action against them, that supplemental jurisdiction 1 claims “as there is no common nucleus of operative fact with the federal ADA complaints[,]” and 2 the complaint “is

incurably implausible, speculative and contains substantial flaws” such that “it 3 should be dismissed without leave to amend[.]” (Doc.

23-2 at 3). Individual Defendants contend 4 the complaint “contains unrelated mixed allegations without the common nucleus of operative fact 5 and no operative fact at all.” (Id. at 4). Individual Defendants further contend that Plaintiff fails to 6 allege facts to establish Counts 4, 6, 7, and the state law negligence claim against them. (Id. at 5). 7 2. Relevant Authorities 8 a. The Americans with Disabilities Act (“ADA”) 9 Title III of the ADA prohibits discrimination against persons with disabilities and provides: 10 “No individual shall be discriminated against on the basis of disability in the full and equal 11 enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place 12 of public accommodation by any person who owns, leases (or leases to), or operates a place of 13 public accommodation.” 42 U.S.C. § 12182(a).

The ADA requires business facilities be “readily 14 accessible to and usable by individuals with disabilities,” unless it would be “structurally 15 impracticable.” 42 U.S.C. § 12183(a)(1); *Oliver v. Ralphs Grocery Co.*, 654 F.3d 903, 905 (9th 16 Cir. 2011). “In general, a facility is readily accessible to and usable by individuals with disabilities 17 if it meets the requirements promulgated by the Attorney General in the ‘ADA Accessibility 18 Guidelines,’ or the ‘ADAAG.’” *Oliver*, 654 F.3d at 905.

These standards are codified at 28 C.F.R. 19 Pt. 36, Appendix A, and are “essentially an encyclopedia of design standards.” (See *id.*). 20 For purposes of Title III, discrimination also includes “a failure to remove architectural 21 barriers ... in existing facilities ... where such removal is readily achievable.” 42 U.S.C. § 22 12182(b)(2)(A)(iv).

The Ninth Circuit has articulated the elements of an ADA discrimination claim 23 as follows: 24 To prevail on a Title III discrimination claim, the plaintiff must show that (1) she is disabled within the meaning of the ADA; (2) the 25 defendant is a private entity that owns, leases, or operates a place of 26 public accommodation; and (3) the plaintiff was denied public accommodations by the defendant because of her disability.

27 1 discrimination to establish an ADA violation. *Lentini v. California Ctr. for the Arts, Escondido*, 2 370 F.3d 837, 846 (9th Cir. 2004). 3 b. Supplemental Jurisdiction 4 Under 28 U.S.C. § 1367(a), a court that has original jurisdiction over a civil action “shall 5 have supplemental jurisdiction over all other claims that are so related to claims in the action within 6 such original jurisdiction that they form part of the same case or controversy under Article III of 7 the United States Constitution.” 28 U.S.C. § 1367(a). “A state law claim is part of the same case 8 or controversy when it shares a common nucleus of operative fact with the federal claims and the 9 state and federal claims would normally be tried together.” *Bahrampour v. Lampert*, 356 F.3d 969, 10 978 (9th Cir.

2004) (internal quotation and citation omitted). “Section 1367(a) requires courts to exercise supplemental jurisdiction, while [Section] 1367(c) provides ‘the exclusive means by which supplemental jurisdiction can be declined by a court.’” *Carne v. Stanislaus Cnty. Animal Services Agency*, 445 F. Supp. 3d 772, 774 (E.D. Cal. Mar. 31, 2020) (quoting *Executive Software 14 N. Am., Inc. v. U.S. Dist.*

*Court for the Cent. Dist. of Cal.*, 24 F.3d 1545, 1556 (9th Cir. 1994)). However, even where supplemental jurisdiction over a claim exists under § 1367(a), the Court may decline jurisdiction over the claim under § 1367(c) if: (1) the claim raises a novel or complex issue of State law, (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction, (3) the district court has dismissed all claims over which it has original jurisdiction, or (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

§ 1367(c)(1)–(4). Courts have “discretion to keep, or decline to keep, [supplemental state law claims] under the conditions set out in § 1367(c).” *Acri v. Varian Assocs.*, 114 F.3d 999, 1000 (9th Cir. 1997) (en banc). Courts “should consider and weigh in each case, and at every stage of the litigation, the values of judicial economy, convenience, fairness, and comity” when deciding

3. Analysis Plaintiff’s operative complaint asserts state law claims against moving individual Defendants, specifically in Counts 4, 6, 7, and the supplemental state law negligence claim. (Doc. 1 at 12-13). Individual Defendants contend “there is no common nucleus of operative fact” with Plaintiff’s federal ADA claims as alleged against Defendant Shah, and that the complaint “contains unrelated mixed allegations without the common nucleus of operative fact and no operative fact at all.” (Doc.

