



1 purposes only, others are either factually deficient or not appropriate as against a named  
2 Defendant. Leave to amend these claims is therefore granted, and service will not be directed  
3 until after the opportunity to so amend the FAC has passed.

#### 4 **I. PROCEDURAL MATTERS**

5 The Court begins by addressing two procedural matters. First, the undersigned previously  
6 filed Findings and Recommendations recommending that this action be dismissed without  
7 prejudice. ECF No. 9. That recommendation followed Plaintiff's failure to timely file an  
8 amended complaint as directed by the Court on February 6, 2025 and failure to respond to an  
9 order to show cause issued on June 11, 2025 as to why this case should not be dismissed for  
10 failure to file an amended complaint. ECF Nos. 7 & 8. Now that Plaintiff has filed the FAC, the  
11 order to show cause will be discharged and the Findings and Recommendations withdrawn.

12 Second, Plaintiff's FAC was filed as a motion for leave to amend the complaint. ECF No.  
13 10. While Plaintiff's FAC was not timely, in light of Plaintiff's pro se status, that motion for  
14 leave to amend is granted and the FAC is deemed properly filed.

#### 15 **II. SCREENING**

##### 16 **A. Legal Standards**

17 The federal IFP statute requires federal courts to dismiss a case if the action is legally  
18 "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks  
19 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). In  
20 reviewing the complaint, the Court is guided by the requirements of the Federal Rules of Civil  
21 Procedure.

22 Under the Federal Rules of Civil Procedure, the complaint must contain (1) a "short and  
23 plain statement" of the basis for federal jurisdiction (that is, the reason the case is filed in this  
24 court, rather than in a state court), (2) a short and plain statement showing that plaintiff is entitled  
25 to relief (that is, who harmed the plaintiff, and in what way), and (3) a demand for the relief  
26 sought. Fed. R. Civ. P. 8(a). Plaintiff's claims must be set forth simply, concisely and directly.  
27 Fed. R. Civ. P. 8(d)(1).

28 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.

1 *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). In reviewing a complaint under this standard, the  
2 court will (1) accept as true all factual allegations contained in the complaint, unless they are  
3 clearly baseless or fanciful, (2) construe those allegations in the light most favorable to the  
4 plaintiff, and (3) resolve all doubts in the plaintiff’s favor. *See Neitzke*, 490 U.S. at 327; *Von*  
5 *Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010), *cert.*  
6 *denied*, 564 U.S. 1037 (2011).

7 The court applies the same rules of construction in determining whether the complaint  
8 states a claim on which relief can be granted. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (court  
9 must accept the allegations as true); *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974) (court must  
10 construe the complaint in the light most favorable to the plaintiff). Pro se pleadings are held to a  
11 less stringent standard than those drafted by lawyers. *Erickson*, 551 U.S. at 94. However, the  
12 court need not accept as true legal conclusions, even if cast as factual allegations. *See Moss v.*  
13 *U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). A formulaic recitation of the elements of  
14 a cause of action does not suffice to state a claim. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,  
15 555-57 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

16 To state a claim on which relief may be granted, the plaintiff must allege enough facts “to  
17 state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A claim has  
18 facial plausibility when the plaintiff pleads factual content that allows the court to draw the  
19 reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at  
20 678. A pro se litigant is entitled to notice of the deficiencies in the complaint and an opportunity  
21 to amend, unless the complaint’s deficiencies could not be cured by amendment. *See Akhtar v.*  
22 *Mesa*, 698 F.3d 1202, 1213 (9th Cir. 2012).

23 B. The FAC

24 The FAC alleges that Plaintiff was a DMV employee for twelve years as of the events  
25 underlying this action. ECF No. 10 at 13. When the COVID-19 pandemic began in 2020,  
26 Plaintiff was eight months pregnant and therefore “high risk.” *Id.* at 14. Rather than offer  
27 telework or “Administrative Time Off” per executive guidance, Plaintiff was sent home on  
28 involuntary leave. *Id.* Plaintiff did eventually receive compensation for an initial period, but was

1 still forced to remain on unpaid leave through pregnancy, postpartum, and nursing. *Id.*

2 By the time Plaintiff was ready to return to work in June 2021, Governor Gavin Newsom  
3 had purportedly issued a workplace mandate requiring all government employees to wear masks  
4 and be vaccinated for COVID-19 as a condition of employment. *Id.* Plaintiff had religious  
5 objections to the vaccine and medical documentation from her physician exempting her from  
6 masking, both of which the California Department of Public Health (“CDPH”) recognized at the  
7 time. *Id.* at 14-15. Plaintiff’s union, SEIU 1000, subsequently negotiated a Side Letter  
8 Agreement (“SLA”) that further required government agencies to accommodate employees who  
9 have such exemptions without retaliating against them. *Id.* at 15-16.

