

United States District Court  
Northern District of California

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DANIEL DELACRUZ,  
Plaintiff,  
v.  
TANIMURA & ANTLE, INC., et al.,  
Defendants.

Case No. 23-cv-03034-VKD

**ORDER GRANTING DEFENDANT  
QUIARTE'S MOTION TO DISMISS  
FIRST AMENDED COMPLAINT**

Re: Dkt. No. 38

Plaintiff Daniel Delacruz, who is representing himself, filed this action against defendants Tanimura & Antle, Inc. (“TAI”), Mike Antle, and Carmen Ponce (collectively, “TAI defendants”) and Claudia Quirarte, asserting, among other things, unlawful disability discrimination under the Americans with Disabilities Act (“ADA”). Dkt. No. 1. On prior motions filed by Ms. Quirarte and the TAI defendants, the Court dismissed Mr. Delacruz’s complaint, with leave to amend only as to the ADA claim against Ms. Quirarte. *See* Dkt. Nos. 28, 29.

Mr. Delacruz filed a first amended complaint (“FAC”). Dkt. No. 34. Ms. Quirarte now moves pursuant to Rule 12(b)(6)<sup>1</sup> to dismiss the FAC.<sup>2</sup> Mr. Delacruz opposes the motion. The Court deemed the motion suitable for determination without oral argument. *See* Civil L.R. 7-1(b);

<sup>1</sup> Although Ms. Quirarte also refers to Rule 12(b)(1) as a basis for her present motion to dismiss, certain claims asserted against her arise under federal law. Ms. Quirarte’s arguments for dismissal appear to be more properly characterized as ones under Rule 12(b)(6) and will be addressed as such. Additionally, Ms. Quirarte’s present motion was filed four days late, due to what she says was “a calendaring issue.” Dkt. No. 45 at 1. Although Mr. Delacruz correctly notes that the motion is untimely, there is no indication that he has been prejudiced by the delay in Ms. Quirarte’s filing.

<sup>2</sup> The Court will issue a separate order addressing the TAI defendants’ motion to dismiss the FAC.

1 Dkt. No. 47. Upon consideration of the moving and responding papers, the Court grants Ms.  
2 Quirarte’s motion to dismiss the FAC with limited leave to amend.<sup>3</sup>

3 **I. BACKGROUND**

4 According to the FAC, Mr. Delacruz has been diagnosed with Fabry Disease, a rare  
5 hereditary enzyme deficiency disorder, for which he receives enzyme replacement therapy  
6 (“ERT”) “on a regular basis to prevent chronic organ failure and death.” Dkt. No. 34 ¶¶ 13, 15.  
7 Ms. Quirarte is identified as a registered nurse, who works at Central Coast Nephrology, the  
8 medical facility where Mr. Delacruz received ERT. *Id.* ¶¶ 6, 28. Defendant TAI is a produce  
9 company that employed Mr. Delacruz from about April 1988 to July 1996. *See id.* ¶¶ 7, 13 & Ex.  
10 1 at ECF 19. Defendant Mike Antle is identified as an “owner, employee, and a Vice President”  
11 of TAI. *Id.* ¶ 8. Defendant Carmen Ponce is alleged to be TAI’s “Vice President of Human  
12 Resources and Assistant General Counsel[.]” *Id.* ¶ 9.

13 In 1998, Mr. Delacruz sued TAI and Mr. Antle in state court for race discrimination. *Id.*  
14 ¶ 14. The parties resolved the matter and entered into a settlement agreement. *Id.* & Ex. 1.  
15 According to Mr. Delacruz, as part of that settlement, the TAI defendants agreed not to harass  
16 him. *Id.* Mr. Delacruz claims that the TAI defendants have breached that agreement by, among  
17 other things, “disseminat[ing] to various people, including Claudia Quirarte, falsehoods including  
18 that [he] ‘filed a lot of complaints that went nowhere’ and that [he] is ‘not disabled.’” *Id.* ¶ 22; *see*  
19 *also id.* ¶ 27.

