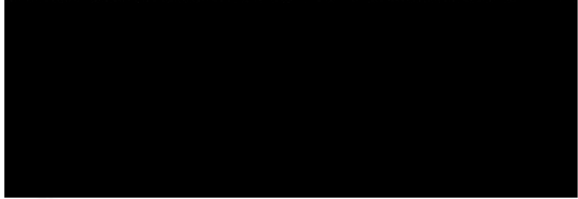


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6 UNITED STATES DISTRICT COURT
7 CENTRAL DISTRICT OF CALIFORNIA
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10 JERRY BAXTER,

11 Plaintiff,

12 v.

13 SAN BERNARDINO COUNTY;
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17 Defendants.
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Case No. 5:25-cv-02620-DOC-MAR

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE
JUDGE

19 This Report and Recommendation is submitted to the Honorable David O.
20 Carter, United States District Judge, pursuant to 28 U.S.C. § 636 and General Order
21 05-07 of the United States District Court for the Central District of California.

22 I.

23 **SUMMARY OF RECOMMENDATION**

24 Plaintiff Jerry Baxter (“Plaintiff”), proceeding pro se, filed the instant
25 Complaint on October 3, 2025. ECF Docket No. (“Dkt.”) 1 (“Compl.”).
26 Defendants, San Bernadino County (“the County”) and three individuals employed by
27 the County (collectively, “Defendants”), have filed a motion to dismiss. Dkt. 15.
28

For the reasons below, the Court recommends **GRANTING** the motions and **DISMISSING** the Complaint, without leave to amend.

II.

BACKGROUND

A. FACTUAL BACKGROUD

Plaintiff's Complaint alleges violations of the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc ("RLUIPA"), the First Amendment, the Equal Protection Clause of the Fourteenth Amendment, Due Process rights under the Fourteenth Amendment, violations of state law, and a claim for declaratory relief.

Plaintiff alleges that Defendants have violated his rights by refusing to grant him a permit to bury the remains of his father on his personal property.

Plaintiff brings the following claims, against the following Defendants:

- (1) "Violation of RLUIPA" against all Defendants ("Claim One");
- (2) "Violation of First Amendment – Free Exercise Clause" against all Defendants ("Claim Two");
- (3) "Violation of Fourteenth Amendment – Equal Protection 42 U.S.C. [Section] 1983" against the County ("Claim Three");
- (4) "Violation of Fourteenth Amendment – Procedural Due Process 42 U.S.C. [Section] 1983" against all Defendants ("Claim Four");
- (5) "Violation of California Constitution Article I, Section 1 – Right to Privacy" against all Defendants ("Claim Five");
- (6) "Violation of California Government Code [Section] 11135 – Religious Discrimination" against the County ("Claim Six"); and
- (7) "Declaratory Judgment 28 U.S.C. [Sections] 2201-2202" against all Defendants ("Claim Seven").

Compl. at 19–32. Plaintiff seeks damages.

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B. PROCEDURAL HISTORY

On October 3, 2025 Plaintiff, proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 (“section 1983”) and California state laws against the following Defendants: San Bernadino County (“the County”); [REDACTED] individual and official capacity; [REDACTED] individual and official capacity; and [REDACTED] in [REDACTED] individual and official capacity. Dkt. 1 at 4.

On October 29, 2025, Defendants filed a motion to dismiss the Complaint. Dkt. 15 (“Mot.”). On November 14, 2025, Plaintiff filed an opposition. Dkt. 21 (“Opp”). Defendants filed a reply on November 21, 2026. Dkt. 22 (“Reply”). On December 12, 2026, the District Judge referred Defendants’ motion to dismiss to the undersigned Magistrate Judge. Dkt. 24. Accordingly, the motion is fully briefed and submitted for decision.

III.

STANDARD OF REVIEW

Under Rule 12(b)(6), a party may move to dismiss a pleading for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). A claim should be dismissed under Rule 12(b)(6) if the plaintiff fails to proffer “enough facts to state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

Dismissal for failure to state a claim can be warranted based on either a lack of a cognizable legal theory or the absence of factual support for a cognizable legal theory. See, e.g., Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir. 2008). A complaint may also be dismissed for failure to state a claim if it

discloses some fact or complete defense that will necessarily defeat the claim. Franklin v. Murphy, 745 F.2d 1221, 1228–29 (9th Cir. 1984), abrogated on other grounds by Neitzke v. Williams, 490 U.S. 319 (1989). Although the plaintiff must provide “more than labels and conclusions,” Twombly, 550 U.S. at 555, “[s]pecific facts are not necessary; the [complaint] need only give the defendant[s] fair notice of what the . . . claim is and the grounds upon which it rests.” Erickson v. Pardus, 551 U.S. 89, 93 (2007) (per curiam) (citations and quotation marks omitted).