23-2 at 3, 4). Whether a state law claim shares a “common nucleus of operative facts” with the federal claims such that asserting supplemental jurisdiction may be warranted requires courts to consider, for instance, “(1) when the facts are related in time, space, origin or motivation[,] (2) when the facts form a convenient trial unit[,] and (3) when treating the facts as a unit would conform to the parties’ expectations[.]” *St. Paul Mercury Ins.*

*Co. v. Del Webb Cal. Corp.*, Case No. CV 16-0208 PSG 14 (SPx), 2017 WL 7661491, at \*3 (C.D. Cal. Nov. 7, 2017) (citing *Apparel Art Int’l, Inc. v. Amertex Enters. Ltd.*, 48 F.3d 576, 584 (1st Cir.1995)), and “whether the claims arise from the same facts, or involve similar occurrences, witnesses or evidence[.]” *Landy v. Pettigrew Crewing, Inc.*, Case 17 No. 2:1-cv-07474-RGK-AFM, 2019 WL 6245525, at \*5 (C.D.

Cal. Nov. 22, 2019). “In the Ninth Circuit, there is no common nucleus of operative fact if ‘there is no evidentiary overlap whatsoever between [the] claims.’” *Lei v. City of Lynden*, No.

C14-0650-JCC, 2014 WL 6611382, at \*4 (W.D. 20 Wash. Nov. 20, 2014) (quoting *U.S. ex. Rel. Hill v. Teledyne, Inc.*, 103 F.3d 143, at \*1 (9th Cir. 21 1996) (unpublished)). “[B]are allegations of a ‘common scheme’ fail to establish sufficient factual 22 overlap.” *Id.* (quoting *NetApp, Inc. v. Nimble Storage, Inc.*, 41 F. Supp. 3d 816, 836 (N.D.

Cal. 23 2014)). “When the facts material to one claim (the jurisdictional anchor) are immaterial to the other 24 claim (the proposed supplemental jurisdiction claim), Ninth Circuit courts have declined to find 25 supplemental jurisdiction.” *Id.* See, e.g., *Titan Global, LLC v. Organo Gold Int’l, Inc.*, No. 12- 26 CV-2104-LHK, 2012 WL 6019285 at \*11 (N.D. Cal. Dec.

2, 2012) (declining supplemental 27 jurisdiction over claim requiring interpretation of agreement not at issue in other claims). 1 against Defendant Shah, it does not appear these federal claims can form the “jurisdictional anchor” 2 for the exercise of supplemental jurisdiction over the state law claims against individual Defendants 3 because the federal claims do not arise from the same common nucleus of operative fact as does 4 the state law claims.

Bahrampour, 356 F.3d at 978. 5 Plaintiff’s allegations that the motor vehicle accident with individual Defendants occurred 6 at or near the CaliMex Supermarket (the location of the ADA-based claims) does not suffice to 7 unify the controversy with the alleged ADA violations of Defendant Shah.

The sole evidentiary 8 overlap alleged—the situs of accident—is not a sufficient basis to find that the state law personal 9 injury claims arise from a common nucleus of operative fact of the purported ADA violations. See, 10 e.g., *Brooke v. Dip Laxmi LLC*, No. 8:24-cv-02255-FWS-JDE, 2024 WL 5429123, at \*4-5 (C.D. 11 Cal. Dec. 6, 2024) (“The court finds Plaintiff’s claims for breach of contract and fraud do not share 12 ‘a common nucleus of operative fact’ with the ADA claim.”); *Scutt v. UnitedHealth Ins.*

Co., No. 13 21-00323 JAO-RT, 2022 WL 787992, at \*9 (D. Haw. Mar. 15, 2022) (“Plaintiff’s medical 14 malpractice and defamation claims do not share a common nucleus of operative fact with the ADA 15 claim.”). The two controversies as alleged are perpetrated by completely different parties and 16 involve different origins of harm such that the exercise of supplemental jurisdiction over the state 17 law claims is improper.