20 Mr. Delacruz alleges that his “hereditary disorder was well known to [Mr.] Antle and [Ms.]  
21 Ponce.” *Id.* ¶ 18. For example, he says that on one occasion, apparently at a time when he was  
22 still employed by TAI, Rick Antle (identified as TAI’s president, now deceased) was in a break  
23 room eating one of TAI’s salad products with heavy dressing. *See id.*; *see also* Dkt. No. 1 ¶¶ 21,  
24 22. When Mr. Delacruz commented, “[B]e careful, that stuff can give you a heart attack,” Rick  
25 Antle reportedly replied, “[Y]ou’re the one that needs to worry about that stuff!” Dkt. No. 34  
26 ¶¶ 18, 19. According to Mr. Delacruz, Rick Antle’s response was a gloating reference to his

27 \_\_\_\_\_  
28 <sup>3</sup> All parties have expressly consented that all proceedings in this matter may be heard and finally  
adjudicated by a magistrate judge. 28 U.S.C. § 636(c); Fed. R. Civ. P. 73; Dkt. Nos. 6, 9, 14.

1 enzyme deficiency disorder and an indication that Rick Antle believed that he would outlive Mr.  
2 Delacruz. *Id.*

3 The FAC alleges that years later, in 2018, Rick Antle passed away. *Id.* ¶ 19. In 2019,  
4 during one of Mr. Delacruz’s ERT procedures, Mr. Delacruz “recited Rick Antle’s malevolent  
5 gloat made towards [Mr. Delacruz] and the irony of Rick Antle’s death[.]” *Id.* ¶ 20. Ms. Quirarte  
6 allegedly overheard Mr. Delacruz’s comment and repeated it to defendants Mike Antle and Ms.  
7 Ponce. *Id.* Mr. Delacruz alleges that this “further enraged the visceral contempt that [Mr.] Antle  
8 and [Ms.] Ponce have towards [him]” and caused them “to interfere with [Mr. Delacruz]’s health  
9 services to fulfill the death threats that [he] had been receiving from TAI’s employees[.]” *Id.* ¶ 21.

10 Mr. Delacruz alleges that, in addition to telling Ms. Quirarte falsehoods about him, Mr.  
11 Antle and Ms. Ponce “solicited [Ms.] Quirarte to obtain a sample of [Mr. Delacruz]’s blood for  
12 nefarious purposes,” e.g., “for analysis to dispute [Mr. Delacruz]’s disability based on their  
13 documented history of fraudulently disputing his disability.” *Id.* ¶ 22. Mr. Antle and Ms. Ponce  
14 allegedly “also solicited [Ms.] Quirarte to interfere with [Mr. Delacruz]’s ERT procedures by  
15 deceitfully leaving out the medication from [his] [intravenous] IV bags,” “caus[ing] [Mr.  
16 Delacruz]’s various organ functions to deteriorate over time including his central nervous system  
17 resulting in tremors to his hands and loss of dexterity.” *Id.* ¶ 23.

18 The FAC alleges that “[i]n the alternative,” Mr. Antle’s and Ms. Ponce’s “reckless  
19 dissemination of falsehoods . . . motivated [Ms.] Quirarte to interfere sua sponte with [Mr.  
20 Delacruz]’s ERT medication” and “to obtain a sample of [Mr. Delacruz]’s blood and deliver it to  
21 [Mr.] Antle and [Ms.] Ponce sua sponte to dispute [Mr. Delacruz]’s disability.” *Id.* ¶ 24. Mr.  
22 Delacruz says that during one of his medical procedures, in which Ms. Quirarte removed an IV  
23 needle from his arm, she “deliberately released the pressure from [his] vein over the injection site  
24 and maneuvered the needle out in an exaggerated arching path causing the needle to drip a stream  
25 of blood onto the medical pillow” that was supporting his arm. *Id.* ¶ 30. Ms. Quirarte reportedly  
26 never did this before. *Id.* Rather than comply with protocols requiring that the pillow promptly be  
27 disposed “in a medical trash bin that is located in the patient’s treatment area in plain view of [Mr.  
28 Delacruz],” Ms. Quirarte reportedly “took the disposable pillow case stained with [Mr.

1 Delacruz]’s blood back to her work area located in a small room about twenty feet opposite to  
2 where [Mr. Delacruz] was seated and placed it on a shelf.” *Id.* ¶ 31. According to the complaint,  
3 Ms. Quirarte previously “never deviated from the proper disposal protocol of used disposable  
4 medical pillow cases.” *Id.* The FAC further alleges that Ms. Quirarte violated Mr. Delacruz’s  
5 privacy rights by giving the blood-stained pillowcase “to [Mr.] Antle and [Ms.] Ponce to use for  
6 their nefarious purposes.” *Id.* ¶ 32.