10 Plaintiff’s attempts to negotiate with the DMV through October 2021, including a “fee  
11 schedule” warning the DMV of the liability it would incur by continuing to deprive her of  
12 employment, were allegedly “met with silence or cursory rejection.” *Id.* at 15. As part of these  
13 efforts, Plaintiff requested a reasonable accommodation under the ADA and the California Fair  
14 Employment and Housing Act (“FEHA”). *Id.* This would permit her to telework from home or  
15 work in a sequestered part of her worksite, both of which DMV policy permitted at the time. *Id.*  
16 The DMV categorically denied her request without explanation or any interactive process to find  
17 a suitable accommodation. *Id.* Managers also threatened to fire Plaintiff if she did not abandon  
18 her stance on the exemptions, in blatant violation of the SLA. *Id.* at 16.

19 The DMV then created what Plaintiff alleges was a hostile work environment. *Id.* at 17.  
20 In late 2021, the DMV compelled Plaintiff to wear a large plastic “splash shield” over her face in  
21 lieu of a mask. *Id.* at 16-17. Given that a splash shield stood out more, the FAC alleges that this  
22 was designed to dehumanize Plaintiff and use her as an example to others who attempted to resist  
23 the mask and vaccination mandates. *Id.* at 17. She was also prohibited from interacting with  
24 coworkers because management alleged she “posed a threat” to their safety, despite the fact that  
25 she was healthy and willing to test regularly. *Id.*

26 Although COVID-19 testing was required of all unvaccinated employees, the DMV  
27 insisted that Plaintiff use third-party contractors like Color Genomics, Inc., with invasive consent  
28 requirements regarding the ability to share her DNA data. *Id.* From November 2021 onward, the

1 DMV began pressuring her daily to sign the consent form, eventually threatening to fire her if she  
2 did not so sign. *Id.* at 17-18. Beyond privacy concerns as to how her data could be used by  
3 “foreign entities,” Plaintiff believed that allowing her genetic information to be harvested and  
4 experimented on would violate religious beliefs. *Id.* The DMV rejected her repeat offer to  
5 instead have her personal physician test her. *Id.* at 18.

6 Between November 2021 and March 2022, Plaintiff contacted multiple agencies and  
7 officials about the purported privacy violations the DMV committed by coercing employees to  
8 agree to third-party testing. *Id.* Those so contacted included the CDPH, SEIU 1000, and  
9 Defendant Gordon as the DMV director. *Id.* During such efforts, while responding to a Public  
10 Records Act request in December 2021, a spokesperson from Governor Newsom’s office asserted  
11 that he never issued a mandate or executive order requiring vaccination or testing. *Id.* at 19.  
12 Later that month, Plaintiff’s eighth request for a transfer to a position that would allow her to  
13 telework as a reasonable accommodation was denied. *Id.*

14 The DMV terminated Plaintiff on March 17, 2022, purportedly for insubordination via  
15 refusal to consent to COVID-19 testing by the state’s chosen contractor. *Id.* at 20. The FAC  
16 frames this as retaliation for refusal to submit to a policy that was never issued via lawful order,  
17 and as discrimination for Plaintiff’s lawfully held beliefs, her medical conditions, and  
18 whistleblowing activities. *Id.* at 20. Only in January 2023, after Plaintiff’s termination, did the  
19 DMV concede that Plaintiff had the right to have her doctor test her for COVID-19 like she  
20 requested, albeit on her own time and expense. *Id.* at 18.

21 In September 2022, the DMV approached Plaintiff with a settlement agreement that  
22 awarded her a sum of money in exchange for waiving her right to sue and resigning. *Id.* at 21.  
23 The FAC alleges that Plaintiff signed the settlement agreement while under duress and in a  
24 vulnerable state of mind. *Id.* She had been without income for two years at this point, throughout  
25 which she was either pregnant or a mother. *Id.* The union lawyer assigned to her case admitted  
26 that he represented the union, not her, and dissuaded her from seeking discovery on the issues  
27 encompassed in the settlement. *Id.* Plaintiff had compiled 1,000 documents relevant to the  
28 matter, which were “lost” or never properly reviewed by the union. *Id.* Plaintiff repudiates the

1 settlement agreement in part by filing this action. *Id.* at 22.