In considering whether a complaint states a claim, a court must accept as true all of the material factual allegations in it. Hamilton v. Brown, 630 F.3d 889, 892–93 (9th Cir. 2011). However, a court need not accept as true “allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” In re Gilead Scis. Sec. Litig., 536 F.3d 1049, 1055 (9th Cir. 2008). The court must also construe the pleading in the light most favorable to the pleading party and resolve all doubts in the pleader’s favor. See, e.g., Berg v. Popham, 412 F.3d 1122, 1125 (9th Cir. 2005). Pro se pleadings are “to be liberally construed” and are held to a less stringent standard than those drafted by a lawyer. Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) (“Iqbal incorporated the Twombly pleading standard and Twombly did not alter courts’ treatment of pro se filings; accordingly, we continue to construe pro se filings liberally when evaluating them under Iqbal.”).

If a court finds the complaint should be dismissed for failure to state a claim, a court has discretion to dismiss with or without leave to amend. Lopez v. Smith, 203 F.3d 1122, 1126–30 (9th Cir. 2000) (en banc). Leave to amend should be granted if it appears possible the defects in the complaint could be corrected, especially if the plaintiff is pro se. Id. at 1130–31; see also Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995). However, if, after careful consideration, it is clear a complaint cannot be cured by amendment, a court may dismiss without leave to amend. Cato, 70 F.3d at 1105, 1107–11.

IV.

DISCUSSION

A. THE COMPLAINT FAILS TO STATE COGNIZABLE FEDERAL CLAIMS

1. RLUIPA – Applicable Law

The Religious Land Use and Institutionalized Persons Act (RLUIPA), Section 2000cc(a)(1), provides:

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the person, assembly, or institution –

(A) is in furtherance of a compelling interest; and

(B) is the least restrictive means of furthering that compelling government interest.

Int'l Church of Foursquare Gospel v. City of San Leandro, 673 F.3d 1059, 1067 (9th Cir. 2011). Plaintiff “bears the burden to prove that the City’s land use regulation or denial of conditional use permit imposes a substantial burden on its religious exercise.” Id. “[A] substantial burden, ‘must place more than inconvenience on religious exercise.’” Id. (citing Guru Nanak Sikh Society of Yuba City v. County of Sutter, 456 F.3d 978, 988 (9th Cir. 2006)).

42 U.S.C. Section 2000cc(a)(2)(c) limits the application of RLUIPA to matters involving “a land use regulation or system of land use regulations . . . that permit the government to make, individualized assessments of the proposed uses for the property involved.” See Guru Nanak Sikh Society of Yuba City, 456 F.3d at 986 (“[b]efore we apply the terms of RLUIPA, of course, we first must determine if RLUIPA even applies, by examining whether the actions of the County are ‘individualized assessments of the proposed uses for the property involved.’”).

1 **2. Analysis**

2 Defendants argue that Plaintiff has not established that RLUIPA applies
3 because he has not plead facts demonstrating that “there was any land use regulation
4 that involved an individualized assessment of a proposed use...” Mot. at 12. Instead,
5 Defendants argue Plaintiff’s application for a permit to bury his father on his personal
6 property was denied because it would violate California Health and Safety Code
7 Section 7054 (“Section 7054”), a “safety regulation” which carries the imposition of a
8 misdemeanor and with which the County must comply.¹ Id. at 12–13. Further,
9 Defendant argues that even if RLUIPA applies, Section 7054 does not impose a
10 “substantial burden” on Plaintiff’s religious exercise. Id. at 13–14.

11 Plaintiff argues that California Health and Safety Code Section 103055(a)
12 (“Section 103055”) creates a discretionary process under which the County makes an
13 “individualized assessment” regarding whether to issue a burial permit.² Opp. at 2–3.

