

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Shaw v. Macomber

Shaw · No. 3:25-cv-0089-RBM-MSB · Decided May 8, 2025

SUMMARY

The United States District Court for the Southern District of California grants Plaintiff James D. Shaw’s motion to proceed in forma pauperis and assesses an initial partial filing fee of \$4.75. The court dismisses without prejudice his claims under the Equal Protection Clause, the ADA, the Rehabilitation Act, and the Eighth Amendment for failure to state a claim, while granting leave to amend. The court also denies without prejudice his motion for a preliminary injunction seeking single-cell housing and related relief.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 JAMES D. SHAW, Case No.: 3:25-cv-0089-RBM-MSB CDCR #G05862,
12 ORDER: Plaintiff, 13 vs. (1) GRANTING PLAINTIFF’S 14 MOTION TO PROCEED IN 15
FORMA PAUPERIS [Doc. 2]; 16 (2) DISMISSING COMPLAINT JEFF MACOMBER, JAMES
HILL, DR. 17 ON SCREENING PURSUANT TO SANTO, Y. SATO, 28 U.S.C. §§ 1915(e)(2)(B)
AND 18 Defendants.

1915A(b) [Doc. 1]; and 19 (3) DENYING PLAINTIFF’S 20 MOTION FOR PRELIMINARY 21
INJUNCTION [Doc. 3] 22 23 Plaintiff James E. Shaw (“Plaintiff”), an inmate proceeding pro se,
has filed a civil 24 rights complaint pursuant to 42 U.S.C. § 1983 (“Complaint”) (Doc. 1), along
with a Motion 25 to Proceed In Forma Pauperis (“IFP Motion”) (Doc. 2), and a Motion for
Preliminary 26 Injunction Pursuant to Federal Rule of Civil Procedure 65 (Doc.

3). In his Complaint, 27 Plaintiff alleges Defendants Jeff Macomber, James Hill, Santo, and Sato
(collectively, 28 “Defendants”) violated his constitutional rights, the Americans with Disabilities
Act 1 (“ADA”), and the Rehabilitation Act (“RA”) when they refused to provide him with single 2
cell housing. (See generally, Doc. 1.)

For the reasons discussed below, the Court 3 GRANTS Plaintiff’s IFP motion, DISMISSES the
Complaint without prejudice for failure 4 to state a claim, and DENIES the motion for preliminary
injunction without prejudice. 5 I. MOTION TO PROCEED IFP 6 All parties instituting any civil
action, suit, or proceeding in a district court of the 7 United States, except an application for writ
of habeas corpus, must pay a filing fee of 8 \$405.1 See 28 U.S.C. § 1914(a).

A party may initiate a civil action without prepaying the 9 required filing fee if the Court grants leave to proceed in forma pauperis (“IFP”) based on 10 indigency. 28 U.S.C. § 1915(a); *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 11 2007).

To proceed IFP, plaintiffs must establish their inability to pay by filing an affidavit 12 regarding their income and assets. See *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th 13 Cir. 2015). Prisoners must also submit a “certified copy of the [prisoner’s] trust fund 14 account statement (or institutional equivalent) for... the 6-month period immediately 15 preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2).

From the certified trust 16 account statement, the Court assesses an initial payment of 20% of (a) the average monthly 17 deposits in the account for the past six months, or (b) the average monthly balance in the 18 account for the past six months, whichever is greater, unless the prisoner has no assets. See 19 28 U.S.C. § 1915(b)(1), (4). Prisoners who proceed IFP must pay the balance of the \$350 20 statutory fee in installments regardless of whether their action is ultimately dismissed.

28 21 U.S.C. § 1915(b)(2); *Bruce v. Samuels*, 577 U.S. 82, 84 (2016). 22 In support of his IFP Motion, Plaintiff provided a copy of his prison trust account 23 statement. (Doc. 2 at 6.) Prior to filing suit, Plaintiff had an average monthly balance of 24 25 26 1 Civil litigants must pay an administrative fee of \$55 in addition to the \$350 filing fee. See 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc.