2 Based on these allegations, the FAC alleges violations of the ADA for failure to provide  
3 reasonable accommodations for Plaintiff’s inability to wear a mask, including by letting her  
4 telework as others did during the pandemic. *Id.* The FAC further alleges religious discrimination  
5 under Title VII of the Civil Rights Act, retaliation under Title VII and FEHA, breach of the SLA,  
6 and violation of medical privacy. *Id.* at 23-26. Plaintiff also brings a cause of action against  
7 Defendant Gordon under 42 U.S.C. § 1983 for violations of her First and Fourteenth Amendment  
8 rights. *Id.* at 24-25. Finally, Plaintiff broadly invokes “Natural Law and Fundamental Human  
9 Rights.” *Id.* at 27-28. Plaintiff seeks reinstatement of her employment with backpay and service  
10 credit; declaratory judgment that the mandate was not valid and the settlement agreement void as  
11 signed under duress; rescission of the settlement agreement; injunctive relief prohibiting further  
12 discrimination or retaliation and expunging Plaintiff’s termination; \$1,250,000 in compensatory  
13 and punitive damages; and attorney’s fees and costs. *Id.* at 30-32.

14 C. Analysis

15 1. The DMV Continues to Enjoy Eleventh Amendment Immunity

16 The Eleventh Amendment protects states from being sued without their consent, unless  
17 Congress has validly abrogated this immunity as to the specific causes of action. *Alaska v.*  
18 *EEOC*, 564 F.3d 1062, 1065-66 (9th Cir. 2009). Accordingly, the Court has already dismissed  
19 Plaintiff’s claims against the DMV with prejudice. ECF No. 6 at 6, 8. Yet the FAC still  
20 identifies the DMV as a defendant. ECF No. 10 at 11, 13. When determining whether Plaintiff  
21 has pled sufficient facts to state each claim, the Court must also address against whom she may  
22 pursue such a claim. This includes whether any of Plaintiff’s new claims—i.e., those claim not  
23 raised against the DMV in the initial complaint before being dismissed—can be asserted against  
24 the DMV in the FAC because Congress has abrogated the DMV’s sovereign immunity as to such  
25 claims.

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1           2.     Federal Causes of Action

2                 a.     Title VII

3           The FAC alleges two forms of religious discrimination under Title VII of the Civil Rights  
4 Act.<sup>1</sup> First, it alleges that the DMV failed to accommodate Plaintiff’s religious objection to the  
5 COVID-19 vaccine and genetic testing, instead compelling her to wear a stigmatizing shield on  
6 her face and labeling her a threat. ECF No. 10 at 23. Second, it alleges that when Plaintiff  
7 engaged in protected activities to protest said discrimination, including by reporting it to superiors  
8 and other agencies, she was fired in retaliation. *Id.* at 23-24.

9           Title VII prohibits the discharge of any employee based on race, color, religion, sex, or  
10 national origin. 42 U.S. Code § 2000e-2(a)(1). Congress validly abrogated state immunity as to  
11 discrimination claims under Title VII. *Nevada Dept. of Human Resources v. Hibbs*, 538 U.S.  
12 721, 729-90 (2003); *see also Alaska*, 564 F.3d at 1068-69 (abrogating state immunity as against  
13 discrimination claims under the equivalent Government Employee Rights Act). The DMV is  
14 therefore an appropriate Defendant for this claim if adequately pled.

15           However, Plaintiff does not explain the religious basis for her objection to the vaccine,  
16 beyond saying that “her body is sacred and God-given” and she cannot be compelled to have her  
17 DNA “harvested” and “tested on” because it is “the code of life given by God.” *Id.* at 18, 23.  
18 The Ninth Circuit recently held that “[i]nvocations of broad, religious tenets cannot, on their own,  
19 convert a secular preference into a religious conviction” for purposes of a discrimination claim.  
20 *Detwiler v. Mid-Columbia Medical Center*, -- F.4th --, Case No. 23-3710, 2025 WL 2700000 at  
21 \*6 (9th Cir. Sep. 23, 2025). To allow Plaintiff’s claim simply because she invokes the concepts  
22 of bodily autonomy and God in the same sentence “would destroy the pleading standard for  
23 religious discrimination claims, allowing complainants to invoke magic words and survive a  
24 dismissal without stating a prima facie case.” *Id.*

25           Plaintiff has failed to adequately plead a causal nexus between a sincerely held religious

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26           <sup>1</sup> Analysis of religious discrimination issues under FEHA would be identical to those under Title  
27 VII. *See Allbright v. Southern Calif. Permanent Medical Group Inc.*, --- F.Supp.3d ---, 2025 WL  
28 2205812, at \*10-11 (C.D. Cal. July 30, 2025). The Court thus incorporates Plaintiff’s FEHA  
claims into the Title VII screening in this section.

