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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

[Signature]

BY: DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

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RUBEN DARIO GARCIA, JR.,
CDCR #J-73373,

Plaintiff,

vs.

SMITH, et al.;

Defendants.

Civil No. 10cv1187 BEN (RBB)

ORDER:

- (1) GRANTING PLAINTIFF RUBEN GARCIA'S MOTION TO PROCEED *IN FORMA PAUPERIS*, IMPOSING NO INITIAL PARTIAL FILING FEE, GARNISHING \$350.00 BALANCE FROM PRISONER'S TRUST ACCOUNT [Doc. No. 2];**
- (2) DISMISSING PLAINTIFF LENIN GARCIA; and**
- (3) DISMISSING COMPLAINT FOR FAILURE TO STATE A CLAIM PURSUANT TO 28 U.S.C. §§ 1915(e)(2) AND 1915A(b);**

Ruben Dario Garcia and Lenin Garcia ("Plaintiffs"), state prisoners currently incarcerated at Richard J. Donovan Correctional Facility located in San Diego, California, and proceeding pro se, have submitted a civil action pursuant to 42 U.S.C. § 1983. Additionally, Plaintiff Ruben Garcia has filed a Motion to Proceed *In Forma Pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a) [Doc. No. 2].

I.

MOTION TO PROCEED IFP [Doc. No. 2]

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff's failure to prepay the entire fee only if the plaintiff is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, prisoners granted leave to proceed IFP remain obligated to pay the entire fee in installments, regardless of whether their action is ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

Under 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act ("PLRA"), a prisoner seeking leave to proceed IFP must submit a "certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the six-month period immediately preceding the filing of the complaint." 28 U.S.C. § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified trust account statement, the Court must assess an initial payment of 20% of (a) the average monthly deposits in the account for the past six months, or (b) the average monthly balance in the account for the past six months, whichever is greater, unless the prisoner has no assets. *See* 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having custody of the prisoner must collect subsequent payments, assessed at 20% of the preceding month's income, in any month in which the prisoner's account exceeds \$10, and forward those payments to the Court until the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2).

The Court finds that Plaintiff Ruben Garcia has no available funds from which to pay filing fees at this time. *See* 28 U.S.C. § 1915(b)(4) (providing that "[i]n no event shall a prisoner be prohibited from bringing a civil action or appealing a civil action or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee."); *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4) acts as a "safety-valve" preventing dismissal of a prisoner's IFP case based solely on a "failure to pay ... due to the lack

1 of funds available to him when payment is ordered.”). Therefore, the Court **GRANTS** Plaintiff
2 Ruben Garcia’s Motion to Proceed IFP [Doc. No. 2] and assesses no initial partial filing fee per
3 28 U.S.C. § 1915(b)(1). However, the entire \$350 balance of the filing fees mandated shall be
4 collected and forwarded to the Clerk of the Court pursuant to the installment payment provisions
5 set forth in 28 U.S.C. § 1915(b)(1).

6 **II.**

7 **CLASS ACTION CLAIMS AND PLAINTIFF LENIN GARCIA**

8 As an initial matter, Plaintiff Ruben Garcia phrases much of his Complaint as though he
9 is bringing this action on behalf of a large number of inmates. However, because Plaintiff is
10 proceeding pro se, he has no authority to represent the legal interest of any other party. *See Cato*
11 *v. United States*, 70 F.3d 1103, 1105 n.1 (9th Cir. 1995); *C.E. Pope Equity Trust v. United*
12 *States*, 818 F.2d 696, 697 (9th Cir. 1987); *see also* FED. R. CIV. P. 11(a) (“Every pleading,
13 written motion, and other paper shall be signed by at least one attorney of record in the attorney’s
14 original name, or if the party is not represented by an attorney, shall be signed by the party.”).
15 Here, while Plaintiff Ruben Garcia purports to bring this action on behalf of an unidentified
16 class, as well as Plaintiff Lenin Garcia, he may not do so. Accordingly, because Plaintiff Lenin
17 Garcia neither signed the Complaint nor filed a separate Motion to Proceed IFP, Plaintiff Lenin
18 Garcia is **DISMISSED** from this action. Further, if Plaintiff Ruben Garcia files an Amended
19 Complaint he may only address facts relevant to claims that his constitutional rights were
20 violated.