Fee 27 Schedule, § 14 (eff. Dec. 1, 2023)). The additional \$55 administrative fee does not apply 28 to persons granted leave to proceed IFP. *Id.* 1 \$23.75, average monthly deposits of \$0.00, and an account balance of \$10.45. (*Id.*) 2 Accordingly, the Court GRANTS Plaintiff’s IFP Motion and assesses an initial 3 partial filing fee of \$4.75 pursuant to 28 U.S.C. § 1915(b)(1).

However, this initial fee 4 only needs to be collected if sufficient funds are available in Plaintiff’s account at the time 5 this Order is executed. See 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event shall a 6 prisoner be prohibited from bringing a civil action or appealing a civil action or criminal 7 judgment for the reason that the prisoner has no assets and no means by which to pay the 8 initial partial filing fee.”); *Taylor v. Delatoore*, 281 F.3d 844, 850 (9th Cir.

2002) (finding 9 that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve” preventing dismissal of a prisoner’s 10 IFP case based solely on a “failure to pay... due to the lack of funds available to him when 11 payment is ordered.”).

The California Department of Corrections and Rehabilitation 12 (“CDCR”) must thereafter collect the full balance of the \$350 fee owed and forward 13 payments to the Clerk of the Court pursuant to 28 U.S.C. § 1915(b)(2). 14 II. SCREENING PURSUANT TO 28 U.S.C. §§ 1915(E)(2)(B) & 1915A(B) 15 A. Legal Standard 16 Pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b), the

Court must screen a 17 prisoner's IFP complaint and sua sponte dismiss it to the extent that it is frivolous, 18 malicious, fails to state a claim, or seeks damages from defendants who are immune.

See 19 *Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc); *Rhodes v. Robinson*, 20 621 F.3d 1002, 1004 (9th Cir. 2010). “The standard for determining whether Plaintiff has 21 failed to state a claim upon which relief can be granted under § 1915(e)(2)(B)(ii) is the 22 same as the Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a claim.” 23 *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir.

2012). Rule 12(b)(6) requires that a 24 complaint “contain sufficient factual matter... to state a claim to relief that is plausible on 25 its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). 26 While detailed factual allegations are not required, “[t]hreadbare recitals of the elements 27 of a cause of action, supported by mere conclusory statements, do not suffice” to state a 28 claim.

Id. The “mere possibility of misconduct” or “unadorned, the defendant-unlawfully- 1 harmed me accusation[s]” fall short of meeting this plausibility standard. *Id.* 2 To state a claim under § 1983, a plaintiff must plausibly allege “both (1) deprivation 3 of a right secured by the Constitution and laws of the United States, and (2) that the 4 deprivation was committed by a person acting under color of state law.” *Tsao v. Desert 5 Palace, Inc.*, 698 F.3d 1128, 1138 (9th Cir.

2012). 6 B. Plaintiff's Allegations 7 In his Complaint, Plaintiff alleges he has been denied a single cell despite having a 8 disability that requires one. Specifically, Plaintiff states he was “classified in 2017 as 9 incontinent.” (Doc. 1 at 3.) At some point, Plaintiff requested a single cell assignment 10 because of “his inability to control his bowel movements.” (*Id.*)

He is “constantly 11 ridiculed” by other inmates because of his condition and has been “assaulted on a few 12 occasions by previous cellmates.” (*Id.*) He did not report these incidents, however, because 13 he feared reprisals. (*Id.*) Despite his medical condition, Plaintiff's housing classification 14 has not changed, and he is still assigned “double cell/dormitory” housing.

(*Id.*) At the time 15 the Complaint was filed, Plaintiff was being housed in a dormitory setting. (*Id.* at 4.) 16 Plaintiff states that other “similarly situated” inmates with disabilities are permitted 17 single cell housing while he has been denied it, despite being “elderly,” “completely 18 disabled,” and incontinent. (*Id.*)

As such, he is forced to deal with his incontinence issues 19 in front of other inmates, causing him “mental distress” and embarrassment. (*Id.* at 5.) He 20 also alleges that he fears for his safety because Defendants have refused to adequately 21 accommodate his disability. (*Id.* at 6.) 22 C. Discussion 23 Plaintiff names four defendants in their official capacities: CDCR Secretary Jeff 24 Macomber (“Defendant Macomber”), Donovan Correctional Facilities Warden James Hill 25

(“Defendant Hill”), primary care physician Dr. Santo (“Defendant Santo”), and psychology 26 clinician Dr. Sato (“Defendant Sato”).