1 belief and her refusal to vaccinate against COVID-19 or consent to COVID-19 testing. Her claim  
2 for religious discrimination and retaliation under the Title VII therefore fails. Plaintiff may,  
3 however, amend her claim to articulate more concrete details as to which religious principles the  
4 DMV violated. If so, she may also amend her claim to more explicitly direct it against the DMV  
5 as a defendant.

6 b. Americans with Disabilities Act

7 To state a Title I ADA employment discrimination claim, a plaintiff must allege that she is  
8 (1) disabled under the ADA, (2) a “qualified individual with a disability,” and (3) discriminated  
9 against “because of” the disability. *See* 42 U.S.C. § 12112(a) (“No covered entity shall  
10 discriminate against a qualified individual on the basis of disability in regard to job application,  
11 procedures, the hiring, advancement, or discharge of employees, employee compensation, job  
12 training, and other terms, conditions, and privileges of employment.”); *Bates v. United Parcel*  
13 *Serv., Inc.*, 511 F.3d 974, 988 (9th Cir. 2007). The ADA defines disability with respect to an  
14 individual as (1) “a physical or mental impairment that substantially limits one or more major life  
15 activities of such individual”; (2) “a record of such an impairment”; or (3) “being regarded as  
16 having such an impairment.” 42 U.S.C. § 12102(1). Upon establishing a disability, the plaintiff  
17 must then “allege that [s]he was subjected to harassment because of [her] disability, and that the  
18 harassing ‘conduct was sufficiently severe or pervasive to alter the conditions of [her]  
19 employment and create an abusive work environment.’” *Mattoida v. Nelson*, 98 F.4th 1164, 1174  
20 (9th Cir. 2024) (quoting *Mannatt v. Bank of Am., N.A.*, 339 F.3d 792, 798 (9th Cir. 2003)).

21 Unlike Title VII claims, Title I ADA claims against the DMV are barred by the Eleventh  
22 Amendment. *See Bd. of Trustees of Univ. of Ala. v. Garrett*, 531 U.S. 356, 374 (2001); *Thomas v.*  
23 *Nakatani*, 309 F.3d 1203, 1205 (9th Cir. 2002) (Congress did not validly abrogate the state’s  
24 sovereign immunity under Title I of the ADA). Nor can Plaintiff bring Title I ADA claims  
25 against state officials in their official capacities for any remedy other than prospective declaratory  
26 or injunctive relief. *Walsh v. Nevada Dep’t of Human Resources*, 471 F.3d 1033, 1036 (9th Cir.  
27 2006) (emphasis in original) (citing *Garrett*, 531 U.S. at 374 n.9, and *Ex parte Young*, 209 U.S.  
28 123 (1908)); *see also Mohsin v. California Dep’t of Water Res.*, 52 F. Supp. 3d 1006, 1012 (E.D.

1 Cal. 2014). Plaintiff does seek such injunctive relief via reinstatement to her former position in  
2 the DMV, including seniority rights and backpay, and expungement of her termination from the  
3 record. ECF No. 10 at 30-31. Whether Defendant Gordon is the appropriate Defendant for such  
4 relief, when Plaintiff's direct superiors were responsible for not accommodating any disabilities  
5 and eventually terminating her, is unclear.

6 In any case, this Court previously held that Plaintiff did not establish the basis for her  
7 disability. ECF No. 6 at 9. Aside from a vague and unexplained reference to "respiratory/mental  
8 health issues," the FAC cites complications related to her pregnancy as the basis of her disability  
9 and the reason she could not wear a mask per COVID-19 mandates. ECF No. 10 at 14, 22.  
10 Courts in the Ninth Circuit have held that pregnancy does not qualify as a disability under the  
11 ADA unless circumstances arise that are "not a function of normal pregnancy," like pre-term  
12 labor and weeks of bed rest. *Hogan v. Ogden*, Case No. CV-06-5078-EFS, 2008 WL 2954245, at  
13 \*4-5 (E.D. Wash. July 30, 2008). A complaint's pleadings are inadequate if, as here, they fail to  
14 articulate how a plaintiff's "pregnancy or related medical condition rendered or currently renders  
15 her disabled or how her condition limits one or more of her major life activities." *Coates v.*  
16 *Washoe Cnty. Sch. Dist.*, No. 3:20-cv-00182-LRH-CLB, 2020 WL 7186746, at \*5 (E.D. Nev.  
17 Dec. 4, 2020).

