

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Jesse M. Ventura v. CDCR, Guzman and Roberts

Ventura · No. 26cv0223-LL (DEB) · Decided February 5, 2026

SUMMARY

The United States District Court for the Southern District of California grants Jesse M. Ventura leave to proceed in forma pauperis but declines to assess an initial partial filing fee due to insufficient funds. The court dismisses his complaint without prejudice for failure to state a federal claim, declines supplemental jurisdiction over his state-law claims, and grants 45 days to amend.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Linda Lopez
JURISDICTION	United States District Court for the Southern District of California
DECIDED	February 5, 2026
DOCKET	26cv0223-LL (DEB)
DISPOSITION	other
PROCEDURAL POSTURE	A state prisoner proceeding pro se filed a civil-rights complaint under 42 U.S.C. § 1983 and moved to proceed in forma pauperis. The district court granted IFP status, screened the complaint under 28 U.S.C. §§ 1915(e)(2) and 1915A(b), dismissed all claims without prejudice for failure to state a claim, and granted leave to amend.
STANDARD OF REVIEW	De novo screening under 28 U.S.C. §§ 1915(e)(2) and 1915A(b), applying the Federal Rule of Civil Procedure 12(b)(6) failure-to-state-a-claim standard. The complaint must contain sufficient factual matter, accepted as true, to state a plausible claim for relief.
PRECEDENTIAL VALUE	Unknown; district court screening order with no reporter citation.
PARTIES	Jesse M. Ventura v. CDCR, Guzman, Roberts

TOPICS

- prisoners rights
- section 1983
- civil rights
- civil procedure
- negligence

PRACTICE AREAS

civil rights

prisoner litigation

civil procedure

constitutional law

torts

QUESTIONS PRESENTED

1. Whether Ventura should be granted leave to proceed in forma pauperis despite insufficient funds to pay the initial partial filing fee.
2. Whether the complaint plausibly stated an Eighth Amendment deliberate-indifference claim under 42 U.S.C. § 1983.
3. Whether CDCR and Warden Guzman could be held liable under § 1983 based on the alleged conduct of Roberts.
4. Whether the court should exercise supplemental jurisdiction over Ventura's state-law claims after dismissing all federal claims.
5. Whether Ventura should receive leave to amend.

HOLDINGS

1. The court granted Ventura leave to proceed in forma pauperis and declined to assess the initial partial filing fee because his available funds were insufficient, while preserving his obligation to pay the remaining filing fee through installments.
2. The complaint failed to plausibly allege deliberate indifference because negligence in operating the motorized cart, without facts showing that Roberts knew of and disregarded a substantial risk of serious harm, is insufficient to state an Eighth Amendment claim.
3. The complaint failed to state a § 1983 claim against Guzman because it did not allege his personal involvement or a sufficient causal connection, and it failed to state a claim against CDCR because CDCR is not a person for purposes of § 1983 and is immune from the asserted private damages and injunctive-relief claims.
4. The court declined to exercise supplemental jurisdiction over Ventura's state-law claims because all claims within the court's original jurisdiction had been dismissed.
5. The court dismissed the complaint without prejudice and granted Ventura forty-five days to file an amended complaint curing the identified deficiencies.

KEY QUOTATIONS

“The standard for determining whether a plaintiff has failed to state a claim upon which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a claim.” (at 3)

“If Plaintiff wishes to proceed with an Eighth Amendment claim against Defendant Roberts, he must plausibly allege Roberts was aware of facts from which he could have inferred that his use of the motorized cart presented a substantial risk to Plaintiff, actually drew such an inference, and failed to act to prevent the injury.” (at 5)

“DISMISSES all claims against all Defendants in the Complaint without prejudice and with leave to amend pursuant to 28 U.S.C. §§ 1915(e)(2) & 1915A(b).” (at 7)

FACTUAL BACKGROUND

On January 26, 2024, Ventura underwent reconstructive surgery on his left knee. On February 23, 2024, while his leg was immobilized in a brace and he was restrained, Officer Roberts allegedly accelerated a motorized cart in a tight space, causing Ventura's foot to catch under an elevated trash can and twisting his knee and foot. Ventura alleged continuing pain, delayed recovery and physical therapy, and additional medical treatment, but alleged negligence rather than facts showing that Roberts knew of and disregarded a substantial risk of serious harm.

