

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Joseph Moore v. Jeff Macomber, CDCR, Does 1–10, Dr. Sato

Case No. 3:25-cv-2980-AJB-BLM · No. 3:25-cv-2980-AJB-BLM · Decided February 4, 2026

OPINION

Moore

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 JOSEPH MOORE, Case No.: 3:25-cv-2980-AJB-BLM

CDCR #BD8941,

12

ORDER: (1) GRANTING MOTION

Plaintiff,

13 TO PROCEED IN FORMA

vs. PAUPERIS (Doc. No. 3); 14

15 (2) DISMISSING COMPLAINT FOR

JEFF MACOMBER, CDCR, DOES 1–10, FAILURE TO STATE A CLAIM

16 DR. SATO, PURSUANT TO 28 U.S.C. 17 Defendants. §§ 1915(e)(2)(B) AND 1915A(b); and

18

(3) DENYING MOTION FOR

19 TEMPORARY RESTRAINING

ORDER (Doc. No. 4) 20 21

22 I. INTRODUCTION

23 Plaintiff Joseph Moore (“Plaintiff” or “Moore”), a prisoner proceeding pro se, has 24 filed a
civil rights complaint and a motion to proceed in forma pauperis (“IFP”). (See Doc.

25 Nos. 1; 3.) In her1 Complaint, Moore alleges violations of her rights under the Americans

26 27 1 Because Plaintiff identifies as a transgender woman the Court will refer to Plaintiff with
female 28 1 with Disabilities Act and the Rehabilitation Act. She also raises the Eighth and
Fourteenth 2 Amendments claims pursuant 42 U.S.C. § 1983. (Doc. No. 1 at 3–6.) On January 14,
2026, 3 Plaintiff also filed a Motion for Temporary Restraining Order (“TRO”). (Doc. No 4.) As 4
discussed below, the Court grants Plaintiff’s IFP motion, dismisses the Complaint without 5
prejudice and denies the TRO motion without prejudice as moot.

6 II. MOTION TO PROCEED IFP

7 All parties instituting any civil action, suit or proceeding in a district court of the 8 United States, except an application for writ of habeas corpus, must pay a filing fee of 9 \$405.2 See 28 U.S.C. § 1914(a). A party may initiate a civil action without prepaying the 10 required filing fee if the Court grants leave to proceed IFP based on indigency. 28 U.S.C. 11 § 1915(a); *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007). 12 To proceed IFP, plaintiffs must establish their inability to pay by filing an affidavit 13 regarding their income and assets. See *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th

14 Cir. 2015). Prisoners must also submit a “certified copy of the [prisoner’s] trust fund 15 account statement (or institutional equivalent) for . . . the 6-month period immediately 16 preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2). From the certified trust 17 account statement, the Court assesses an initial payment of 20% of (a) the average monthly 18 deposits in the account, or (b) the average monthly balance in the account for the past six 19 months, whichever is greater, unless the prisoner has no assets. See 28 U.S.C. §§ 20 1915(b)(1) & (4). Prisoners who proceed IFP must repay the entire fee in installments 21 regardless of whether their action is ultimately dismissed. 28 U.S.C. § 1915(b)(2); *Bruce 22 v. Samuels*, 577 U.S. 82, 84 (2016). 23 In support of her IFP Motion, Moore has provided a copy of her prison certificate 24 and trust account statement. (See Doc. No. 2.) During the six months prior to filing suit, 25 26 2 Civil litigants must pay an administrative fee of \$55 in addition to the \$350 filing fee. See 28 27 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14 (eff. Dec. 1, 2023)). The additional \$55 administrative fee does not apply to persons granted leave to proceed 28 1 Moore had an average monthly balance of \$245.81 and average monthly deposits of 2 \$235.51; and at the time she filed suit she had an available account balance of \$186.00. (*Id.* 3 at 6–7.) Accordingly, the Court GRANTS Plaintiff’s IFP motion and assesses an initial 4 partial filing fee of \$49.16 pursuant to 28 U.S.C. § 1915(b)(1). This initial fee need be 5 collected, however, only if sufficient funds are available in Plaintiff’s account at the time 6 this Order is executed. See 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event shall a 7 prisoner be prohibited from bringing a civil action or appealing a civil action or criminal 8 judgment for the reason that the prisoner has no assets and no means by which to pay the 9 initial partial filing fee.”). Pursuant to 28 U.S.C. § 1915(b), the agency having custody of 10 Plaintiff will forward payments to the Clerk in installment provisions until the \$350 11 statutory fee is paid in full.