(Id. at 2.) Plaintiff alleges Defendants violated his 27 rights under the Equal Protection Clause, the ADA and RA, and the Eighth Amendment. 28 (Id. at 3–6.) He seeks money damages and an injunction requiring Defendants to provide 1 him with single cell housing. (Id. at 8.) 2 1. Equal Protection 3 Plaintiff alleges that Defendants have failed to provide him with the single cell 4 housing necessary given his medical condition, in violation of his right to equal protection.

5 (Doc. 1 at 5.) The Fourteenth Amendment provides that no state shall “deny to any person 6 within its jurisdiction the equal protection against the laws.” U.S. Const. amend. XIV; see 7 *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (citing *Plyler v. Doe*, 8 457 U.S. 202, 216 (1982)).

To state an equal protection claim, Plaintiff must plausibly 9 allege that prison officials (1) intentionally discriminated against him (2) based on his 10 membership in a protected class. *Hartmann v. Cal. Dep’t of Corr. & Rehab.*, 707 F.3d 11 1114, 1123 (9th Cir. 2013). “Intentional discrimination means that a defendant acted at 12 least in part because of a plaintiff’s protected status.” *Serrano v. Francis*, 345 F.3d 1071, 13 1082 (9th Cir.

2003). The Supreme Court has also recognized equal protection claims may 14 be brought by a “‘class of one,’ where the plaintiff alleges that she has been intentionally 15 treated differently from others similarly situated and that there is no rational basis for the 16 difference in treatment.” *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (citations 17 omitted).

18 Here, Plaintiff fails to allege that he is a member of a protected class because “the 19 disabled do not constitute a suspect class” for the purposes of equal protection analysis. 20 *Does 1-5 v. Chandler*, 83 F.3d 1150, 1155 (9th Cir. 1996) (citation omitted).

Moreover, 21 Plaintiff fails to allege he was intentionally singled out for disparate treatment by any 22 Defendant because he is disabled. See *id.* (citing *Personnel Adm’r of Mass. v. Feeney*, 442 23 U.S. 256, 279 (1979)). “‘Discriminatory purpose’... implies more than intent as volition 24 or intent as awareness of consequences. It implies that the decisionmaker... selected or 25 reaffirmed a particular course of action at least in part ‘because of,’ not merely ‘in spite 26 of,’ its adverse effects upon an identifiable group.” *Feeney*, 442 U.S. at 279 (internal 27 citation omitted).

Plaintiff simply states that other inmates with unspecified disabilities 28 have received accommodations, while he has not. (See Doc. 1 at 5.) Plaintiff does not 1 mention any specific conduct by any named Defendant in his Complaint.

As such, his 2 conclusory allegations are insufficient to support his equal protection claim. See *Iqbal*, 3 556 U.S. at 678; see also *Dews v. Cnty. of Kern*, 599 F. App’x 681, 682 (9th Cir. 2015) 4

(affirming the district court's dismissal of plaintiff's equal protection claim where he failed 5 to "show that he was a member of a protected class or that he was intentionally treated 6 differently from other similarly situated individuals for an irrational reason"); *Williams v. Doe*, 343 F. App'x 196, 197 (9th Cir.

2009) (dismissing "[v]ague and conclusory" § 1983 8 equal protection allegations for failure to state claim). 9 Therefore, the Court DISMISSES Plaintiff's equal protection claim without 10 prejudice for failure to state a claim. See 28 U.S.C. §§ 1915(e)(2)(B)(ii), 1915A(b)(1). 11 2. ADA and RA 12 Plaintiff also alleges Defendants violated his rights under the ADA and RA.