PROCEDURAL HISTORY

Ventura alleged that a correctional officer negligently operated a motorized cart, injuring his surgically repaired knee and foot, and asserted state-law negligence and related claims. The court found that the complaint did not plausibly allege a federal constitutional violation, declined supplemental jurisdiction over the state-law claims, dismissed the complaint without prejudice, and allowed forty-five days to amend.

DISPOSITION

other

CASES CITED

- Andrews v. Cervantes, 493 F.3d 1047, 1051 (9th Cir. 2007)
- Andrews v. King, 398 F.3d 1113, 1119 (9th Cir. 2005)
- Bruce v. Samuels, 577 U.S. 82, 84 (2016)
- Taylor v. Delatoore, 281 F.3d 844, 850 (9th Cir. 2002)
- Lopez v. Smith, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)
- Rhodes v. Robinson, 621 F.3d 1002, 1004 (9th Cir. 2010)
- Nordstrom v. Ryan, 762 F.3d 903, 920 n.1 (9th Cir. 2014)
- Watison v. Carter, 668 F.3d 1108, 1112 (9th Cir. 2012)
- Wilhelm v. Rotman, 680 F.3d 1113, 1121, 1123 (9th Cir. 2012)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)
- Devereaux v. Abbey, 263 F.3d 1070, 1074 (9th Cir. 2001)
- Graham v. Connor, 490 U.S. 386, 393-94 (1989)
- Estelle v. Gamble, 429 U.S. 97, 104 (1976)
- Farmer v. Brennan, 511 U.S. 825, 834-37 (1994)
- Daniels v. Williams, 474 U.S. 327, 332 (1986)
- Wilson v. Seiter, 501 U.S. 294, 298, 302-03 (1991)

- Doty v. County of Lassen, 37 F.3d 540, 546 n.3 (9th Cir. 1994)
- Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006)
- Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002)
- Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988)
- Lemire v. California Department of Corrections & Rehabilitation, 726 F.3d 1062, 1074-75 (9th Cir. 2013)
- Brown v. California Department of Corrections, 554 F.3d 747, 752 (9th Cir. 2009)
- Sanford v. MemberWorks, Inc., 625 F.3d 550, 561 (9th Cir. 2010)
- Rosati v. Igbinoso, 791 F.3d 1037, 1039 (9th Cir. 2015)
- Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th Cir. 2012)
- Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc., 896 F.2d 1542, 1546 (9th Cir. 1990)
- Lacey v. Maricopa County, 693 F.3d 896
- Lira v. Herrera, 427 F.3d 1164, 1169 (9th Cir. 2005)

OPINION

Ventura

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 JESSE M. VENTURA, Case No.: 26cv0223-LL (DEB)

CDCR #T-40564,

12 ORDER: Plaintiff, 13

vs. (1) GRANTING MOTION TO

14 PROCEED IN FORMA PAUPERIS,

and 15

CDCR, GUZMAN and ROBERTS,

16 Defendants. (2) DISMISSING COMPLAINT WITH

LEAVE TO AMEND PURSUANT TO

17 28 U.S.C. §§ 1915(e)(2)(B) & 1915A(b) 18 19 Plaintiff Jesse M. Ventura, a state prisoner housed at Centinela State Prison in 20 Imperial, California, proceeding pro se, has filed a civil rights Complaint pursuant to 42 21 U.S.C. § 1983, alleging he was injured by the Defendants' negligence. Doc. No. 1. He 22 has also filed a motion to proceed in forma pauperis ("IFP"). Doc. No. 2. 23 I. Motion to Proceed IFP 24 All parties instituting any civil action, suit or proceeding in a district court of the 25 United States, except an application for writ of habeas corpus, must pay a filing fee of 26 \$405, consisting of a \$350 statutory fee plus an additional administrative fee of \$55, 27 although the administrative fee does not apply to persons granted leave to proceed IFP.