21 **II.**

22 **INITIAL SCREENING PER 28 U.S.C. §§ 1915(e)(2)(b)(ii) and 1915A(b)(1)**

23 Notwithstanding IFP status or the payment of any partial filing fees, the Court must
24 subject each civil action commenced pursuant to 28 U.S.C. § 1915(a) to mandatory screening
25 and order the sua sponte dismissal of any case it finds “frivolous, malicious, failing to state a
26 claim upon which relief may be granted, or seeking monetary relief from a defendant immune
27 from such relief.” 28 U.S.C. § 1915(e)(2)(B); *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir.
28 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.”); *Lopez v.*

1 *Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (noting that 28 U.S.C. § 1915(e) “not
2 only permits but requires” the court to sua sponte dismiss an *in forma pauperis* complaint that
3 fails to state a claim).

4 Before its amendment by the PLRA, former 28 U.S.C. § 1915(d) permitted sua sponte
5 dismissal of only frivolous and malicious claims. *Lopez*, 203 F.3d at 1130. However, as
6 amended, 28 U.S.C. § 1915(e)(2) mandates that the court reviewing an action filed pursuant to
7 the IFP provisions of § 1915 make and rule on its own motion to dismiss before directing the
8 U.S. Marshal to effect service pursuant to Federal Rule of Civil Procedure 4(c)(3). *See Calhoun*,
9 254 F.3d at 845; *Lopez*, 203 F.3d at 1127; *see also McGore v. Wrigglesworth*, 114 F.3d 601,
10 604-05 (6th Cir. 1997) (stating that sua sponte screening pursuant to § 1915 should occur
11 “before service of process is made on the opposing parties”).

12 “[W]hen determining whether a complaint states a claim, a court must accept as true all
13 allegations of material fact and must construe those facts in the light most favorable to the
14 plaintiff.” *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000); *Barren*, 152 F.3d at 1194
15 (noting that § 1915(e)(2) “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”);
16 *Andrews*, 398 F.3d at 1121. In addition, the Court has a duty to liberally construe a pro se’s
17 pleadings, *see Karim-Panahi v. Los Angeles Police Dep’t*, 839 F.2d 621, 623 (9th Cir. 1988),
18 which is “particularly important in civil rights cases.” *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261
19 (9th Cir. 1992). In giving liberal interpretation to a pro se civil rights complaint, however, the
20 court may not “supply essential elements of claims that were not initially pled.” *Ivey v. Bd. of*
21 *Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

22 Section 1983 imposes two essential proof requirements upon a claimant: (1) that a person
23 acting under color of state law committed the conduct at issue, and (2) that the conduct deprived
24 the claimant of some right, privilege, or immunity protected by the Constitution or laws of the
25 United States. *See* 42 U.S.C. § 1983; *Nelson v. Campbell*, 541 U.S. 637, 643 (2004); *Haygood*
26 *v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985) (en banc).

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1 **A. Rule 8**

2 As a preliminary matter, the Court finds that Plaintiff's Complaint fails to comply with
3 Rule 8. Specifically, Rule 8 provides that in order to state a claim for relief a pleading must
4 contain "a short and plain statement of the grounds for the court's jurisdiction" and "a short and
5 plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(1)
6 & (2). Plaintiff's Complaint is nearly sixty pages long and is often rambling and incoherent.
7 If Plaintiff chooses to file an Amended Complaint, he must comply with Rule 8. He is further
8 cautioned that he must also comply with Local Rule 8.2 which provides, in part, that prisoners
9 must use the Court's form complaint and any additional pages are "not to exceed fifteen (15) in
10 number." S.D. CIVLR 8.2.