(See 13 Doc. 1 at 3, 5.) As these statutes have similar elements, the Court discusses them together. 14 To state a claim under Title II of the ADA, a plaintiff must allege: "(1) he is an 15 individual with a disability; (2) he is otherwise qualified to participate in or receive the 16 benefit of some public entity's services, programs, or activities; (3) he was either excluded 17 from participation in or denied the benefits of the public entity's services, programs, or 18 activities, or was otherwise discriminated against by the public entity; and (4) such 19 exclusion, denial of benefits, or discrimination was by reason of [his] disability." *Guinn v. Lovelock Corr.*

Ctr., 502 F.3d 1056, 1060 (9th Cir. 2007) (internal quotations omitted). 21 To state a claim under Section 504 of RA, a plaintiff must allege he or she was: (1) 22 an individual with a disability; (2) otherwise qualified to receive the benefit; (3) denied the 23 benefits of the program solely by reason of his or her disability; and (4) the program 24 receives federal financial assistance.

Lovell v. Chandler, 303 F.3d 1039, 1052 (9th Cir. 25 2002). Because of the similarities between the laws and remedies available, a complaint 26 that properly states a claim under Title II of the ADA also states a claim under Section 504 27 of the RA. *Zukle v. Regents of the Univ. of Cal.*, 166 F.3d 1041, 1045 n.11 (9th Cir. 1999). 28 While Plaintiff states he has a qualifying disability, he does not allege any facts to 1 support his claim that Defendants denied him a single cell "by reason of his disability." 2 See *Guinn*, 502 F.3d at 1060 (emphasis added).

Instead, he simply alleges that his request 3 for a single cell was denied. (See Doc. 1 at 3, 5.) Such conclusory statements in the 4 Complaint, unsupported by any specific facts, are insufficient to state an ADA or RA claim. 5 See, e.g., *Regal v. Cnty. of Santa Clara*, Case No. 22-cv-04321-BLF, 2023 WL 2266135, 6 at *7 (N.D. Cal. Feb. 27, 2023) (dismissing ADA and RA claims where the plaintiff failed 7 to allege facts to show services were denied because of his disability).

8 Accordingly, the Court DISMISSES Plaintiff's ADA and RA claims without 9 prejudice for failure to state a claim. See 28 U.S.C. §§ 1915(e)(2)(B)(ii), 1915A(b)(1); 10 *Iqbal*, 556 U.S. at 678. 11 3. Eighth Amendment 12 Finally, Plaintiff alleges that Defendants violated his Eighth Amendment rights by 13 refusing to provide him single cell housing. (Doc. 1 at 6.)

The Eighth Amendment's 14 prohibition against cruel and unusual punishment imposes a duty on prison officials to 15 "provide humane conditions of confinement." *Farmer v. Brennan*, 511 U.S. 825, 832 16 (1994). These include "food, clothing, shelter, sanitation, medical care, and personal 17 safety." *Toussaint v. McCarthy*, 801 F.2d 1080, 1107 (9th Cir. 1986), abrogated in part 18 on other grounds by *Sandin v. Connor*, 515 U.S. 472 (1995); see also *Johnson v. Lewis*, 19 217 F.3d 726, 731 (9th Cir.

2000). 20 A prisoner does not have an Eighth Amendment right to be housed in a single cell. 21 See *Rhodes v. Chapman*, 452 U.S. 337, 347–48 (1981) (finding double-celling does not 22 violate Eighth Amendment unless it amounts to unnecessary and wanton pain). Instead, to 23 properly plead a claim of "cruel and unusual" punishment, Plaintiff must allege facts to 24 demonstrate he was confined under conditions posing a risk of "objectively, sufficiently 25 serious" harm and that the prison officials he seeks to hold liable had a "sufficiently 26 culpable state of mind." *Wallis v. Baldwin*, 70 F.3d 1074, 1076 (9th Cir.

1995). 27 There is both an objective and subjective component to this inquiry. *Hallett v. 28 Morgan*, 296, F.3d 732, 744 (9th Cir. 2002). First, the Eighth Amendment requires that 1 Plaintiff plead facts sufficient to show he was subjected to an objectively serious 2 deprivation of "the minimal civilized measure of life's necessities." *Farmer*, 511 U.S. at 3 832.