28 See 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee

1 Schedule, § 14 (eff. Dec. 1, 2023)). The action may proceed despite a plaintiff's failure to 2

prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C. 3 § 1915(a). See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007). Section 4 1915(a)(2) requires prisoners seeking leave to proceed IFP to submit a “certified copy of 5 the trust fund account statement (or institutional equivalent) for . . . the 6-month period 6 immediately preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2); *Andrews v. 7 King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified trust account statement, the 8 Court assesses an initial payment of 20% of (a) the average monthly deposits in the account, 9 or (b) the average monthly balance in the account for the past six months, whichever is 10 greater, unless the prisoner has insufficient assets. See 28 U.S.C. § 1915(b)(1)&(4); *Bruce 11 v. Samuels*, 577 U.S. 82, 84 (2016). Prisoners who proceed IFP must pay any remaining 12 balance in “increments” or “installments,” regardless of whether their action is ultimately 13 dismissed. 28 U.S.C. § 1915(b)(1)&(2); *Bruce*, 577 U.S. at 84. 14 Plaintiff’s prison certificate, which the Court construes as a motion to proceed in 15 forma pauperis, shows an average monthly balance of \$206.25 and average monthly 16 deposits of \$225.33 for the 6-months preceding the filing of this action, and an available 17 balance of \$0.25. Doc. No. 4 at 4. The Court GRANTS Plaintiff’s motion to proceed IFP 18 and declines to assesses the initial partial filing fee of \$45.06 because it appears Plaintiff 19 has insufficient funds to pay it. See *Taylor v. Delatoore*, 281 F.3d 844, 850 (9th Cir. 2002) 20 (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve” preventing dismissal of a 21 prisoner’s IFP case based solely on a “failure to pay . . . due to the lack of funds available 22 to him when payment is ordered.”) Plaintiff remains obligated to pay the \$350 filing fee 23 pursuant to the installment payment provisions of 28 U.S.C. § 1915(b)(1). 24 II. Screening pursuant to 28 U.S.C. §§ 1915(e)(2) & 1915A(b) 25 A. Standard of Review 26 Because Plaintiff is a prisoner proceeding IFP, his Complaint requires a pre-Answer 27 screening pursuant to 28 U.S.C. §§ 1915(e)(2) & 1915A(b). Under these statutes, the Court 28 must sua sponte dismiss a prisoner’s IFP complaint, or any portion of it, which is frivolous, 1 malicious, fails to state a claim, or seeks damages from defendants who are immune. See 2 *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (discussing 28 U.S.C. 3 § 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing 28 4 U.S.C. § 1915A(b)). “The purpose of § 1915A is to ensure that the targets of frivolous or 5 malicious suits need not bear the expense of responding.” *Nordstrom v. Ryan*, 762 F.3d 6 903, 920 n.1 (9th Cir. 2014) (internal quote marks omitted). 7 “The standard for determining whether a plaintiff has failed to state a claim upon 8 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of 9 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668 F.3d 10 1108, 1112 (9th Cir. 2012); see also *Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir. 11 2012) (noting that § 1915A screening “incorporates the familiar standard applied in the 12 context of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).”) Rule 13 12(b)(6) requires a complaint to “contain sufficient factual matter, accepted as true, to ‘state 14 a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), 15 quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Detailed factual 16 allegations