18 Plaintiff's broad references to respiratory issues and a complication-free pregnancy are  
19 inadequate to show that she was disabled under the ADA, that such disability prevented her from  
20 wearing a mask, and that the DMV violated the ADA by refusing to let her work from home  
21 instead of masking. Plaintiff has failed to state a claim under the ADA, but may amend her FAC  
22 if she can plead additional facts plausibly showing that abnormal complications of her pregnancy  
23 constituted a disability. If Plaintiff so amends her claim, she shall also name as Defendants any  
24 DMV employees who participated in the denial of any accommodations for such a disability.

25 c. Section 1983

26 A plaintiff may bring an action under 42 U.S.C. § 1983 to redress violations of "rights,  
27 privileges, or immunities secured by the Constitution and [federal] laws" by a person or entity,  
28 including a municipality, acting under the color of state law. 42 U.S.C. § 1983. To state a claim

1 under 42 U.S.C. § 1983, a plaintiff must show that (1) a defendant acting under color of state law  
2 (2) deprived plaintiff of rights secured by the Constitution or federal statutes. *Benavidez v.*  
3 *County of San Diego*, 993 F.3d 1134, 1144 (9th Cir. 2021). To allege a claim based on an equal  
4 protection violation, the plaintiff must allege that while acting under such color of law, the  
5 defendant intentionally discriminated against her as a member of an identifiable class. *Flores v.*  
6 *Morgan Hill Unified School District*, 324 F.3d 1130, 1134 (9th Cir. 2003).

7 Plaintiff argues that Defendant Gordon violated her First and Fourteenth Amendment  
8 rights to free exercise of religion, free speech, and equal protection under the law. ECF No. 10 at  
9 24-25. As to freedom of religion, Plaintiff argues that the DMV failed to use the “least restrictive  
10 means” possible to address the COVID-19 pandemic, instead requiring her to vaccinate or submit  
11 to testing despite her claim to a religious exemption. *Id.* at 24. As to equal protection, she asserts  
12 that she was treated differently despite the DMV promising under the SLA to accommodate both  
13 her religious and medical exemptions. *Id.* at 25.

14 These arguments lack merit. As discussed above, Plaintiff failed to adequately plead that  
15 she has either a medical disability based on her pregnancy or a religious belief exempting her  
16 from vaccination, masking, or testing. *See supra* C.2.a-b. Aside from Plaintiff not pleading  
17 sufficient facts to demonstrate that her belief in bodily autonomy is a bona fide religious one, the  
18 right to refuse vaccination is not a fundamental right. *See Johnson v. Brown*, 567 F.Supp.3d  
19 1230, 1251 (D. Or. 2021). Compulsory vaccination is an established police power of a state, and  
20 public health laws in general “further the concept of ordered liberty” by balancing individual  
21 freedoms against public safety. *Id.* at 1250 (citing *Zucht v. King*, 260 U.S. 174, 176 (1922)).  
22 Such policies are therefore subject to only rational basis review instead of strict scrutiny, and  
23 upheld if “rationally related to a legitimate state interest.” *Johnson*, 567 F.Supp.3d at 1251  
24 (quoting *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985)). Monitoring and  
25 preventing the spread of a disease amidst a pandemic through masking, vaccination, and testing,  
26 particularly among public service employees, is a legitimate interest.

27 The FAC provides more support for the allegation that DMV employees retaliated against  
28 Plaintiff for exercising her First Amendment right to freedom of speech. Plaintiff argues that the

1 DMV penalized her for voicing her objections with its policies to various organizations and  
2 officials, including through her termination. ECF No. 10 at 25. She asserts that her objections  
3 were “protected speech” insofar as they touched on policy matters like public health, data  
4 privacy, and government overreach. *Id.* She further asserts that trying to force her to sign Color  
5 Genomics’ consent form was a type of compelled speech. *Id.*

6 A First Amendment retaliation claim requires that the plaintiff engaged in protected  
7 speech, the defendant took adverse action against her employment, and said speech was a  
8 “‘substantial or motivating’ factor for the adverse employment action.” *Dodge v. Evergreen*  
9 *School District #114*, 56 F.4th 767, 776 (9th Cir. 2022) (quoting *Howard v. City of Coos Bay*, 871  
10 F.3d 1032, 1044 (9th Cir. 2017)). Whether specific speech is protected under the First  
11 Amendment depends on whether it was on a “matter of public concern” and spoken “as a private  
12 citizen or public employee.” *Dodge*, 56 F.4th at 777 (quoting *Johnson v. Poway Unified Sch.*  
13 *Dist.*, 658 F.3d 954, 961 (9th Cir. 2011)).