12 III. SCREENING PURSUANT TO 28 U.S.C. §§ 1915(e)(2)(B) & 1915A(b)

13 A. Legal Standard 14 Pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b), the Court must screen a 15 prisoner’s IFP complaint and sua sponte dismiss it to the extent that it is frivolous, 16 malicious, fails to state a claim, or seeks damages from defendants who are immune. See 17 *Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc); *Rhodes v. Robinson*, 18 621 F.3d 1002, 1004 (9th Cir. 2010). “The standard for determining whether Plaintiff has 19 failed to state a claim upon which relief can be granted under § 1915(e)(2)(B)(ii) is the 20 same as the Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a claim.” 21 *Watison v.*

Carter, 668 F.3d 1108, 1112 (9th Cir. 2012). Rule 12(b)(6) requires that a complaint “contain sufficient factual matter . . . to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). While detailed factual allegations are not required, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice” to state a claim. *Id.* The “mere possibility of misconduct” or “unadorned, the defendant-unlawfully- harmed me accusation[s]” fall short of meeting this plausibility standard. *Id.* 1 B. Plaintiff’s Allegations 2 Plaintiff is a transgender inmate confined at R.J. Donovan Correctional Facility 3 (“RJD”). (Doc. No. 1 at 1, 3.) In her Complaint, Plaintiff alleges that after a civil suit she 4 filed in this Court in 2022 against prison officials settled, 3 Macomber, the Secretary of the 5 California Department of Corrections and Rehabilitation (“CDCR”), “knowingly permitted 6 the reimplementation of a housing policy previously adjudicated as discriminatory and 7 unconstitutional.” (*Id.* at 3.) Moore sent Macomber an “intent to sue letter in 2022 which 8 [Macomber] . . . ignored.” (*Id.*) Macomber then “continued” enforcement of the policy 9 regarding double-cell housing, which “is disproportionate and harms transgender inmates” 10 like Moore by “denying them privacy, safety and dignity.” (*Id.*) 11 On October 21, 2025, the RJD officials “attempted to” assign Moore a cellmate, 12 despite Moore having been in a single cell for “3 years.” (*Id.* at 4.) Moore states that RJD 13 is “notorious for making excuses to take away an individual’s single cell.” (*Id.*) Moore 14 further alleges that Sato, a clinical psychologist, had “direct knowledge” of her 15 “ongoing anxiety [about] being housed in a double cell setting.” (*Id.*) But despite knowing 16 Moore suffers from “gender dysphoria,” and is currently receiving gender affirming 17 hormone treatment, Sato failed to recommend she be assigned single cell housing. (*Id.* at 18 5.) 19 Moore states that “Does 1–10,” unknown “correctional officials, classification staff, 20 custody supervisors, medical personnel . . . and mental health staff . . . participated in, 21 authorized or failed to intervene in the October 21, 2025 attempt to assign” her a cellmate. 22 (*Id.* at 6.) While Moore does not state she was actually assigned the potential cellmate, she 23 24 25 3 The Court takes judicial notice of the docket in *Moore v. Palmer, et al.*, 3:22-cv-0539-LR (S.D. Cal.). See *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980) (stating a court “may take judicial 26 notice of its own records in other cases”). The Court, however, will not take judicial notice of any findings of fact in the court documents, only of the existence of each document and court orders. See *Queen v. M/V 27 Am. San Diego Marine Const. Corp.*, 708 F.2d 1483, 1491 (9th Cir. 1983) (“As a general rule, a court may not take judicial notice of proceedings or records in another cause so as to supply, without formal 28 1 alleges she has been improperly “double cell classified.” (*Id.*) 2 C. Discussion 3 Moore names as Defendants: the CDCR itself and Jeff Macomber (Secretary of the 4 CDCR), Sato, and Does 1–10 in their official capacities only. (Doc. No. 1 at 2.) Moore 5 alleges Defendants violated her rights under the Americans with Disabilities Act (“ADA”) 6 and the Rehabilitation Act (“RA”). (*Id.* at 3–6.) She also alleges violations of the Eighth 7 Amendment and Fourteenth Amendment pursuant to 42 U.S.C. § 1983. (*Id.*) She seeks 8 money damages and