are not required, but “[t]hreadbare recitals of the elements of a cause of action, 17 supported by mere conclusory statements, do not suffice.” Id. 18 B. Allegations in the Complaint 19 On January 26, 2024, while housed at Centinela State Prison (“CSP”), Plaintiff had 20 reconstructive surgery on his left knee at an outside hospital. Doc. No. 1 at 5. On February 21 23, 2024, he states that he had a physical therapy session at the Centinela Central Health 22 Facility. (Id.) Plaintiff alleges that: 23 Following therapy, Officers Acosta and Roberts, aka John Doe loaded me onto a motorized cart. I was shackled in waist chains and handcuffs. My left 24 leg was immobilized in a brace due to the surgery. Ofc. Roberts aka John Doe 25 was at the wheel of the cart and without warning or regard for the surroundings suddenly accelerated the vehicle which was parked in a tight space. My left 26 foot got caught under an elevated trash can outside Central Health. Two CSP 27 residents witnessed this incident: Ed Tolbert and Gabriel Perez. The force caused my left leg to twist and jerk. I felt immediate and excruciating pain in 28 1 my left knee and foot. I screamed out and Ofc. Acosta told Ofc. Roberts aka John Doe to stop the vehicle. I was placed in a wheelchair and taken into the 2 triage area of Central Health. There my left knee and abrasions to my left foot 3 were examined. The accident has damaged and prolonged my recovery from the left knee surgery. It has delayed and disrupted my physical therapy. I 4 have required additional medical treatment beyond that from my surgery. My 5 left knee was too swollen for months following the accident to have an MRI performed. I live in constant pain which impairs all my day to day activities. 6 Ofc. Roberts aka John Doe’s negligent operation of the motor vehicle was the 7 legal proximate cause of the damages I suffered and still suffer including but not limited to my left knee and left foot. Per Government Code 844.6 (b) and 8 (d) and Vehicle Code 17001, Ofc. Roberts aka John Doe’s negligence renders 9 him and CDCR and (A) Warden Fidencio Guzman liable for my injuries. 10 (Id.) 11 Plaintiff names as Defendants the California Department of Corrections and 12 Rehabilitation (“CDCR”), CSP Acting Warden Guzman and CSP correctional officer 13 Roberts. (Id. at 1.) He brings causes of action for general negligence, intentional tort, 14 premises liability and under the vehicle code, and seeks money damages. (Id. at 3.) 15 C. Analysis 16 Although this action has been docketed as an action filed pursuant to 42 U.S.C. 17 § 1983, the Complaint on its face presents only state law claims. Title 42 U.S.C. § 1983 18 “creates a private right of action against individuals who, acting under color of state law, 19 violate federal constitutional or statutory rights.” *Devereaux v. Abbey*, 263 F.3d 1070, 20 1074 (9th Cir. 2001) (emphasis added). Section 1983 “is not itself a source of substantive 21 rights, but merely provides a method for vindicating federal rights elsewhere conferred.” 22 *Graham v. Connor*, 490 U.S. 386, 393-94 (1989) (internal quotation marks omitted). 23 Prisoner medical care may amount to cruel and unusual punishment in violation of 24 the Eighth Amendment, as applied to the States through the Fourteenth Amendment, when 25 prison officers are “deliberately indifferent” to an inmate’s “serious” medical needs. See 26 *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). However, it is clear the allegation of 27 negligence in the operation of the motorized cart fails to plausibly allege such a claim. 28 “[D]eliberate indifference describes a state of mind more blameworthy than