14 Speech reflects an issue of public concern if it reflects a “matter of political, social, or  
15 other concern to the community” or a “‘subject of legitimate news interest.’” *Dodge*, 56 F.4th at  
16 777 (quoting *Lane v. Franks*, 573 U.S. 228, 241 (2014)). Plaintiff is correct that the measures a  
17 public agency implements to protect its employees during a pandemic, including those that could  
18 infringe any privacy right she has in her genetic information, are a matter of public concern. This  
19 is particularly true if, as Plaintiff alleges, the DMV implemented these measures without a  
20 mandate from the Governor’s office and without respecting the exemptions contemplated in the  
21 SLA. ECF No. 10 at 16, 19.

22 The speech at issue must also be spoken as a private citizen rather than a public employee,  
23 based on whether a plaintiff has an official duty to make the statements at issue. *Dodge*, 56 F.4th  
24 at 778 (internal quotations omitted). A plaintiff who reports policies that she objects to, as here,  
25 is inherently engaging in speech that exceeds the scope of her employment.

26 Plaintiff has therefore alleged sufficient facts to find that the speech she engaged in was  
27 protected under the First Amendment. She further alleges adverse employment action, including  
28 but not limited to her termination, that the DMV may have taken in response to such

1 whistleblowing. ECF No. 10 at 20, 25. Although the DMV could argue that it terminated her  
2 employment because of her refusal to submit to COVID-19 testing, this is a factual dispute not  
3 appropriate for screening.

4 These allegations, however, do not sufficiently state a claim as to Defendant Gordon. His  
5 only connection to this cause of action is that Plaintiff contacted him, among others, about her  
6 privacy-based objections to Color Genomics' test and her supervisors pressuring her to consent to  
7 it. *Id.* at 18. Plaintiff pleads no facts to suggest that Gordon was one of the DMV employees who  
8 partook in the retaliation that followed, including her termination. Why Plaintiff does not bring  
9 this action against her direct supervisors, those who terminated her for insubordination in March  
10 2022, is unclear. See *id.* at 20.

11 Plaintiff has generally pled sufficient facts to support a claim under 42 U.S.C. § 1983,  
12 based solely on alleged retaliation against protected speech under the First Amendment. She  
13 must, however, amend this claim to name as defendants employees within the DMV who partook  
14 in such retaliation. Failure to do so will lead the undersigned to recommend this claim's  
15 dismissal.

16 d. Genetic Privacy

17 The FAC alleges that both federal and state law recognize “a right to keep ... personal  
18 medical and genetic information private,” such that “collection and disclosure of such  
19 information” requires consent. ECF No. 10 at 26. As to federal authority, Plaintiff alleges that  
20 the Genetic Information Nondiscrimination Act (“GINA”) categorically prohibits employers from  
21 requesting employees to provide genetic information. *Id.* The DMV allegedly did this by  
22 requiring employees to consent to Color Genomics' COVID-19 tests. *Id.*

23 GINA prohibits employers from requesting or requiring genetic information from any  
24 employees or their family members, with exceptions inapplicable to the current action. 42 U.S.C.  
25 § 2000ff-1(b). The term “genetic information” includes the genetic tests of the individual and  
26 members of their family, as well as “the manifestation of a disease or disorder in family members  
27 of such individual.” 42 U.S.C. § 2000ff(4)(A). A genetic test, in turn, is a test on “*human* DNA,  
28 RNA, chromosomes, proteins, or metabolites,” and only to the extent that it “detects *genotypes*,

1 *mutations, or chromosomal changes.*” 42 U.S.C. § 2000ff(7)(A)-(B) (emphasis added). Those  
2 who fit under the Civil Rights Act of 1964’s definition of “employee” may use the same remedies  
3 therein, including litigation, for any unlawful employment practice in violation of GINA. *See* 42  
4 U.S.C. § 2000ff-6(a)(1).

5 The Ninth Circuit has not ruled on whether GINA abrogates a state’s sovereign immunity.  
6 Although courts in other circuits have ruled that it does not, some acknowledge that Congress  
7 may have intended to do so by incorporating Title VII’s definition of employees, including  
8 government employees. *See Witherspoon v. New York State Department of Corrections and*  
9 *Community Supervision*, Case No. 1:19-CV-01440, 2022 WL 2209565 at \*5 (N.D.N.Y. June 21,  
10 2022). At minimum, the applicability of sovereign immunity is sufficiently ambiguous to allow  
11 this claim against Defendant DMV for screening purposes.