15 ¹ Section 7054(a) states:

16 (1) Except as authorized pursuant to the sections referred to in subdivision (b), a person who
17 deposits or disposes of human remains in any place, except in a cemetery, is guilty of a
18 misdemeanor.

19 (2) Every licensee or registrant pursuant to Chapter 12 (commencing with Section 7600) of Division
20 3 of the Business and Professions Code and the agents and employees of the licensee or registrant,
21 or an unlicensed person acting in a capacity in which a license from the Cemetery and Funeral
22 Bureau is required, who, except as authorized pursuant to the sections referred to in subdivision (b),
23 deposits or disposes of human remains in any place, except in a cemetery, is guilty of a misdemeanor
24 that shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not
25 exceeding ten thousand dollars (\$10,000), or both that imprisonment and fine.

26 Cal. Health & Safety Code § 7054(a)(1)-(2).

27 ² Section 103055(a) states:

28 If the certificate of death is properly executed and complete, the local registrar of births and deaths
shall issue a permit for disposition that, in all cases, shall specify any one of the following:

(1) The name of the cemetery where the remains shall be interred.

(2) Burial at sea as provided in Section 7117.

(3) The address or description of the place where remains shall be buried or scattered.

(4) The address of the location where the cremated remains or hydrolyzed human remains will be
kept, as provided in Section 7054.6, under the conditions the state registrar may approve, including,
but not limited to, conditions in keeping with public sensibilities, applicable laws, and reasonable

Specifically, Plaintiff argues that Section 103055(a)(3) would be rendered “meaningless surplusage” by Defendant’s interpretation of the statute because there would be no need to address the “address or description of the place where remains shall be buried” if the only legal place to bury remains is a cemetery, covered by Section 103055(a)(1). Opp. at 4. In response to Defendant’s explanation that the language in Section 103055(a)(3) is not “meaningless surplusage” because it covers situations where a cemetery may be too old to have a name, Mot. at 23, Plaintiff argues that in such a situation the registrar must determine whether a burial site is a cemetery or a non-cemetery, which requires “discretionary judgment,” Opp. at 5.

Plaintiff’s arguments are non-availing. Plaintiff has not established that the County performed an “individualized assessment” as required for an RLUIPA claim. Instead, Plaintiff’s permit was denied pursuant to non-discretionary health and safety statutes. Temple of 1001 Buddhas v. City of Fremont, 588 F.Supp.3d 1010, 1027 (N.D. Cal. 2022) (“Safety laws such as building or construction code provisions do not qualify as ‘land use regulations’ under RLUIPA, at least where they do not explicitly reference zoning laws.”). Section 7054 prohibits the burial of human remains anywhere except a cemetery, with certain exceptions that do not apply to Plaintiff. Cal. Health & Safety Code § 7054(a)(1). California Health and Safety Code Section 8115 states that the “governing body of any city or county” may not adopt local standards that conflict with Division 7 of the of the Health and Safety Code (commencing with Section 7000). Cal. Health & Safety Code § 8115. Therefore, Section 103055(a) does not create a discretionary procedure through which the registrar “may approve” of burial sites that are not cemeteries, nor does it preempt or

assurances that the disposition will be carried out in accordance with the prescribed conditions and will not constitute a private or public nuisance.

Cal. Health & Safety Code § 103055(a).

1 revoke California's generally applicable health and safety laws regarding burial.³
2 Because Plaintiff cannot establish that either Section 103055 or Section 7054 are land
3 use regulations that permit the government to make individualized assessments of the
4 proposed uses for the property involved, he fails to state an RLUIPA claim. See
5 Guru Nanak Sikh Society of Yuba City, 456 F.3d at 986.

6 **3. First Amendment – Applicable law**

7 The First Amendment's Free Exercise Clause, which applies to the states via
8 the Fourteenth Amendment, Cantwell v. Connecticut, 310 U.S. 296, 303, 60 S.Ct. 900,
9 84 L.Ed. 1213 (1940), provides that "Congress shall make no law ... prohibiting the
10 free exercise [of religion]." Stormans, Inc. v. Wiesman, 794 F.3d 1064, 1075 (9th Cir.
11 2015) (citing U.S. Const. amend. I).⁴ The right to exercise one's religion freely,
12 however, "does not relieve an individual of the obligation to comply with a valid and
13 neutral law of general applicability on the ground that the law proscribes (or
14 prescribes) conduct that his religion prescribes (or proscribes)." Id. (citing Emp't
15 Div. v. Smith, 494 U.S. 872, 879 (1990) (internal quotation marks omitted)).
16 A neutral law of general application need not be supported by a compelling
17 government interest even when "the law has the incidental effect of burdening a
18 particular religious practice." Id. at 1075 (citing Smith, 494 U.S. 872; Church of
19 Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 531 (1993)). Such laws
20 need only survive rational basis review. Id. at 1076 (citing Miller v. Reed, 176 F.3d
21 1202, 1206 (9th Cir.1999)). For laws that are not neutral or not generally applicable,

