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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IKEY PORTER CURRY,)	No. CV 16-4491 JLS (AS)
)	
Plaintiff,)	ORDER DISMISSING SECOND AMENDED
v.)	
)	COMPLAINT WITH LEAVE TO AMEND
K. SEIBEL, Official Capacity as)	
Associate Warden, et al.,)	
)	
Defendants.)	

INTRODUCTION

On June 21, 2016, Plaintiff Ikey Porter Curry, a prisoner at the California State Prison, Los Angeles County, in Lancaster, California ("CSP-LAC"), filed a pro se civil rights Complaint pursuant to 42 U.S.C. § 1983. (Docket Entry No. 1). On July 14, 2016, before the Court had screened the Complaint, Plaintiff filed a First Amended Complaint. (Docket Entry No. 5 ("FAC")). On September 8, 2016, the Court dismissed the First Amended Complaint with leave to amend. (Docket Entry No. 8).

1 On December 29, 2016, Plaintiff filed the operative Second
2 Amended Complaint in this action. (Docket Entry No. 17 ("SAC")).
3 Plaintiff names as Defendants: (1) K. Seibel, an Associate Warden at
4 the Richard J. Donovan Correctional Facility ("RJD") in San Diego,
5 California; (2) several John Doe correctional officers assigned to
6 deliver the mail at Pleasant Valley State Prison ("PVSP") in
7 Coalinga, California; (3) Debbie Asuncion, the Warden at CSP-LAC;
8 (4) Xavier Cano, the Acting Warden at CSP-LAC; (5) CSP-LAC
9 correctional officers Carter, Flores, and Marin; and (6) Director of
10 Corrections M.D. Steiner. (SAC at 3-4, 8-9).¹ Plaintiff sues
11 Seibel, Asuncion, Cano, Carter, Flores, and Marin in both their
12 official and individual capacities and does not specify what capacity
13 he sues the other Defendants in. (Id.). Plaintiff principally
14 alleges that Defendants confiscated or mis-delivered his mail. (Id.
15 at 10-11).

16
17 The Court has screened the Second Amended Complaint as
18 prescribed by 28 U.S.C. § 1915A and 42 U.S.C. § 1997e. For reasons
19 discussed below, the Court DISMISSES the Second Amended Complaint
20 WITH LEAVE TO AMEND.²

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23
24 ¹ For ease of reference, the Court cites the Second Amended
25 Complaint and attached exhibits as though they constitute a single
continuously paginated document.

26 ² Magistrate Judges may dismiss a complaint with leave to
27 amend without approval from the district judge. McKeever v. Block,
28 932 F.2d 795, 798 (9th Cir. 1991).

1 **PLAINTIFF'S ALLEGATIONS**

2
3 The factual allegations of the Second Amended Complaint are
4 brief and somewhat confusing. Under "Facts," Plaintiff writes:

5
6 On are [sic] about March 2014, while housed at PVSP I
7 attempted to file a civil rights complaint, 42 U.S.C. sec.
8 1983 in the United States Northern District Court, Case No.
9 CV 14-1250-MEJ-(PR). On or about April, 2014, I was
10 transferred to [RJD], where I was an unknowing victim of
11 "deliberate indifference" when it came to delivery of the
12 incoming U.S. Mail? So, I wrote to the Warden (Daniel
13 Paramo) in which K. Seibel, associate warden, took it upon
14 his self to address my concerns? Not [illegible]? In
15 fact, the harassment got worse? So, being concerned with a
16 "writ of habeas corpus" of my criminal conviction, I stop
17 pursuing the civil rights complaint, and it was dismissed
18 without prejudice! I was transferred back to [CSP-LAC] and
19 placed in four (4) building on "B"-yard? Being a disabled
20 inmate, I knew something was wrong? Because, there wasn't
21 a wheelchair shower? Then the violations of my U.S. Mail
22 started happening? C/O Carter (not her real name) along
23 with a C/O named Frazier (both African-Americans) kept
24 selectively passed out my incoming mail? So, I call my
25 family, asking what's the problem with the registered mail
26 (U.S. Postal Stamps, legal tablets and envelopes) in which
27 I been receiving since my incarceration, 2010/2011 in the
28 Department of Corrections, North Kern State Prison -

1 Reception Center! So, I'm aware that this type of
2 "deliberate indifference" was going on! That why I
3 had/have my family to "register mail," when it comes to my
4 legal supplies! They have the receipts! C/O Marin was
5 next with the mis-delivering of the incoming U.S. Mail? I
6 have written to Internal Affairs of the State of California
7 Department of Corrections, along? (I've never received an
8 answer back? (So, I've documented this?)). Will attach a
9 copy of one of the letter dated July 22, 2016 and a letter
10 of complaint to M.D. Steiner, Director dated Dec. 30th,
11 2013.