7 Additionally, the FAC alleges that during an April 2021 ERT procedure, Ms. Quirarte  
8 “contemptuously star[ed]” at Mr. Delacruz and “snidely remarked . . . ‘Look, he’s going to start  
9 complaining!’” *Id.* ¶ 29. Mr. Delacruz says that “[w]henver possible, [he] would change his  
10 schedule for his ERT procedures so that a different nurse would prepare his medication in an  
11 attempt to avoid [Ms.] Quirarte.” *Id.* Ms. Quirarte, however, allegedly “would also adjust her  
12 work schedule to remain as [Mr. Delacruz]’s nurse.” *Id.*

13 The FAC further alleges that after Mr. Antle and Ms. Ponce “disseminated to [Ms.]  
14 Quirarte their fraudulent dispute” regarding his disability, and Ms. Quirarte made a “snide  
15 comment to [Mr. Delacruz] that he did not look disabled,” Ms. Quirarte “deceitfully left out the  
16 ERT medication from [his] IV bags,” “caus[ing] [his] various organ functions to deteriorate over  
17 time including his central nervous system resulting in tremors to his hands and loss of dexterity.”  
18 *Id.* ¶¶ 33, 34. Additionally, Mr. Delacruz alleges that around June 26, 2019, Ms. Quirarte  
19 prepared his IV bag “that appeared abnormal and foamy, which had never occurred in the more  
20 than twenty years of [Mr. Delacruz]’s ERT treatments via IV bags.” *Id.* ¶ 34. But when Mr.  
21 Delacruz inquired about it, Ms. Quirarte reportedly “responded with an excuse that ‘it just needs to  
22 settle.’” *Id.* ¶ 35. Suspicious, Mr. Delacruz says that he photographed the IV bag and showed it to  
23 a nephrologist at the facility who is familiar with ERT medication, as well as to a representative of  
24 the company that developed the ERT medication, both of whom affirmed that the IV bag that was  
25 prepared by Ms. Quirarte appeared abnormal.” *Id.* ¶ 36.

26 Mr. Delacruz says that he became more suspicious of Ms. Quirarte and began to seat  
27 himself closer to her work area so he could observe her while she prepared his medication. *Id.*  
28 ¶ 37. However, Mr. Delacruz says that his view was partially blocked by Ms. Quirarte’s back, and

1 she “took notice of [his] new seating arrangement and would constantly look over her shoulder  
2 and use her peripheral vision to see if [he] was observing her prepare [his] ERT medication.” *Id.*

3 Mr. Delacruz says that he told his nephrologist about Ms. Quirarte’s “suspicious behavior,”  
4 “insisted on changing nurses for his ERT medical procedures,” and later “changed his medical  
5 services provider as an added precaution.” *Id.* ¶ 38. However, Ms. Quirarte reportedly accessed  
6 Mr. Delacruz’s medical file to obtain the name of his new medical services provider and then  
7 “telephoned [Mr. Delacruz] to inform him that she was seeking employment with the same  
8 medical services provider and wanted to continue as [his] nurse.” *Id.* ¶ 39. Mr. Delacruz says he  
9 was alarmed and changed his medical services provider yet again “so that [Ms.] Quirarte would  
10 not be able to continue as his nurse and to prevent [her] from accessing his medical file from his  
11 new medical services provider.” *Id.*

12 In his original complaint, Mr. Delacruz asserted six claims for relief against all defendants,  
13 four of which were based on federal law: disability discrimination and retaliation under the ADA,  
14 42 U.S.C. § 12101, *et seq.* and various implementing regulations (claim 1); civil rights violations,  
15 42 U.S.C. § 1983 (claim 2); breach of contract, 42 U.S.C. § 1981 (claim 3); and request for “Order  
16 to Show Cause re Specific Performance and Injunctive Relief,” 42 U.S.C. § 1981 (claim 4). *See*  
17 Dkt. No. 1. The remaining two claims for relief were based on California state law: disability  
18 discrimination under the California Unruh Civil Rights Act (Cal. Civ. Code § 51, *et seq.*) and the  
19 Disabled Persons Act (Cal. Govt. Code § 12948) (claim 5); and violation of Article I, § 1 of the  
20 California Constitution (claim 6).

21 The Court granted Ms. Quirarte’s Rule 12(b)(6) motion to dismiss Mr. Delacruz’s  
22 complaint. All of Mr. Delacruz’s federal claims for relief were dismissed, and he was given leave  
23 to amend only his ADA claim. *See* Dkt. No. 29. The Court declined to exercise supplemental  
24 jurisdiction over Mr. Delacruz’s state law claims “unless and until a viable federal ADA claim is  
25 adequately pled.” *Id.* at 11. Those state law claims were dismissed without prejudice.