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24 ³ "When interpreting state law, federal courts are bound by decisions of the state's highest court. 'In
25 the absence of such a decision, a federal court must predict how the highest state court would decide
26 the issue using intermediate appellate court decisions, decisions from other jurisdictions, statutes,
27 treatises, and restatements as guidance.'" Strother v. Southern California Permanente Medical
28 Group, 79 F.3d 859 (9th Cir. 1996) (citing Arizona Elec. Power Coop., Inc. v. Berkeley, 59 F.3d 988,
991 (9th Cir. 1995)). Plaintiff has identified no legal authority from any jurisdiction, treatise, or
restatement which supports his interpretation of Health and Safety Code §§ 7054 and 103055.

⁴ RLUIPA was enacted to ensure "greater protection for religious exercise than protected under the
First Amendment." Ramirez v. Collier, 595 U.S. 411, 424 (2022).

1 strict scrutiny applies. See Lukumi, 508 U.S. at 531–32, 113 S.Ct. 2217 (“A law failing
2 to satisfy these requirements must be justified by a compelling governmental interest
3 and must be narrowly tailored to advance that interest.”).

4 The tests for “[n]eutrality and general applicability are interrelated, and ... failure
5 to satisfy one requirement is a likely indication that the other has not been satisfied.”
6 Id. (citing Lukumi, 508 U.S. at 531). Nevertheless, we must consider each criterion
7 separately so as to evaluate the text of the challenged law as well as the “effect ... in its
8 real operation.” Id. (citing Lukumi, 508 U.S. at 535). “[I]f the object of a law is to
9 infringe upon or restrict practices because of their religious motivation, the law is not
10 neutral....” Id. (citing Lukumi, 508 U.S. at 533). “A law lacks facial neutrality if it
11 refers to a religious practice without a secular meaning discernable from the language
12 or context.” Id. A law is not generally applicable if it, “in a selective manner [,]
13 impose[s] burdens only on conduct motivated by religious belief.” Id. at 1079 (citing
14 Lukumi, 508 U.S. at 543).

15 **4. Analysis**

16 As an initial matter, the Court notes that a municipality may be held liable
17 under section 1983 only for constitutional violations occurring pursuant to an official
18 government policy or custom. Collins v. City of Harker Heights, Tex., 503 U.S. 115,
19 121 (1992); Monell v. Dep’t of Soc. Servs., 436 U.S. 658, 694 (1978). Here, Plaintiff
20 has not pleaded an official policy or custom regarding claims two (Free Exercise),
21 three (Equal Protection), or four (Procedural Due Process), as required for municipal
22 liability. Nevertheless, even assuming Plaintiff could plead a Monell violation, he still
23 fails to state a constitutional violation.

24 Plaintiff argues the complaint alleges actions that are not neutral and generally
25 applicable. Opp. at 20. He argues that the “discretionary permitting system,
26 differential treatment of religious burial versus secular disposition methods, and
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1 willingness to permit animal burial on private property with minimal regulation...”
2 show that the law is not neutral or generally applicable. Id. (citing Compl. ¶¶ 74-86).

3 Plaintiff has not established that Section 7054 lacks facial neutrality. On its
4 face, the law proscribes all burials on private property, regardless of religious or
5 secular motivation. The Free Exercise Clause is not violated even if a particular
6 group, motivated by religion, may be more likely to engage in the proscribed conduct.
7 Stormans, Inc., 794 F.3d at 1077. Although a law may have the effect of
8 disproportionately punishing religiously motivated violators, it makes no difference
9 whether a violator acts because of religious convictions or for other reasons, for “[t]he
10 same conduct is outlawed for all.” Id. (citing American Life League, Inc. v. Reno, 47
11 F.3d 642, 646, 656 (4th Cir. 1995)).