11 **B. Fourteenth Amendment Due Process Claims**

12 Plaintiff alleges that his due process rights were violated during his disciplinary hearing
13 because several correctional officers falsified rules violation reports which led to Plaintiff being
14 sentenced to Administrative Segregation ("Ad-Seg"). "The requirements of procedural due
15 process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's
16 protection of liberty and property." *Bd. of Regents v. Roth*, 408 U.S. 564, 569 (1972). State
17 statutes and prison regulations may grant prisoners liberty interests sufficient to invoke due
18 process protections. *Meachum v. Fano*, 427 U.S. 215, 223-27 (1976). However, the Supreme
19 Court has significantly limited the instances in which due process can be invoked. Pursuant to
20 *Sandin v. Conner*, 515 U.S. 472, 483 (1995), a prisoner can show a liberty interest under the
21 Due Process Clause of the Fourteenth Amendment only if he alleges a change in confinement
22 that imposes an "atypical and significant hardship . . . in relation to the ordinary incidents of
23 prison life." *Id.* at 484 (citations omitted); *Neal v. Shimoda*, 131 F.3d 818, 827-28 (9th Cir.
24 1997).

25 In this case, Plaintiff has failed to establish a liberty interest protected by the Constitution
26 because he has not alleged, as he must under *Sandin*, facts related to the conditions or
27 consequences of his placement in Ad-Seg which show "the type of atypical, significant
28 deprivation [that] might conceivably create a liberty interest." *Id.* at 486. For example, in

1 *Sandin*, the Supreme Court considered three factors in determining whether the plaintiff
2 possessed a liberty interest in avoiding disciplinary segregation: (1) the disciplinary versus
3 discretionary nature of the segregation; (2) the restricted conditions of the prisoner's
4 confinement and whether they amounted to a "major disruption in his environment" when
5 compared to those shared by prisoners in the general population; and (3) the possibility of
6 whether the prisoner's sentence was lengthened by his restricted custody. *Id.* at 486-87.

7 Therefore, to establish a due process violation, Plaintiff must first show the deprivation
8 imposed an atypical and significant hardship on him in relation to the ordinary incidents of
9 prison life. *Sandin*, 515 U.S. at 483-84. Plaintiff has failed to allege any facts from which the
10 Court could find there were atypical and significant hardships imposed upon him as a result of
11 the Defendants' actions. Plaintiff must allege "a dramatic departure from the basic conditions"
12 of his confinement that would give rise to a liberty interest before he can claim a violation of due
13 process. *Id.* at 485; *see also Keenan v. Hall*, 83 F.3d 1083, 1088-89 (9th Cir. 1996), *amended*
14 *by* 135 F.3d 1318 (9th Cir. 1998). He has not. Therefore, the Court finds that Plaintiff has failed
15 to allege a liberty interest in remaining free of Ad-Seg, and thus, has failed to state a due process
16 claim. *See May*, 109 F.3d at 565; *Hewitt*, 459 U.S. at 466; *Sandin*, 515 U.S. at 486 (holding that
17 placing an inmate in administrative segregation for thirty days "did not present the type of
18 atypical, significant deprivation in which a state might conceivably create a liberty interest.").

19 C. Conspiracy Claims

20 Throughout Plaintiff's Complaint, he alleges that several correctional officers acted in
21 a conspiracy to violate his constitutional rights pursuant to 42 U.S.C. § 1985(3). "To state a
22 cause of action under § 1985(3), a complaint must allege (1) a conspiracy, (2) to deprive any
23 person or a class of persons the equal protection of the laws, or of equal privileges and
24 immunities under the laws, (3) an act by one of the conspirators in furtherance of the conspiracy,
25 and (4) a personal injury, property damage or a deprivation of any right or privilege of a citizen
26 of the United States." *Gillespie v. Civiletti*, 629 F.2d 637, 641 (9th Cir. 1980); *see also Griffin*
27 *v. Breckenridge*, 403 U.S. 88, 102-03 (1971); *Sever v. Alaska Pulp Corp.*, 978 F.2d 1529, 1536
28 (9th Cir. 1992). "[T]he language requiring intent to deprive *equal* protection . . . means that

1 there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus
2 behind the conspirators' action." *Griffin*, 403 U.S. at 102; *see also Sever*, 978 F.2d at 1536.