The "routine discomfort inherent in the prison setting" is inadequate to satisfy the 4 objective prong of the inquiry. *Johnson*, 217 F.3d at 731. 5 Second, Plaintiff must allege facts sufficient to plausibly show each official acted 6 with "deliberate indifference" to his health or safety. *Farmer*, 511 U.S. at 834.

To do so, 7 Plaintiff must allege facts demonstrating that the official displayed a subjective 8 indifference "to a substantial risk of serious harm." *Frost v. Agnos*, 152 F.3d 1124, 1128 9 (9th Cir. 1998). "Deliberate indifference" is evidenced only when "the official knows of 10 and disregards an excessive risk to inmate health or safety; the official must both be aware 11 of facts from which the inference could be drawn that a substantial risk of serious harm 12 exists, and he must also draw the inference." *Farmer*, 511 U.S. at 837.

If an official 13 "should have been aware of the risk, but was not, then the [official] has not [violated a 14 party's Constitutional rights], no matter how severe the risk." *Gibson v. Cnty. of Washoe*, 15 290 F.3d 1175, 1187 (9th Cir. 2002); *Farmer*, 511 U.S. at 838 ("[A]n official's failure to 16 alleviate a significant risk that he should have perceived but did not, while no cause for 17 commendation, cannot under [the Eighth Amendment] be condemned as the infliction of 18 punishment.").

19 Here, while Plaintiff includes the legally significant term, "deliberate indifference," 20 in his Complaint (see Doc. 1 at 6), to state a claim, he must provide more than "labels and 21

conclusions” or offer a mere “formulaic recitation of the elements” of an Eighth Amendment claim. See *Twombly*, 550 U.S. at 555; *Iqbal*, 556 U.S. at 679. (“[L]egal conclusions can provide the framework of a complaint, [but] they must be supported by factual allegations.”).

Beyond stating that Defendants “refuse to accommodate” his requests for single cell housing, Plaintiff alleges no facts specific to any Defendant. For instance, he fails to provide any factual allegations showing Defendants Macomber, Hill, Santo or Sato “[knew] of and disregard[ed] an excessive risk” to either his mental health or his physical safety with respect to his alleged need for single-cell placement.

See *Farmer*, 511 U.S. at 837. Indeed, to the extent Plaintiff alleges he has experienced harassment and threats to his safety due to his housing placement, he concedes he failed to report any of these incidents to any Defendant or other official. (See Doc. 1 at 3, 6.)

As such, he has failed to plausibly allege Defendants acted with deliberate indifference. See *Iqbal*, 556 U.S. at 678. The Court therefore DISMISSES Plaintiff’s Eighth Amendment claim pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b)(1); see also, e.g., *Dillingham v. Garcia*, Case 8 No. 1:19-cv-00461-AWI-GSA-PC, 2021 WL 971331, at *8 (E.D. Cal. Mar.

15, 2021) 9 (dismissing prisoner’s Eighth Amendment claims related to double-celling pursuant to 28 U.S.C. § 1915A because he failed to allege facts “showing that either of the defendants knew and understood that Plaintiff had a serious medical or mental health care need which [posed] an excessive risk to [his] health,” if he were not single-celled and “ignored it or acted unreasonably under the circumstances.”).

14 D. Leave to Amend 15 In light of Plaintiff’s pro se status, the Court GRANTS him leave to amend his 16 Complaint, as outlined at the conclusion of this Order. See *Rosati v. Igbinoso*, 791 F.3d 17 1037, 1039 (9th Cir. 2015) (“A district court should not dismiss a pro se complaint without 18 leave to amend [pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii)] unless ‘it is absolutely clear that 19 the deficiencies of the complaint could not be cured by amendment.’”) (quoting *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir.

2012)). 21 III. MOTION FOR PRELIMINARY INJUNCTION 22 Plaintiff also seeks a preliminary injunction requiring Defendants reclassify him so 23 that he may be “housed in a Level Two facility” and provided with a single cell while he 24 litigates his case. (Doc. 3 at 11.) 25 Federal Rule of Civil Procedure 65 authorizes courts to issue preliminary 26 injunctions.