12 Additionally, the law is generally applicable. It imposes a burden on any
13 person who wishes to bury human remains on private property, regardless of whether
14 the conduct is motivated by religious or secular beliefs. Lukumi, 508 U.S. at 543.
15 Therefore, the regulation need only survive rational basis review.

16 Under rational basis review, we must uphold the rules if they are rationally
17 related to a legitimate governmental purpose. Stormans, Inc., 794 F.3d at 1084 (citing
18 Gadda v. State Bar of Cal., 511 F.3d 933, 938 (9th Cir.2007)). Plaintiffs “have the
19 burden to negat[e] every conceivable basis which might support [the rules],” FCC v.
20 Beach Commc’ns, Inc., 508 U.S. 307, 315 (1993) (internal quotation marks omitted), a
21 burden that they have failed to meet. Here, the law is rationally related to California’s
22 legitimate interest in protecting public health and safety. See, e.g., Christensen v.
23 Superior Court (Pasadena Crematorium of Altadena), 54 Cal.3d 868, 893 (1991).
24 Thus, Plaintiff has failed to identify a First Amendment claim.

25 **5. Fourteenth Amendment – Equal Protection**

26 “The Equal Protection Clause requires the State to treat all similarly situated
27 people equally.” Shakur v. Schriro, 514 F.3d 878, 891 (9th Cir. 2008) (citation
28

omitted). “To state a claim under 42 U.S.C. [Section] 1983 for a violation of the Equal Protection Claims of the Fourteenth Amendment a plaintiff must show that the defendants acted with an intent or purpose to discriminate against plaintiff based upon membership in a protected class.” Furnace v. Sullivan, 705 F.3d 1021, 1030 (9th Cir. 2013) (citing Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998)).

6. Analysis

Plaintiff argues that the Complaint alleges the County treats religious burial less favorably than secular disposition methods. He argues that the County permits secular cemetery burial, cremation, and animal burial on private property under County Code 32.0105 with only “safe and sanitary requirements...” Compl. ¶¶ 87–94. He argues that this establishes differential treatment between religious burial and secular disposition methods. Opp. at 21.

Defendant argues that “Plaintiff has pleaded no facts demonstrating that Plaintiff was treated any differently than anyone else on the basis of religion, much less that the County ‘acted with an intent or purpose’ to discriminate against him.” Mot. at 16. The Court agrees. Plaintiff has not alleged any facts to establish that the County acted with an “intent or purpose” to discriminate against him. Furnace, 705 F.3d at 1030. Therefore, Plaintiff has failed to state an Equal Protection claim.

7. Fourteenth Amendment – Procedural Due Process

A “Fourteenth Amendment ‘procedural due process claim has two elements: deprivation of a constitutionally protected liberty or property interest and denial of adequate procedural protection.” Shelley v. County of San Juaquin, 996 F.Supp.2d 921, 926 (E.D. CA. 2014) (citing Krainski v. Nev. ex rel. Bd. of Regents of Nev. Sys. of Higher Educ., 616 F.3d 963, 970 (9th Cir. 2010)). Where a constitutionally protected liberty or property interest is implicated, due process generally requires consideration of three distinct factors:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the

1 procedures used, and the probable value, if any, of additional or substitute
2 procedural safeguards; and finally, the Government's interest, including
3 the function involved and the fiscal and administrative burdens that the
additional or substitute procedural requirement would entail.

4 Matthews v. Eldridge, 424 U.S. 319, 334 – 335 (1976), referencing Goldberg v.
5 Kelly, 397 U.S. 254, 263-271 (1970).

6 However, California courts have found that “Plaintiffs do not have a property
7 interest in remains of their relative cognizable as a procedural due process claim under
8 the Fourteenth Amendment.” Shelley, 996 F.Supp.2d at 931. California courts
9 recognize “a quasi-property right to [] possession [of relative's remains] ... for the
10 limited purpose of determining who shall have its custody for burial.” Id. at 927
11 (citing Sinai Temple v. Kaplan, 54 Cal.App.3d 1103, 1110 (1976)). “California law
12 creates a right to possession of a body for burial, but it does not create a right to
13 burial on whatever terms the family desires.” Chaudhry v. City of Los Angeles, 573 F.
14 App'x 628, 632 (9th Cir. 2014).