26 Mr. Delacruz filed his FAC, asserting claims against Ms. Quirarte for disability  
27 discrimination under ADA Title II (claim 1), disability discrimination under Section 504 of the  
28 Rehabilitation Act of 1973 (claim 2), and violation of his privacy rights under Article I, § 1 of the

1 California Constitution (claim 3).

2 Ms. Quirarte moves to dismiss all of Mr. Delacruz’s claims, arguing that he was not given  
3 leave to assert a claim under the Rehabilitation Act and that the FAC fails, in any event, to state  
4 sufficient facts to support any plausible claim for relief.

5 **II. LEGAL STANDARD**

6 A motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6) tests the legal  
7 sufficiency of the claims in the complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).  
8 Dismissal is appropriate where there is no cognizable legal theory or an absence of sufficient facts  
9 alleged to support a cognizable legal theory. *Id.* (citing *Balistreri v. Pacifica Police Dep’t*, 901  
10 F.2d 696, 699 (9th Cir. 1990)). In such a motion, all material allegations in the complaint must be  
11 taken as true and construed in the light most favorable to the claimant. *Id.*

12 However, “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
13 conclusory statements, do not suffice,” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), and “[f]actual  
14 allegations must be enough to raise a right to relief above the speculative level,” *Bell Atl. Corp. v.*  
15 *Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). Moreover, the Court is not required to  
16 “assume the truth of legal conclusions merely because they are cast in the form of factual  
17 allegations.” *Prager Univ. v. Google LLC (“Prager P”)*, No. 17-CV-06064-LHK, 2018 WL  
18 1471939, at \*3 (N.D. Cal. Mar. 26, 2018) (quoting *Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th  
19 Cir. 2011) (per curiam)). Nor does the Court accept allegations that contradict documents attached  
20 to the complaint or incorporated by reference, *Gonzalez v. Planned Parenthood of L.A.*, 759 F.3d  
21 1112, 1115 (9th Cir. 2014), or that rest on “allegations that are merely conclusory, unwarranted  
22 deductions of fact, or unreasonable inferences,” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055  
23 (9th Cir. 2008). Although pro se pleadings are liberally construed and held to a less stringent  
24 standard than those drafted by lawyers, see *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972), a  
25 complaint (or portion thereof) should be dismissed for failure to state a claim if it fails to set forth  
26 “enough facts to state a claim to relief that is plausible on its face,” *Twombly*, 550 U.S. at 570.

27 Documents appended to or incorporated into the complaint or which properly are the  
28 subject of judicial notice may be considered along with the complaint when deciding a Rule

1 12(b)(6) motion. *Khoja v. Orexigen Therapeutics*, 899 F.3d 988, 998 (9th Cir. 2018); *Coto*  
2 *Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010). A court may take judicial notice of  
3 facts that are “not subject to reasonable dispute” because they are “generally known” or “can be  
4 accurately and readily determined from sources whose accuracy cannot reasonably be questioned.”  
5 Fed. R. Evid. 201(b); *see also Khoja*, 899 F.3d at 999. Thus, a court properly may take judicial  
6 notice of matters of public record, but cannot take judicial notice of disputed facts contained  
7 within such records. *Khoja*, 899 F.3d at 999 (citing *Lee v. City of Los Angeles*, 250 F.3d 668, 689  
8 (9th Cir. 2001)).

9 **III. DISCUSSION**

10 **A. Disability Discrimination under Title II of the ADA**

11 Title II of the ADA prohibits disability discrimination in public services and programs by  
12 public entities, and provides, in relevant part, that “no qualified individual with a disability shall,  
13 by reason of such disability, be excluded from participation in or be denied the benefits of the  
14 services, programs, or activities of a public entity, or be subjected to discrimination by any such  
15 entity.” 42 U.S.C. § 12132. To state a claim for violation of Title II, a plaintiff must plead facts  
16 showing that (1) he is a “qualified individual with a disability”; (2) he was excluded from  
17 participation in or denied the benefits of a public entity’s services, or was otherwise discriminated  
18 against by the public entity; and (3) such exclusion, denial of benefits, or discrimination was by  
19 reason of his disability. *See Weinreich v. Los Angeles Cnty. Metro. Transp. Auth.*, 114 F.3d 976,  
20 978 (9th Cir.1997).