an injunction preventing Defendants “from enforcing their egregious 9 housing placement policy” and requiring Defendants grant her “permanent single cell 10 status.” (Id. at 8.) 11 1. ADA and RA 12 Plaintiff alleges Defendants violated her rights under the ADA and RA. (Doc. No. 1 13 at 3–4.) To state a claim under Title II of the ADA, a plaintiff must allege: “(1) [s]he is an 14 individual with a disability; (2) [s]he is otherwise qualified to participate in or receive the 15 benefit of some public entity’s services, programs, or activities; (3) [s]he was either 16 excluded from participation in or denied the benefits of the public entity’s services, 17 programs, or activities, or was otherwise discriminated against by the public entity; and (4) 18 such exclusion, denial of benefits, or discrimination was by reason of [her] disability.” 19 *Guinn v. Lovelock Corr. Ctr.*, 502 F.3d 1056, 1060 (9th Cir. 2007) (internal quotations 20 omitted). 21 To state a claim under Section 504 of RA, a plaintiff must allege she was: (1) an 22 individual with a disability; (2) otherwise qualified to receive the benefit; (3) denied the 23 benefits of the program solely by reason of her disability; and (4) the program receives 24 federal financial assistance. *Lovell v. Chandler*, 303 F.3d 1039, 1052 (9th Cir. 2002). 25 Because of the similarities between the laws and remedies available, a complaint that 26 properly states a claim under Title II of the ADA also states a claim under Section 504 of 27 the RA. *Zukle v. Regents of the Univ. of Cal.*, 166 F.3d 1041, 1045 n.11 (9th Cir. 1999). 28 First, the proper defendant to such ADA and RA claims is the public entity 1 responsible for the alleged discrimination. *United States v. Georgia*, 546 U.S. 151, 153 2 (2006). As such, the CDCR is a proper Defendant here. Moreover, a suit against a state 3 official in his or her official capacity is also, in effect, a suit against the government entity. 4 *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1989). Thus, because Plaintiff sues 5 Macomber, Sato, and Does 1–10 in their official capacities only, her ADA and RA claims 6 against them are proper. See *Miranda B. v. Kitzhaber*, 328 F.3d 1181, 1187–88 (9th Cir. 7 2003). 8 Moore, however, fails to state an ADA or RA claim. While the Court presumes for 9 purposes of initial screening that Moore’s gender dysmorphia is a qualifying disability, 4 10 she does not allege any facts to support her claim that Defendants denied her a single cell 11 “by reason of [her] disability.” See *Guinn*, 502 F.3d at 1060 (emphasis added). Indeed, 12 Plaintiff does not even allege she has been given a cellmate. Instead, she states only that 13 her requests for a “permanent” single cell classification have been denied and that on one 14 occasion, officials attempted to assign her a specific cellmate, but ultimately did not. (See 15 Doc. No. 1 at 4.) And Moore makes only a broad allegation that the “double-cell policy is 16 disproportionate and harms transgender inmates by denying them privacy, safety and 17 dignity.” (Id. at 3.) Such generalized allegations are insufficient to state an ADA or RA 18 claim. See, e.g., *Regal v. Cnty. of Santa Clara*, Case No. 22-cv-04321-BLF, 2023 WL 19 2266135, at *7 (N.D. Cal. Feb. 27, 2023) (dismissing ADA and RA claims where the 20 plaintiff failed to allege facts to show services were denied “because of” the plaintiff’s 21 22 4 The statutory definition of disability is “a physical or mental impairment that substantially limits 23 one or more major life activities.” 42 U.S.C. § 12102(A). But, pursuant to § 12211, “the term ‘disability shall not include . . . transvestism,

transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders[.]” 42 U.S.C. § 25 12211(b)(1). While this Court is unaware of any controlling law in the Ninth Circuit on this issue, other courts have found gender dysphoria to be a qualifying disability. See, e.g., *Williams v. Kincaid*, 45 F.4th 26 759 (4th Cir. 2022), cert. denied, 143 S. Ct. 2414 (2023) (holding that the plaintiff “has plausibly alleged that gender dysphoria does not fall within the ADA’s exclusion for ‘gender identity disorders not resulting 27 from physical impairments.’”); see also *Doe v. Horne*, No. 23-cv-00185-TUC-JGZ, 2024 WL 3091984, at *4 (D. Ariz. June 21, 2024) (finding that gender dysphoria qualifies as a disability under the ADA and 28 1 disability); *Turner v. Ralkey*, No. 3:20-cv-5472-TL-DWC, 2022 WL 18460747, at *18 2 (W.D. Wash. Apr. 26, 2022) (dismissing ADA and RA claims when transgender Plaintiff 3 failed to meet her burden to establish defendants’ decisions regarding her housing were 4 “by reason of” her gender dysphoria). 5 Accordingly, the Court DISMISSES Plaintiff’s ADA and RA claims as to all 6 Defendants without prejudice for failure to state a claim. See 28 U.S.C. §§ 7 1915(e)(2)(B)(ii), 1915A(b)(1); *Iqbal*, 556 U.S. at 678. 8 2. 42 U.S.C. § 1983

9 Moore also brings claims pursuant to 42 U.S.C. § 1983. (Doc. No. 1 at 3–6.) 10 Specifically, she alleges that Defendants violated her Eighth Amendment and Fourteenth 11 Amendment rights by a “trying to house [her] with another inmate.” (Id. at 4.) To state a 12 claim under § 1983, a plaintiff must plausibly allege “both (1) deprivation of a right secured 13 by the Constitution and laws of the United States, and (2) that the deprivation was 14 committed by a person acting under color of state law.” *Tsao v. Desert Palace, Inc.*, 698 15 F.3d 1128, 1138 (9th Cir. 2012). 16 a. Sovereign Immunity 17 As noted above, Moore sues the CDCR and Defendants Macomber, Sato and Does 18 1–10 in their official capacities only. “Claims under § 1983 are limited by the scope of the 19 Eleventh Amendment.” *Doe v. Lawrence Livermore Nat. Lab.*, 131 F.3d 836, 839 (9th Cir. 20 1997). 21 First, the CDCR is not a proper defendant as to Moore’s § 1983 claims. The Eleventh 22 Amendment prohibits § 1983 suits against a state or its agencies in federal court unless the 23 State waives its immunity. *Will*, 491 U.S. at 70. “California has not waived its Eleventh 24 Amendment immunity with respect to claims brought under § 1983 in federal court.” 25 *Brown v. Cal. Dep’t of Corr.*, 554 F.3d 747, 752 (9th Cir. 2009). Accordingly, the CDCR, 26 as an agency of the State, is an improper Defendant as to Plaintiff’s § 1983 claims, whether 27 sued for money damages or for injunctive relief. See *Dittman v. California*, 191 F.3d 1020, 28 1025–26 (9th Cir. 1999) (“In the absence of a waiver by the state or a valid congressional 1 override, under the eleventh amendment, agencies of the state are immune from private 2 damage actions or suits for injunctive relief brought in federal court.”). 3 Next, with respect to the state officials sued in their official capacities, Macomber, 4 Sato, and Does 1–10, 5 the analysis is slightly different. Generally, because “a suit against 5 a state official in his or her official capacity . . . is no different from a suit against the State 6 itself,” state officials sued in their official capacity are generally entitled to immunity in a 7 § 1983 action. *Flint v. Dennison*, 488 F.3d 816, 824–25 (9th Cir. 2007)