negligence” 1 and “more than ordinary lack of due care for the prisoner’s interests or safety.” Farmer v. 2 Brennan, 511 U.S. 825, 835 (1994). Negligence is not actionable under § 1983. Daniels 3 v. Williams, 474 U.S. 327, 332 (1986). 4 “[A] prison official violates the Eighth Amendment when two requirements are met. 5 First, the deprivation alleged must be, objectively, ‘sufficiently serious.’” Id. at 834, 6 quoting Wilson v. Seiter, 501 U.S. 294, 298 (1991). Second, Plaintiff must allege the prison 7 official had a “sufficiently culpable state of mind,” that is, “one of ‘deliberate indifference’ 8 to inmate health or safety.” Id., quoting Wilson, 501 U.S. at 302-03. A prison official must 9 “know[] of and disregard[] an excessive risk to inmate health or safety; the official must 10 both be aware of facts from which the inference could be drawn that a substantial risk of 11 serious harm exists, and he must also draw the inference.” Id. at 837. 12 The allegations in the Complaint with respect to the serious medical need prong in 13 relation to Plaintiff’s knee and foot are sufficient to survive the “low threshold” of 14 screening required by 28 U.S.C. §§ 1915(e)(2) & 1915A(b) for a deliberate indifference 15 claim. Wilhelm, 680 F.3d at 1123; Iqbal, 556 U.S. at 678; Doty v. County of Lassen, 37 16 F.3d 540, 546 n.3 (9th Cir. 1994) (“[I]ndicia of a ‘serious’ medical need include (1) the 17 existence of an injury that a reasonable doctor would find important and worthy of 18 comment or treatment, (2) the presence of a medical condition that significantly affects an 19 individual’s daily activities, and (3) the existence of chronic or substantial pain.”) 20 However, the Complaint as drafted fails to plausibly allege any Defendant was 21 deliberately indifferent to Plaintiff’s serious medical needs. The deliberate indifference 22 prong of an Eighth Amendment violation “is satisfied by showing (a) a purposeful act or 23 failure to respond to a prisoner’s pain or possible medical need and (b) harm caused by the 24 indifference.” Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006). A prison official can 25 be held liable only if he “knows of and disregards an excessive risk to inmate health or 26 safety; the official must both be aware of facts from which the inference could be drawn 27 that a substantial risk of serious harm exists, and he must also draw the inference.” Farmer, 28 511 U.S. at 837. 1 Plaintiff alleges Defendant Roberts negligently operated the motorized cart. Doc.

2 No. 1 at 5. There are no factual allegations Defendant Roberts was actually aware that the 3 manner in which he operated the cart posed a substantial risk to Plaintiff. See Farmer, 511 4 U.S. at 837 (a prison “official must both be aware of facts from which the inference could 5 be drawn that a substantial risk of serious harm exists, and he must also draw the 6 inference.”); Id. at 835 (“[D]eliberate indifference describes a state of mind more 7 blameworthy than negligence” and “more than ordinary lack of due care for the prisoner’s 8 interests or safety.”) If Plaintiff wishes to proceed with an Eighth Amendment claim 9 against Defendant Roberts, he must plausibly allege Roberts was aware of facts from which 10 he could have inferred that his use of the motorized cart presented a substantial risk to 11 Plaintiff, actually drew such an inference, and failed to act to prevent the injury. Id.; Jett, 12 439 F.3d at 1096. 13 Plaintiff alleges Defendants CDCR and Acting Warden Guzman are responsible for 14 Roberts’ negligent handling of the motorized cart. Doc. No. 1 at 5. Plaintiff may not rely 15 on a respondeat superior theory of liability under § 1983 but