A “preliminary injunction is ‘an extraordinary remedy never awarded as of right.’” *Benisek v. Lamone*, 585 U.S. 155, 158 (2018) (per curiam) (quoting *Winter v. Nat’l Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008)). “A plaintiff seeking a preliminary 1 injunction must establish that he is likely to succeed on the merits, that he is likely to suffer 2 irreparable harm in the absence of

preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter*, 555 U.S. at 20.

The Ninth Circuit employs a “sliding scale” approach to preliminary injunctions as part of this four- element test. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). Under this “sliding scale,” a preliminary injunction may issue “when a plaintiff demonstrates... that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff’s favor,” as long as the other two *Winter* factors have also been met.

Id. (internal citations omitted). “[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 12 972 (1997). As discussed above, Plaintiff fails to state a plausible claim for relief against any Defendant in his Complaint.

As such, he fails to carry his burden of persuasion and is not entitled to injunctive relief at this time. See *Williams v. Duffy*, Case No. 18-cv-06921-BLF, 2019 WL 95924, at *3 (N.D. Cal. Jan. 3, 2019) (“[H]aving reached th[e] conclusion [that Plaintiff’s complaint failed to state a claim], the Court need not reach the remainder of the *Winter* factors.”); *Asberry v. Beard*, Civil No. 13CV2573 WQH (JLB), 2014 WL 3943459, 19 at *9 (S.D.

Cal. Aug. 12, 2014) (denying prisoner’s preliminary injunction motion because his complaint was subject to dismissal pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A). Accordingly, the Court DENIES Plaintiff’s motion for preliminary injunction without prejudice. IV. CONCLUSION Based on the foregoing considerations, Plaintiff’s IFP Motion (Doc. 2) is GRANTED, the Complaint (Doc.

1) is DISMISSED without prejudice, and his Motion for Preliminary Injunction (Doc. 3) is DENIED without prejudice. The Court further: 1. ORDERS the Secretary of the CDCR, or his designee, to collect from Plaintiff’s trust account the \$4.75 initial filing fee assessed, if those funds are available at the time this Order is executed, and forward whatever balance remains of the full \$350 owed in monthly payments in an amount equal to twenty percent (20%) of the preceding month’s income to the Clerk of the Court each time the amount in the account exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2).

All payments must clearly identify the name and case number assigned to this action. 2. DIRECTS the Clerk of the Court to serve a copy of this Order on Jeff Macomber, Secretary, CDCR, P.O. Box 942883, Sacramento, California, 94283-0001, by U.S. Mail, or by forwarding an electronic copy to trusthelpdesk@cdcr.ca.gov. 3. GRANTS Plaintiff leave to file a First Amended Complaint which cures the deficiencies of pleading noted in this Order on or before May 28, 2025.

Plaintiff's 11 } Amended Complaint must be complete by itself without reference to his original 12
|| Complaint. See S.S.D. Cal. Civ. R. 15.1; *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 13 896
F.2d 1542, 1546 (9th Cir. 1989) (“[A]n amended pleading supersedes the 14 original.”); *Lacey v.*
Maricopa Cnty., 693 F.3d 896, 928 (9th Cir. 2012) (noting that claims 15 || dismissed with leave to
amend which are not re-alleged in an amended pleading may be 16 || “considered waived if not
repled.”).

17 If Plaintiff fails to file a First Amended Complaint on or before May 28, 2025, the 18 Court
will enter a final order dismissing this civil action based both on failure to state a 19 || claim upon
which relief can be granted pursuant to 28 U.S.C. § 1915(e)(2)(B)(Gi) and 20 || § 1915A(b)(1), and
failure to prosecute in compliance with a court order requiring 21 || amendment.

See *Lira v. Herrera*, 427 F.3d 1164, 1169 (9th Cir. 2005) (“If a plaintiff does 22 || not take
advantage of the opportunity to fix his complaint, a district court may convert the 23 || dismissal
of the complaint into dismissal of the entire action.”). 24 IT IS SO ORDERED. 25 || DATE: May
8, 2025 26 Get Barmnude, Notes! D 17 HON. RUTH BERMUDEZ'MONTENEGRO UNITED
STATES DISTRICT JUDGE 28 11 AAE..

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