There is, however, 8 an important exception. *Id.* at 825. “When sued for prospective injunctive relief, a state 9 official in his official capacity is considered a ‘person’ for § 1983 purposes,” and the 10 Eleventh Amendment will not bar such relief. *Id.* Accordingly, a suit for prospective 11 injunctive relief against a state employee in his or her official capacity may be cognizable 12 when properly pled. See *Hason v. Med. Bd. of Calif.*, 279 F.3d 1167, 1171 (9th Cir. 2002); 13 *Will*, 491 U.S. at 71 n.10 (citing *Kentucky v. Graham*, 473 U.S. 159, 167 n.14 (1985)). 14 To plead a cognizable official-capacity claim for prospective injunctive relief against 15 an official, Moore must “identify the law or policy challenged as a constitutional violation 16 and name the official within the entity who can appropriately respond to injunctive relief.” 17 *Hartmann v. California Dep’t of Corr. & Rehab.*, 707 F.3d 1114, 1127 (9th Cir. 2013). In 18 addition, Moore must also allege facts to show the specific state official sued for 19 prospective injunctive relief has “some direct connection with the enforcement of the 20 [allegedly unconstitutional] act.” *L.A. Cnty. Bar Ass’n v. March Fong Eu*, 979 F.2d 697, 21 22 5 The Court notes that while the use of fictitiously named “Doe” defendants is generally not favored, 23 *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980), amendment is allowed to substitute true names for fictitiously named defendants, *Merritt v. Cnty. of L.A.*, 875 F.2d 765, 768 (9th Cir. 1989). Here, 24 however, Moore has failed to make any specific allegations against any separately identified Doe 25 Defendant. (See Doc. No. 1 at 6.) If Plaintiff wants to state claims against unknown defendants, she must identify them individually (i.e. Doe 1, Doe 2, etc.) and specify what each unknown individual did. She 26 “must allege sufficient facts to show how each doe defendant individually violated [her] constitutional rights. If [s]he does so, [s]he may be given leave to obtain the names of doe defendants during discovery 27 and seek leave to amend to name those defendants.” *Finefeuiaki v. Maui Police Dep’t*, No. 18-CV-00325- JAO-KSC, 2018 WL 4839001, at *3 (D. Haw. Oct. 4, 2018) (citing *Wakefield v. Thompson*, 177 F.3d 28 1 704 (9th Cir. 1992) (alteration in original; internal quotation marks omitted); see also 2 *Planned Parenthood of Idaho, Inc. v. Wasden*, 376 F.3d 908, 919 (9th Cir. 2004) (noting 3 that official capacity claims require that a plaintiff demonstrate that there is a causal 4 connection between the defendant’s official duties and any injury suffered by the plaintiff, 5 and that there is a direct connection between the official and the challenged policy). “[A] 6 generalized duty to enforce state law or general supervisory power over the persons 7 responsible for enforcing the challenged provision will not subject an official to suit.” *Id.* 8 Furthermore, for the “prospective injunctive relief” exception to Eleventh Amendment 9 immunity to apply, the plaintiff must establish a continuing violation of federal law. *Green 10 v. Mansour*, 474 U.S. 64, 73 (1985) (stating relief barred in suit for injunctive relief against 11 state official where there is “no claimed continuing violation of federal law”). 12 Here, as to Defendant Macomber, Moore makes only a conclusory allegation that he 13 “permitted the reimplementation of a housing policy previously adjudicated as 14 discriminatory and unconstitutional.” (Doc. No.1 at 3.) But Moore does not elaborate on 15 what this “housing policy” entails or identify what specifically about it is 16 “unconstitutional.” Nor does she explain when and to what extent such a