must allege facts which 16 plausibly show each individual defendant was personally involved in the alleged 17 constitutional violation. See *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002) (“In 18 order for a person acting under color of state law to be liable under section 1983 there must 19 be a showing of personal participation in the alleged rights deprivation: there is no 20 respondeat superior liability under section 1983.”) A prisoner must allege “(1) that the 21 specific prison official, in acting or failing to act, was deliberately indifferent to the 22 mandates of the eighth amendment and (2) that this indifference was the actual and 23 proximate cause of the deprivation of the inmates’ eighth amendment right to be free from 24 cruel and unusual punishment.” *Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988). 25 Supervisors may only be held liable if they were “personally involved in the constitutional 26 violation or a sufficient causal connection exists between the supervisor’s unlawful conduct 27 and the constitutional violation.” *Lemire v. Cal. Dept. of Corrections & Rehabilitation*, 28 726 F.3d 1062, 1074-75 (9th Cir. 2013). Because Plaintiff has failed to plausibly allege a 1 constitutional violation arising from Roberts’ negligent handling of the motorized cart, and 2 has failed to allege Guzman was personally involved, he has failed to allege a causal 3 connection between a constitutional violation and unlawful conduct by Defendant 4 Guzman. *Id.* In addition, the CDCR is not a “person” for purposes of § 1983, and as an 5 agency of the State of California is immune from private damage actions or suits for 6 injunctive relief brought in federal courts under § 1983. *Brown v. California Dep’t of 7 Corr.*, 554 F.3d 747, 752 (9th Cir. 2009) (citations omitted). 8 With respect to Plaintiff’s state law claims, the Court may “decline to exercise 9 supplemental jurisdiction” over any supplemental state law claim if it “has dismissed all 10 claims over which it has original jurisdiction.” 28 U.S.C. § 1367(c); *Sanford v. 11 MemberWorks, Inc.*, 625 F.3d 550, 561 (9th Cir. 2010) (“[I]n the usual case in which all 12 federal-law claims are eliminated before trial, the balance of factors to be considered under 13 the pendent jurisdiction doctrine . . . will point toward declining to exercise jurisdiction 14 over the remaining state-law claims.”) Because no federal claims remain in the Complaint, 15 the Court declines to exercise supplemental jurisdiction over the state law claims. 16 Plaintiff’s Complaint is dismissed without prejudice pursuant to 28 U.S.C. 17 §§ 1915(e)(2) & 1915A(b) for failure to state a claim. 18 D. Leave to Amend 19 In light of Plaintiff’s pro se status, the Court grants leave to amend. See *Rosati v. 20 Igbinoso*, 791 F.3d 1037, 1039 (9th Cir. 2015) (“A district court should not dismiss a pro 21 se complaint without leave to amend [pursuant to 28 U.S.C. § 1915(e)(2)] unless ‘it is 22 absolutely clear that the deficiencies of the complaint could not be cured by amendment.’”), 23 quoting *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012). 24 III. Conclusion and Orders 25 Good cause appearing, the Court: 26 1. GRANTS Plaintiff’s Motion to Proceed IFP. Doc. No. 2. 27 2. DIRECTS the Secretary of the CDCR, or his designee, to collect from 28 Plaintiff’s prison trust account the \$350 filing fee by collecting monthly payments from 1 || Plaintiff’s account in an amount equal to twenty percent (20%) of the preceding month’s 2 || income and forwarding those payments to the Clerk of the Court each time the amount in 3 || the account exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2). 4

3. DIRECTS the Clerk of the Court to serve a copy of this Order on Jeff 5 ||Macomber, Secretary, California Department of Corrections and Rehabilitation, P.O. Box 6 942883, Sacramento, California 94283-0001. 7 4. DISMISSES all claims against all Defendants in the Complaint without 8 || prejudice and with leave to amend pursuant to 28 U.S.C. §§ 1915(e)(2) & 1915A(b). 9 5. GRANTS Plaintiff forty-five (45) days leave from the date of this Order in 10 || which to file an amended complaint which cures the deficiencies of pleading noted in this 11 ||}Order. Plaintiff's First Amended Complaint must be complete by itself without reference 12 || to his original Complaint. Defendants not named and any claims not re-alleged in the First 13 || Amended Complaint will be considered waived. See S.D. Cal. CivLR 15.1; Hal Roach 14 || Studios, Inc. v. Richard Feiner & Co., Inc., 896 F.2d 1542, 1546 (9th Cir. 1989) (“[A]n 15 ||}amended pleading supersedes the original.”); Lacey v. Maricopa County, 693 F.3d 896, 16 (9th Cir. 2012) (noting that claims dismissed with leave to amend which are not re- 17 || alleged in an amended pleading may be “considered waived if not repled.”) A failure to 18 ||}amend will result in dismissal of this action for failure to state a claim and failure to 19 || prosecute. See Lira v. Herrera, 427 F.3d 1164, 1169 (9th Cir. 2005) (“If a plaintiff does 20 take advantage of the opportunity to fix his complaint, a district court may convert the 21 || dismissal of the complaint into dismissal of the entire action.”) 22 IT IS SO ORDERED. 23 Dated: February 5, 2026 NO 24 Qe | 25 Honorable Linda Lopez United States District Judge 27 28 8