12 Whether Color Genomics’ test results include “genetic information” under GINA is also  
13 unclear. A test that only detects the RNA of a temporary virus, one that does not permanently  
14 alter human genes, does not alone qualify as a genetic test. The FAC alleges, however, that the  
15 consent form would give Color Genomics the right to collect, store, or sell “DNA and personal  
16 data” for later use. ECF No. 10 at 17. This implies that the information may include Plaintiff’s  
17 DNA, a form of genetic information. Nor is it clear that an employer may avoid liability under  
18 GINA by outsourcing the collection and storage of such information if the employer compels the  
19 employee to agree to the underlying test.

20 Plaintiff has pled sufficient facts to state a claim for breach of genetic information privacy  
21 against Defendant DMV. Should Plaintiff choose to amend the FAC as to her other claims, she  
22 may also add as defendants to this claim any DMV employees who attempted to coerce Plaintiff  
23 into consenting to Color Genomics’ test, including any supervisors who retaliated against her for  
24 refusing to do so.

25 e. Medical Privacy (California Constitutional Right to Privacy)

26 The Court construes this claim as falling under California’s constitutional right to privacy,  
27 which Plaintiff references. ECF No. 10 at 26. However, the DMV and its officers acting in their  
28 official capacities are immune from prospective injunctive relief and damages for state law claims

1 brought in federal court. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106  
2 (1984) (“[I]t is difficult to think of a greater intrusion on state sovereignty than when a federal  
3 court instructs state officials on how to conform their conduct to state law.”); *see also Spoklie v.*  
4 *Montana*, 411 F.3d 1051, 1060 (9th Cir. 2005) (citing *Pennhurst* in dismissing plaintiff’s state  
5 law claims for damages as barred by the Eleventh Amendment). Plaintiff has not identified a  
6 defendant who can properly be sued based on an alleged violation of the right to privacy, but will  
7 be granted leave to amend to attempt to do so.

8 f. Breach of Contract (Side Letter Agreement)

9 Plaintiff alleges that the SLA required the DMV to accommodate employees “with  
10 documented medical or religious exemptions.” ECF No. 10 at 25-26. The Court therefore  
11 understands that a breach of contract claim under the SLA would be require Plaintiff to first show  
12 that she warranted such a medical or religious accommodations. For the reasons provided above  
13 as to her Title VII, Free Exercise, and ADA claims, she has not done so, but will be granted leave  
14 to amend this claim to attempt to do so as well.

15 Plaintiff also has not identified a proper defendant for this claim. The DMV would be  
16 immune to any state law claim for injunctive relief or damages. *See supra* C.e. Plaintiff will be  
17 granted leave to amend to attempt to name a proper defendant for this claim.<sup>2</sup>

18 D. Leave to Amend

19 As discussed above, for screening purposes only, the Court concludes that Plaintiff has  
20 stated a claim under GINA against the DMV. *See supra* C.2.d. Plaintiff has not, however, stated  
21 claims under Title VII or the ADA. *See supra* C.2.a-b. Plaintiff’s First Amendment retaliation  
22 claim is sufficiently cognizable, but only if it identifies individual defendants involved in the  
23 alleged retaliation. *See supra* C.2.c. Plaintiff has also not stated state law claims.

24 Plaintiff is proceeding pro se, and a pro se litigant should be given leave to amend unless  
25 it is absolutely clear that the deficiencies cannot be cured by amendment. *See Akhtar v. Mesa*,

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26 <sup>2</sup> Plaintiff’s claims under “Natural Law and Fundamental Human Rights” do not state a claim  
27 enforceable in federal court. *See Johnson*, 567 F.Supp.3d at 1247-1248 (holding that requiring  
28 COVID-19 vaccination for public employees did not violate enforceable principles of  
international law).

1 698 F.3d 1202, 1212 (9th Cir. 2012). The nature of the failed claims suggest that their  
2 deficiencies may be cured.

3 As discussed above, the Title VII and Free Exercise claims fails because Plaintiff relies  
4 solely on “broad, religious tenets” to argue that requiring her to mask, vaccinate, or consent to  
5 genetic testing discriminates against her faith. *See supra* C.2.a; *Detwiler*, 2025 WL 2700000 at  
6 \*6. In theory, Plaintiff may cure this defect by providing more concrete details as to which  
7 religious principles the DMV violated.

8 Similarly, the ADA claim fails in part because the FAC does not suggest that Plaintiff  
9 suffered any conditions that were “not a function of normal pregnancy.” *See supra* C.2.b; *Hogan*,  
10 2008 WL 2954245, at \*4-5. Plaintiff may have suffered such conditions, particularly as her  
11 physician asked to excuse her from masking requirements, and should receive an opportunity to  
12 plead them. ECF No. 10 at 14. Because the DMV itself is immune from such a claim, however,  
13 Plaintiff must also amend her complaint to name as defendants the employees responsible for  
14 denying accommodations.