“policy” was 17 previously “adjudicated” to be “unconstitutional.”⁶ (See *id.*) Thus, even if Macomber, as 18 CDCR Secretary, could presumably respond to Moore’s request for injunctive relief, 19 Moore has not stated a plausible claim for such relief because she has not adequately 20 identified the policy she alleges is unconstitutional. See *Hartman*, 707 F.3d at 1127. 21 As to Defendants Sato and Does 1–10, the Complaint contains no specific 22 allegations suggesting they are state officials with the authority to enforce or prohibit the 23 policy by which cellmate classifications are made at RJD specifically, or the CDCR more 24 25 26 6 Moore makes several vague references to the prior civil suit filed in this Court in *Moore v. Palmer, et al.*, 3:22-cv-0539-JLS-LR. Review of the docket in that case indicates it was voluntarily dismissed on 27 May 11, 2023 without any final ruling on the merits of Moore’s claims, after a settlement was reached.

Id., Doc. Nos. 47, 49. In her instant Complaint, Moore states she received a monetary settlement in 22- 28 1 generally. Thus, she has not stated a claim for prospective relief against Sato or Does 1– 2 10. 3 In addition, Moore fails to adequately allege an ongoing constitutional violation. 4 While Plaintiff argues she should be given a “permanent” single cell classification, she 5 concedes she has been housed in a single cell for the past three years and she makes no 6 allegation she has actually been given a cellmate. (See Doc. No. 1 at 4.) On the one 7 occasion Moore alleges RJD officials attempted to assign her a cellmate, it did not go 8 forward. (*Id.*) Thus, she alleges no constitutional violation, much less an ongoing one. 9 *Green*, 474 U.S. at 73; see also *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996) (stating 10 liability cannot be predicated on isolated incidents; it must be founded upon practices of 11 sufficient duration, frequency, and consistency). 12 Therefore, because Plaintiff has sued only the CDCR and Defendants Macomber, 13 Sato, and Does #1–10 in their official capacities only, she is barred from seeking money 14 damages by sovereign immunity and has also failed to state a plausible claim for 15 prospective injunctive relief as to any individual Defendant in their official capacity. 16 Accordingly, the Court DISMISSES Plaintiff’s Eighth Amendment and Fourteenth 17 Amendment claims pursuant to 24 U.S.C. § 1983 without prejudice for failure to state a 18 claim as to any Defendant and for seeking damages from Defendants who are immune. See 19 28 U.S.C. §§ 1915(e)(2)(B)(ii), 1915A(b)(1); *Iqbal*, 556 U.S. at 678; *Will*, 491 U.S. at 70. 20 D. Leave to Amend 21 Given Plaintiff’s pro se status, the Court grants her leave to amend her complaint. 22 See *Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir. 2015) (“A district court should not 23 dismiss a pro se complaint without leave to amend unless ‘it is absolutely clear that the 24 deficiencies of the complaint could not be cured by amendment.’”) (quoting *Akhtar v. 25 Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012)). If Plaintiff chooses to amend her pleading, 26 she should be aware of the following standards for individual liability under 42 U.S.C. 27 § 1983, as set forth below. 28 /// 1 1. Eighth Amendment Standard 2 The Eighth Amendment’s prohibition against cruel and unusual punishment imposes 3 a duty on prison officials to “provide humane conditions of confinement.” *Farmer v. 4 Brennan*, 511 U.S. 825, 832 (1994). To state an Eighth Amendment claim, a plaintiff must 5 satisfy both an