See *Carne*, 445 F. Supp. 3d at 776 (“When the acts are different, it appears 18 that there is no common nucleus unless there is some evidentiary overlap.”); *Scutt*, 2022 WL 19 787992, at \*9 (declining supplemental jurisdiction where ADA claim and state law medical 20 malpractice and defamation claims “involve a completely distinct set of facts arising from different 21 events”).

22 Accordingly, because the Court should not exercise supplemental jurisdiction over the 23 claims asserted against individual Defendants, their motion to dismiss should be granted. 24 B.

Leave to Amend 25 Rule 15 provides that “leave [to amend] shall be freely given when justice so requires.” 26 Fed. R. Civ. P. 15(2).

However, district courts are only required to grant leave to amend if a 27 complaint can be saved. *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000). When a complaint 1 F.3d 494, 397 (9th Cir. 1995). 2 In lieu of filing an opposition to individual Defendants’ motion to dismiss, Plaintiff filed a 3 motion for leave to file an amended complaint (Doc. 37) and therewith lodged the first amended 4 complaint (Doc.

38). Individual Defendants opposed the motion to amend on May 19, 2025. (Doc. 5 40). 6 In the motion for leave amend, Plaintiff requests leave to file the lodged amended complaint 7 to add Alghaity Abdullah Corp. (“Abdullah Corp.”) as a defendant. (Doc. 37 at 1). Plaintiff asserts 8 that “[t]he only difference” between the operative complaint and the lodged amended complaint is 9 that Plaintiff correctly names Defendant Saleh in the original complaint and upon further 10 investigation, the “lessee” of CaliMex Supermarket is Abdullah Corp. (Id. at 2).

11 In opposition to the motion to amend, individual Defendants contend that Plaintiff’s lodged 12 first amended complaint fails to correct the deficiencies identified in the original complaint as it “is 13 incurably implausible, speculative, and contains other substantial flaws” and contains “no common 14 nucleus of operative fact alleged” against them with any of the federal claims such that 15 supplemental jurisdiction cannot be exercised.

(Doc. 40 at 2). 16 Plaintiff’s proposed amendment to the operative complaint (merely adding a party) does not 17 bear on the undersigned’s conclusion that the Court should decline to exercise supplemental 18 jurisdiction over the claims asserted against individual Defendants. Given the facts and 19 circumstances of Plaintiff’s claims as recounted above, the undersigned finds that further leave to 20 amend Plaintiff’s claims against individual Defendants would be futile and, accordingly, 21 recommends that individual Defendants’ motion to dismiss be granted without leave to amend.

22 *Ismail v. Cnty. of Orange*, 693 Fed. Appx. 507, 511-12 (9th Cir. 2017) (“A pro se complaint may 23 be dismissed with prejudice when ‘it is absolutely clear that the deficiencies of the complaint could 24 not be cured by amendment.’”) (quoting *Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir. 2015)). 25 /// 26 /// 27 /// 1] IV. CONCLUSION AND RECOMMENDATIONS 2 Accordingly, the undersigned RECOMMENDS that: 3 1.

Defendants’ motion to dismiss (Doc. 23) be GRANTED. 4 2. Plaintiff’s claims against individual Defendants Kelly Long and Darrell Long (Doc. 1 5 at 12-13) (Counts 4, 5, 6, 7, and supplemental state law negligence claim) be 6 DISMISSED without leave to amend and Defendants Kelly Long and Darrell Long be 7 DISMISSED from this action. 8 These Findings and Recommendations will

be submitted to the U.S. District Judge assigned 9 | to this case, pursuant to the provisions of 28 U.S.C. § 636(b)().

Within 14 days after being served 10 | with a copy of these Findings and Recommendations, any party may file written objections with 11 | the Court. Local Rule 304(b). The document should be captioned, “Objections to Magistrate 12 | Judge’s Findings and Recommendations” and shall not exceed 15 pages without leave of Court 13 |} and good cause shown.

The Court will not consider exhibits attached to the Objections. To the 14 | extent any party wishes to refer to any exhibit(s), that party should reference the exhibit in the 15 | record by its CM/ECF document and page number, when possible, or otherwise reference the 16 || exhibit with specificity. Any pages filed in excess of the 15-page limitation may be disregarded by 17 || the District Judge when reviewing these Findings and Recommendations under 28 U.S.C. § 18 | 636(b)d)(C).

A party’s failure to file any objections within the specified time may result in the 19 | waiver of certain rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014). 20 | IT Is SO ORDERED. 21 | } ) Bo Dated: \_ June 6, 2025 22 UNITED STATES MAGISTRATE JUDGE 23 24 25 26 27 28 1]