15 **8. Analysis**

16 Plaintiff argues that the Complaint alleges a protected interests in disposition of
17 father's remains under California Health and Safety Code Section 7100 (“Section
18 7100”), which grants next of kin the “right to control the disposition of the remains
19 of a deceased person, the location and conditions of interment, and arrangements for
20 funeral goods and services” Cal. Health & Safety Code § 7100(a). Compl. ¶¶ 95–
21 102.

22 In response, Defendants cite Shelley v. Cnty. of San Joaquin, 996 F. Supp. 2d
23 921, 926 (E.D. Cal. 2014), which held, “Plaintiffs do not have a property interest in
24 the remains of their relative cognizable as a procedural due process claim under the
25 Fourteenth Amendment.” In Shelley, the Plaintiffs challenged the exhumation of a
26 relative's body. Although Shelley identifies that Section 7100 grants next of kin the
27 “right to control the disposition of the remains of a deceased person,” the court notes
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1 that “this limited right does not include many of the rights incident to property, such
2 as the right to exclude, use, or transfer the body; instead California law only allows a
3 relative to seek damages in certain circumstances.” 996 F. Supp. 2d at 930. As the
4 Ninth Circuit stated in Chaudry, “California law creates a right to possession of a
5 body for burial, but it does not create a right to burial on whatever terms the family
6 desires.” 573 F. App’x at 632. Therefore, the Court concludes that Plaintiff has not
7 alleged facts sufficient to establish that he has a property interest in the human
8 remains sufficient to support a due process claim.

9 **B. THE COURT DECLINES TO EXERCISE JURISDICTION OVER**
10 **THE REMAINING STATE LAW CLAIMS**

11 28 U.S.C. § 1367(c)(3) provides that a district court may decline to exercise
12 supplemental jurisdiction over a claim if it has dismissed all claims over which it has
13 original jurisdiction. 28 U.S.C. § 1367(c)(3); see also Satey v. JP Morgan Chase and
14 Co., 521 F.3d 1087, 1090-91 (9th Cir. 2008) (“the decision whether to continue to
15 exercise jurisdiction over supplemental state law claims after all federal claims have
16 been dismissed lies within the district court’s discretion.”)(citing Foster v. Wilson, 504
17 F.3d 1046, 1051 (9th Cir. 2007)). “[I]n the usual case in which all federal law claims
18 are eliminated before trial, the balance of factors ... will point toward declining to
19 exercise jurisdiction over the remaining state law claims.” Acri v. Varian Assoc., Inc.,
20 114 F.3d 999, 1001 (9th Cir. 1997) (en banc) (quoting Carnegie-Mellon Univ. v.
21 Cohill, 484 U.S. 343, 350 n.7 (1988)).

22 The Court has dismissed all federal claims and declines to exercise jurisdiction
23 over the remaining state law claims. 28 U.S.C. § 1367(c)(3).

24 **C. PLAINTIFF SHOULD NOT BE GRANTED LEAVE TO AMEND**

25 If a court finds the complaint should be dismissed for failure to state a claim, a
26 court has discretion to dismiss with or without leave to amend. Lopez v. Smith, 203
27 F.3d 1122, 1126–30 (9th Cir. 2000) (en banc). Leave to amend should be granted if it
28

1 appears possible the defects in the complaint could be corrected, especially if the
2 plaintiff is pro se. Id. at 1130–31; see also Cato v. United States, 70 F.3d 1103, 1106
3 (9th Cir. 1995). However, if, after careful consideration, it is clear a complaint cannot
4 be cured by amendment, a court may dismiss without leave to amend. Cato, 70 F.3d
5 at 1105, 1107–11.

6 Here, the Court has found that all of Plaintiff's federal claims are subject to
7 dismissal. Furthermore, the Court is not convinced that Plaintiff's allegations could
8 be cured to state a valid federal claim to give jurisdiction to this Court. Accordingly,
9 the undersigned recommends dismissing the Complaint without leave to amend.

10 V.

11 **RECOMMENDATION**

12 **IT IS THEREFORE RECOMMENDED** that the District Court issue an
13 order:

- 14 (1) accepting this Report and Recommendation;
15 (2) **GRANTING** Defendants' motion; and
16 (3) **DISMISSING** the Complaint with prejudice and without leave to amend.

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18 Dated: May 5, 2026



19 HONORABLE MARGO A. ROCCONI
20 United States Magistrate Judge
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