3 Here, Plaintiff fails to allege membership in a protected class and fails to allege that any
4 Defendant acted with class-based animus, both of which are essential elements of a cause of
5 action under 42 U.S.C. § 1985(3). *See Griffin*, 403 U.S. at 101-02; *Schultz v. Sundberg*, 759
6 F.2d 714, 718 (9th Cir. 1985) (holding that conspiracy plaintiff must show membership in a
7 judicially-designated suspect or quasi-suspect class); *Portman v. County of Santa Clara*, 995
8 F.2d 898, 909 (9th Cir. 1993).

9 Accordingly, the Court finds that Plaintiff's Complaint fails to state a § 1983 claim upon
10 which relief may be granted, and is therefore subject to dismissal pursuant to 28 U.S.C.
11 §§ 1915(e)(2)(b) & 1915A(b). The Court will provide Plaintiff with an opportunity to amend
12 his pleading to cure the defects set forth above. Plaintiff is warned that if his amended complaint
13 fails to address the deficiencies of pleading noted above, it may be dismissed with prejudice and
14 without leave to amend.

15 **III.**

16 **CONCLUSION AND ORDER**

17 Good cause appearing, **IT IS HEREBY ORDERED** that:

18 1. Plaintiff Lenin Garcia is **DISMISSED** from this action.

19 2. Plaintiff Ruben Garcia's Motion to proceed IFP pursuant to 28 U.S.C. § 1915(a)
20 [Doc. No. 2] is **GRANTED**.

21 3. The Secretary of California Department of Corrections and Rehabilitation, or his
22 designee, shall collect from Plaintiff's prison trust account the \$350 balance of the filing fee
23 owed in this case by collecting monthly payments from the account in an amount equal to twenty
24 percent (20%) of the preceding month's income and forward payments to the Clerk of the Court
25 each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2).
26 **ALL PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER**
27 **ASSIGNED TO THIS ACTION.**

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1 4. The Clerk of the Court is directed to serve a copy of this Order on Matthew Cate,
2 Secretary, California Department of Corrections and Rehabilitation, 1515 S Street, Suite 502,
3 Sacramento, California 95814.

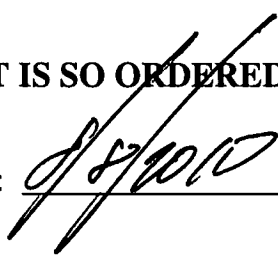
4 **IT IS FURTHER ORDERED** that:

5 5. Plaintiff's Complaint is **DISMISSED** without prejudice pursuant to 28 U.S.C.
6 §§ 1915(e)(2)(b) and 1915A(b). However, Plaintiff is **GRANTED** forty five (45) days leave
7 from the date this Order is "Filed" in which to file a First Amended Complaint which cures all
8 the deficiencies of pleading noted above. Plaintiff's Amended Complaint must be complete in
9 itself without reference to the superseded pleading. *See* S.D. Cal. Civ. L. R. 15.1. Defendants
10 not named and all claims not re-alleged in the Amended Complaint will be deemed to have been
11 waived. *See King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987). Further, if Plaintiff's Amended
12 Complaint fails to state a claim upon which relief may be granted, it may be dismissed without
13 further leave to amend and may hereafter be counted as a "strike" under 28 U.S.C. § 1915(g).
14 *See McHenry v. Renne*, 84 F.3d 1172, 1177-79 (9th Cir. 1996).

15 6. The Clerk of Court is directed to mail a court approved form § 1983 complaint to
16 Plaintiff.

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18 **IT IS SO ORDERED.**

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20 DATED: _____



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HON. ROGER T. BENITEZ
United States District Judge