21 Mr. Delacruz claims that he “was denied the benefits of the ERT infusion services solely  
22 by reason of his Fabry Disease because [Ms.] Quirarte harassed him” and omitted the ERT  
23 medication from his IV bags. Dkt. No. 34 ¶¶ 47, 48. Ms. Quirarte argues that this claim must be  
24 dismissed because the FAC fails to allege sufficient facts demonstrating that Mr. Delacruz  
25 experienced discrimination by a public entity. She also contends that the FAC fails to allege facts  
26 demonstrating that her alleged conduct was by reason of Mr. Delacruz’s claimed disability. *See*  
27 Dkt. No. 38 at 6. As Ms. Quirarte’s first argument is dispositive, the Court grants her motion to  
28 dismiss Mr. Delacruz’s ADA claim on that basis, without leave to amend.

1 Title II defines a “public entity” as “any [s]tate or local government[s]” and their  
2 “department[s], agenc[ies], special purpose district[s], or other instrumentalit[ies].” 42 U.S.C.  
3 §§ 12131(1)(A), (B). The FAC contains no facts suggesting that Central Coast Nephrology is a  
4 “public entity” under Title II. While the FAC alleges that Mr. Delacruz’s ERT services were paid  
5 for by his health insurance through the Affordable Care Act (*id.* ¶ 47), and elsewhere alleges that  
6 the facility provides services covered by Medicare (*see* Dkt. No. 34 ¶ 62), there is no indication  
7 that Mr. Delacruz’s complaint has anything to do with the administration of those programs.  
8 Moreover, allegations that Ms. Quirarte “as a registered nurse” is an agent of the U.S. Department  
9 of Health and Human Services via the Affordable Care Act and Covered California” are  
10 speculative, conclusory, and unsupported by any facts. *Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S.  
11 at 555. Indeed, in ruling on Ms. Quirarte’s first motion to dismiss, the Court addressed Title II of  
12 the ADA solely because that is how the parties’ briefed their respective arguments. *See* Dkt. No.  
13 29 at 7. However, the Court specifically noted that the complaint did not identify whether Ms.  
14 Quirarte worked for a public entity or a private facility, and questioned whether Ms. Quirarte  
15 could be a proper defendant to a claim under Title II. *See id.* at 7, 9. The allegations of the FAC  
16 do not correct those deficiencies. Nor is it apparent that the identified deficiencies could be cured  
17 by further amendment. Accordingly, Mr. Delacruz’s ADA claim is dismissed without leave to  
18 amend.

19 **B. Section 504 of the Rehabilitation Act of 1973**

20 Ms. Quirarte argues that Mr. Delacruz’s Rehabilitation Act claim should be dismissed on  
21 the procedural ground that he was not given leave to assert it in his FAC. Dkt. No. 38 at 6. With  
22 respect to the merits of the claim, Ms. Quirarte argues that “the [Rehabilitation Act] claim should  
23 be dismissed for the same reasons the [ADA claim] should be dismissed. The cause of action is  
24 not supported by the facts alleged.” *Id.* at 7.

25 Ms. Quirarte’s motion regarding the merits of Mr. Delacruz’s claim is denied, as her  
26 arguments are poorly developed and unpersuasive to the extent they ignore differences between  
27 the ADA and the Rehabilitation Act. However, the Court otherwise grants her motion to dismiss,  
28 as she is correct that the Court did not give Mr. Delacruz leave to amend to include a



1 Rehabilitation Act claim. *See* Fed. R. Civ. P. 15(a)(2) (for amendments other than as a matter of  
2 course, “a party may amend its pleading only with the opposing party’s written consent or the  
3 court’s leave.”). The Court’s prior order of dismissal granted leave to amend “*only* as to the  
4 identified deficiencies in Mr. Delacruz’s claim against Ms. Quirarte under the ADA[.]” Dkt. No.  
5 29 at 11 (emphasis added). While Mr. Delacruz argues that Title II of the ADA was modeled after  
6 section 504 of the Rehabilitation Act, *see Weinreich*, 114 F.3d at 978, leave to amend cannot  
7 plausibly be construed from that fact. Mr. Delacruz also argues that the Court’s prior order stated  
8 that his amendments “must be warranted by existing law.” Dkt. No. 29 at 11. However, that  
9 portion of the order concerned Mr. Delacruz’s Rule 11 obligations and in no way expanded the  
10 scope of the Court’s leave to amend.