objective and subjective component. *Hallett v. Morgan*, 296 F.3d 732, 744 6 (9th Cir. 2002). First, the plaintiff must plead facts sufficient to show she was subjected to 7 an objectively serious deprivation of “the minimal civilized measure of life’s necessities.” 8 *Farmer*, 511 U.S. at 832. The “routine discomfort inherent in the prison setting” is 9 inadequate to satisfy the objective prong of the inquiry. *Johnson*, 217 F.3d at 731. Second, 10 Plaintiff must allege sufficient facts to show each official acted with “deliberate 11 indifference” to her health or safety. *Farmer*, 511 U.S. at 834. To do so, Plaintiff must 12 demonstrate that the official displayed a subjective indifference “to a substantial risk of 13 serious harm.” *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998). “Deliberate 14 indifference” is evidenced only when “the official knows of and disregards an excessive 15 risk to inmate health or safety; the official must both be aware of facts from which the 16 inference could be drawn that a substantial risk of serious harm exists, and he must also 17 draw the inference.” *Farmer*, 511 U.S. at 837. 18 2. Equal Protection Standard 19 To the extent Moore alleges Defendants violated her rights under the Fourteenth 20 Amendment, the Court construes this as an attempt to raise an equal protection claim. The 21 Equal Protection Clause of the Fourteenth Amendment requires states treat all similarly 22 situated people equally. See *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 23 (1985). To state such a claim, a plaintiff must allege facts plausibly showing that “the 24 defendants acted with an intent or purpose to discriminate against [her] based upon 25 membership in a protected class.” *Lee v. City of Los Angeles*, 250 F.3d 668, 686 (9th Cir. 26 2001) (citation omitted). “Intentional discrimination means that a defendant acted at least 27 in part because of a plaintiff’s protected status.” *Maynard v. City of San Jose*, 37 F.3d 1396, 28 1404 (9th Cir. 1994). In short, a plaintiff must demonstrate that (1) she is a member of a 1 protected class and (2) that the defendant acted with an intent or purpose to discriminate 2 against her based upon her membership in a protected class. *Barren v. Harrington*, 152 3 F.3d 1193, 1194–95 (9th Cir. 1998); *Serrano v. Francis*, 345 F.3d 1071, 1082 (9th Cir. 4 2003) (emphasis in original).

5 IV. MOTION FOR TEMPORARY RESTRAINING ORDER

6 Plaintiff has also filed a TRO Motion seeking an order “enjoining Defendants from 7 forcing Plaintiff to double-cell, or use the restroom in front of others and to refrain from 8 any acts of retaliation or harassment.” (Doc. No. 4 at 6.) Federal Rule of Civil Procedure 9 65(b) governs the issuance of a TRO. Such injunctive relief is “an extraordinary remedy 10 that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” 11 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (citation omitted). 12 Plaintiff’s TRO motion, however, has been rendered moot because Plaintiff’s 13 Complaint has been dismissed for the reasons discussed above. The Court cannot grant 14 Plaintiff injunctive relief because it has no personal jurisdiction over any Defendant at this 15 time. See Fed. R. Civ. P. 65(a)(1), (d)(2); *Zepeda v. I.N.S.*, 753 F.2d 719, 727–28 (9th Cir. 16 1983). Therefore, the TRO motion must be denied.⁷ See *Goggin v. Williams*, No. 25-cv- 17 01873-RBM-DEB, 2025 WL 3034073, at *4 (S.D. Cal. Oct. 30, 2025) (denying pro se 18 plaintiff’s TRO as moot where his complaint failed to state a claim