15 Plaintiff will also be granted leave to attempt to assert state law claims against proper  
16 defendants.

17 Finally, although Plaintiff has not alleged facts showing that Defendant Gordon retaliated  
18 against Plaintiff for engaging in protected speech, the allegations indicate that her supervisors  
19 within the DMV did. *See supra* C.2.c. Leave to amend this claim to name such supervisors as  
20 Defendants is granted. Similar leave to add Defendants to Plaintiff’s claim under GINA is  
21 granted, notwithstanding the undersigned’s finding that this claim may proceed against Defendant  
22 DMV. *See supra* C.2.d.

23 It is not absolutely clear that the deficiencies in Plaintiff’s ADA, Title VII, Free Exercise,  
24 First Amendment, and state law claims cannot be cured. The undersigned will provide Plaintiff  
25 an opportunity to amend the FAC to attempt to cure these defects. Service to Defendant DMV  
26 will not be addressed until after the deadline for such amendment has passed. If Plaintiff chooses  
27 to amend the FAC, the Court will then screen that amended complaint. If Plaintiff chooses not to  
28 amend the FAC, the Court will then order service against Defendant DMV as to Plaintiff’s GINA

1 claim and recommend that the remaining claims be dismissed for failure to state a claim upon  
2 which relief can be granted.

## 3 II. AMENDING THE COMPLAINT

4 If plaintiff chooses to amend the complaint, the amended complaint shall be clearly  
5 labeled as the Second Amended Complaint. In addition, it must contain a short and plain  
6 statement of Plaintiff's claims. The allegations of the complaint must be set forth in sequentially  
7 numbered paragraphs, with each paragraph number being one greater than the one before, each  
8 paragraph having its own number, and no paragraph number being repeated anywhere in the  
9 complaint. Each paragraph should be limited "to a single set of circumstances" where  
10 possible. Rule 10(b). As noted above, forms are available to help plaintiffs organize their  
11 complaint in the proper way. They are available at the Clerk's Office, 501 I Street, 4th Floor  
12 (Rm. 4-200), Sacramento, CA 95814, or online at [www.uscourts.gov/forms/pro-se-forms](http://www.uscourts.gov/forms/pro-se-forms).

13 The amended complaint must not force the Court or the defendants to guess at what is  
14 being alleged against whom. *See McHenry v. Renne*, 84 F.3d 1172, 1177-80 (9th Cir. 1996)  
15 (affirming dismissal of a complaint where the district court was "literally guessing as to what  
16 facts support the legal claims being asserted against certain defendants"). The amended  
17 complaint should contain specific allegations as to the actions of each named defendant.

18 Also, the amended complaint must not refer to a prior pleading in order to make plaintiff's  
19 amended complaint complete. An amended complaint must be complete in itself without  
20 reference to any prior pleading. Local Rule 220. This is because, as a general rule, an amended  
21 complaint supersedes the original complaint. *See Pacific Bell Tel. Co. v. Linkline*  
22 *Communications, Inc.*, 555 U.S. 438, 456 n.4 (2009) ("[n]ormally, an amended complaint  
23 supersedes the original complaint") (citing 6 C. Wright & A. Miller, *Federal Practice &*  
24 *Procedure* § 1476, pp. 556-57 (2d ed. 1990)). Therefore, in an amended complaint, as in an  
25 original complaint, each claim and the involvement of each defendant must be sufficiently  
26 alleged. This includes any claims in the FAC that the undersigned has found sufficiently  
27 cognizable.

28 ///

1 Plaintiff's amended complaint must address the issues set forth herein as to inadequately  
2 pled claims.

3 **III. CONCLUSION**

4 Accordingly, **IT IS HEREBY ORDERED** that:

- 5 1. The Court's Findings and Recommendations (ECF No. 9) are WITHDRAWN in light of  
6 the filing of the FAC;
- 7 2. Plaintiff's motion for leave to amend the complaint (ECF No. 10) is GRANTED, for  
8 screening purposes only;
- 9 3. Plaintiff may, within **28 days from the date of this order**, file a second amended  
10 complaint that addresses the defects in her claims, as set forth above.
- 11 4. Plaintiff's failure to comply with this order will result in a recommendation that this  
12 action be dismissed except as against Defendant DMV for violations of GINA.

13 SO ORDERED.

14 DATED: October 28, 2025

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16 SEAN C. RIORDAN  
17 UNITED STATES MAGISTRATE JUDGE  
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