11         Although Mr. Delacruz did not request leave to amend to add a Rehabilitation Act claim,  
12 the Court liberally construes his opposition brief as such a request. The Court concludes that Mr.  
13 Delacruz has not provided sufficient grounds for such an amendment. The Rehabilitation Act  
14 prohibits discrimination in federally-funded programs and provides, in relevant part, that “[n]o  
15 otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability,  
16 be excluded from the participation in, be denied the benefits of, or be subjected to discrimination  
17 under any program or activity receiving Federal financial assistance[.]” 29 U.S.C. § 794(a). To  
18 state a claim under section 504 of the Rehabilitation Act, a plaintiff must allege facts showing that  
19 “(1) he is an ‘individual with a disability’; (2) he is ‘otherwise qualified’ to receive the benefit;  
20 (3) he was denied the benefits of the program solely by reason of his disability; and (4) the  
21 program receives federal financial assistance.” *Weinreich*, 114 F.3d at 978 (cleaned up). On the  
22 facts alleged, it is not apparent whether such a claim properly may be maintained against Ms.  
23 Quirarte individually, as the Rehabilitation Act, on its face, states that the Act applies to entities  
24 that receive federal funding. *See* 29 U.S.C. §§ 794(a), (b)(3)(A); *Zimmerman v. Oregon Dep’t of*  
25 *Justice*, 170 F.3d 1169, 1180 (9th Cir. 1999) (Rehabilitation Act applies “to private entities that  
26 receive federal financial assistance.”). Moreover, the FAC alleges that Ms. Quirarte’s conduct  
27 was “motivated” by “falsehoods” about Mr. Delacruz’s history of unsuccessful complaints as well  
28 as his disability status, *see* Dkt. No. 34 ¶ 24, such that it appears Mr. Delacruz has not pled facts

1 plausibly supporting the causation element of a Rehabilitation Act claim.

2 Accordingly, the Court dismisses Mr. Delacruz’s Rehabilitation Act claim. The Court is  
3 skeptical whether Mr. Delacruz can plausibly state a claim for relief under that statute. But as the  
4 Court cannot conclude from the present record whether amendment would be futile, the Court will  
5 give Mr. Delacruz leave to amend this claim—and only this claim—as explained below.

6 **C. State Law Claims**

7 Where a federal court has original jurisdiction over a claim pursuant to federal law, it also  
8 has supplemental jurisdiction over related state law claims. 28 U.S.C. § 1367(a). A district court  
9 “may decline to exercise supplemental jurisdiction” if it “has dismissed all claims over which it  
10 has original jurisdiction.” 28 U.S.C. § 1367(c)(3). As all of Mr. Delacruz’s federal claims are  
11 being dismissed, the Court declines to exercise supplemental jurisdiction over any of the state law  
12 claims asserted in the FAC, unless and until a viable federal Rehabilitation Act claim is adequately  
13 pled. Mr. Delacruz’s state law claim against Ms. Quirarte is dismissed without prejudice, as  
14 discussed below.

15 **IV. CONCLUSION**

16 Based on the foregoing, Ms. Quirarte’s motion to dismiss the FAC is granted as follows:

17 1. Mr. Delacruz’s ADA claim is dismissed, without leave to amend.

18 2. Mr. Delacruz’s Rehabilitation Act claim is dismissed, with leave to amend. The Court  
19 emphasizes that Mr. Delacruz only has the Court’s leave to amend the Rehabilitation Act claim.  
20 He is not permitted to assert any new or additional claims for relief. Additionally, Mr. Delacruz is  
21 given leave to amend only to the extent he believes that he can truthfully assert a plausible  
22 Rehabilitation Act claim, consistent with his obligations under Rule 11.

23 3. Mr. Delacruz’s state law claim against Ms. Quirarte is dismissed, without prejudice to  
24 reassert the claim in an amended pleading, but only to the extent that Mr. Delacruz believes he can  
25 adequately plead a federal claim for relief, consistent with the limited scope of leave to amend  
26 permitted by this order.

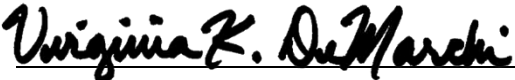
27 If Mr. Delacruz chooses to amend his complaint, his amended pleading should be titled  
28 “Second Amended Complaint.” He must file his Second Amended Complaint no later than **May**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**23, 2024.** Mr. Delacruz is advised that the failure to comply with court-ordered deadlines may result in the dismissal of this case for his lack of attention to it and failure to prosecute this matter. Fed. R. Civ. P. 41.

**IT IS SO ORDERED.**

Dated: May 9, 2024

  
Virginia K. DeMarchi  
United States Magistrate Judge