and required sua sponte 19 dismissal pursuant to 28 U.S.C. § 1915(e)(2)); *Youssef v. Youssef*, No. 22-cv-1260-RBM- 20 AGS, 2022 WL 5287776, at *3 (S.D. Cal. Oct. 6, 2022) (“Since there is no basis for federal 21 jurisdiction, it would be improper to consider the merits of Plaintiff’s motion for restraining 22 23 7 In addition, to obtain a TRO or a preliminary injunction, a plaintiff “must establish that [she] is 24 likely to succeed on the merits, that [she] is likely to suffer irreparable harm in the absence of preliminary 25 relief, that the balance of equities tips in [her] favor, and that an injunction is in the public interest.” *Herb Reed Enters., LLC v. Fla. Entm’t Mgmt., Inc.*, 736 F.3d 1239, 1247 (9th Cir. 2013). And here, because 26 Plaintiff’s Complaint is subject to dismissal, she has necessarily failed to show a likelihood of success on the merits of her claims, or even a “serious question” as to her claims, to justify preliminary injunctive 27 relief. See *Pimental v. Dreyfus*, 670 F.3d 1096, 1111 (9th Cir. 2012) (“[A]t an irreducible minimum the moving party must demonstrate a fair chance of success on the merits, or questions serious enough to 28 1 order.”); *Olajide v. Brown*, No. 18-cv-03991-CRB, 2018 WL 3328227, at *3 (N.D. Cal. 2 July 6, 2018) (dismissing the complaint and denying the TRO motion as moot).

3 Therefore, the Court DENIES the TRO Motion without prejudice as moot.

4 V. CONCLUSION AND ORDER

5 Accordingly, the Court: 6 1. GRANTS Plaintiff’s Motion to Proceed IFP (Doc. No. 3). 7 2. DIRECTS the Secretary of the CDCR, or his designee, to collect from 8 Plaintiff’s trust account the \$49.16 initial filing fee assessed, if those funds are available at 9 the time this Order is executed, and to forward whatever balance remains of the full \$350 10 owed in monthly payments in an amount equal to twenty percent (20%) of the preceding 11 month’s income to the Clerk of the Court each time the amount in Plaintiff’s account 12 exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2). All payments must be clearly identified 13 by the name and number assigned to this action. 14 3. DIRECTS the Clerk of the Court to serve a copy of this Order by U.S. Mail 15 on the Secretary of the CDCR, P.O. Box 942883, Sacramento, California, 94283-0001, or 16 by forwarding an electronic copy to trusthelpdesk@cdcr.ca.gov. 17 4. DISMISSES Plaintiff’s Complaint in its entirety without prejudice for failing 18 to state a claim pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b). 19 5. DENIES Plaintiff’s Motion for Temporary Restraining Order (Doc. No. 4) 20 without prejudice as moot. 21 6. GRANTS Plaintiff sixty (60) days leave from the date of this Order in which 22 to file a First Amended Complaint which cures the deficiencies of pleading noted in this 23 Order. Plaintiff’s Amended Complaint must be complete by itself without reference to her 24 original Complaint. See S.D. Cal. CivLR 15.1; *Hal Roach Studios, Inc. v. Richard Feiner 25 & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (“[A]n amended pleading supersedes the 26 original.”); *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (noting that claims 27 dismissed with leave to amend which are not re-alleged in an amended pleading may be 28 “considered waived if not repled.”). 1 If Plaintiff fails to timely file a First Amended Complaint, the Court will enter a final 2 || Order dismissing this civil action based both on failure to state a claim upon which relief 3 ||can be granted pursuant to 28 U.S.C. § 1915(e)(2)

(B)(i1) and § 1915A(b)(1), and failure to 4 || prosecute in compliance with a court order requiring amendment. See *Lira v. Herrera*, 427 5 || F.3d 1164, 1169 (9th Cir. 2005) (“If a plaintiff does not take advantage of the opportunity 6 ||to fix her complaint, a district court may convert the dismissal of the complaint into 7 || dismissal of the entire action.”). 8 IT IS SO ORDERED. 9 Dated: February 4, 2026 © 10 Hon, Anthony J.Battaglia 11 United States District Judge 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 14