12
13 (SAC at 9-10 (some formatting and spelling altered)). Plaintiff
14 claims that he has been "deprived of his right to correspond and
15 received his personal and legal mail without receiving a notification
16 of confiscation, which is guaranteed by the First Amendment . . . and
17 the Due Process Clause of the Fourteenth Amendment." (Id. at 10-11).
18 Plaintiff also alleges that Defendants have given him "meaningless
19 write-ups" to punish him for taking legal action and have placed him
20 on loss-of-privileges status because he "went to a ADA table
21 (wheelchair) instead of a regular table[.]" (Id. at 11).

22
23 Plaintiff seeks declaratory relief stating that Defendants'
24 actions violate the Constitution. (Id. at 11). Plaintiff also seeks
25 an injunction requiring Marin, Flores, and the Doe defendants to
26 deliver incoming mail and prohibiting Defendants from harassing or
27 punishing him for filing this action. (Id.). Finally, Plaintiff
28

1 seeks \$10,000 in compensatory damages from "all Defendants and each
2 of them," as well as \$10,000 in punitive damages. (Id. at 12).

3
4 Attached to the Second Amended Complaint are exhibits which
5 Plaintiff describes as (1) a December 30, 2013 "letter of complaint"
6 to Steiner; (2) a July 22, 2016 "letter of complaint" to the "Office
7 of Internal Affairs;" (3) a "second level CDCR inmate appeal" dated
8 June 13, 2016; and (4) a January 5, 2016 letter to Cano. (Id. at
9 13). Many of these documents are illegible, but they appear to
10 complain that Plaintiff's mail was being withheld. (Id. at 14-58).
11 The second level appeal response ruled that, on one occasion, several
12 "peel and seal" envelopes were "disallowed" as contraband, and the
13 prison had no record of stamps or legal tablets arriving addressed to
14 Plaintiff. (See id. at 45-48).

15
16 **STANDARD OF REVIEW**

17
18 Congress mandates that district courts initially screen civil
19 complaints filed by prisoners seeking redress from a governmental
20 entity or employee. 28 U.S.C. § 1915A. A court may dismiss such a
21 complaint, or any portion thereof, before service of process, if the
22 court concludes that the complaint (1) is frivolous or malicious;
23 (2) fails to state a claim upon which relief may be granted; or
24 (3) seeks monetary relief from a defendant who is immune from such
25 relief. 28 U.S.C. § 1915A(b)(1)-(2); see also Lopez v. Smith,
26 203 F.3d 1122, 1126-27 & n.7 (9th Cir. 2000) (en banc).

1 Dismissal for failure to state a claim is appropriate if a
2 complaint fails to proffer "enough facts to state a claim for relief
3 that is plausible on its face." Bell Atl. Corp. v. Twombly,
4 550 U.S. 544, 570 (2007); Ashcroft v. Iqbal, 556 U.S. 662, 678
5 (2009). "A claim has facial plausibility when the plaintiff pleads
6 factual content that allows the court to draw the reasonable
7 inference that the defendant is liable for the misconduct alleged."
8 Iqbal, 556 U.S. at 678; see also Hartmann v. Cal. Dep't of Corr.
9 & Rehab., 707 F.3d 1114, 1122 (9th Cir. 2013). A plaintiff must
10 provide more than "labels and conclusions" or a "formulaic recitation
11 of the elements" of his claim. Twombly, 550 U.S. at 555; Iqbal,
12 556 U.S. at 678. However, "[s]pecific facts are not necessary; the
13 [complaint] need only 'give the defendant fair notice of what the
14 . . . claim is and the grounds upon which it rests.'" Erickson v.
15 Pardus, 551 U.S. 89, 93 (2007) (per curiam) (quoting Twombly, 550
16 U.S. at 555).

17
18 In considering whether to dismiss a complaint, a court is
19 generally limited to the pleadings and must construe all "factual
20 allegations set forth in the complaint . . . as true and . . . in the
21 light most favorable" to the plaintiff. Lee v. City of L.A.,
22 250 F.3d 668, 679 (9th Cir. 2001). Moreover, pro se pleadings are
23 "to be liberally construed" and held to a less stringent standard
24 than those drafted by a lawyer. Erickson, 551 U.S. at 94; see also
25 Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) ("Iqbal
26 incorporated the Twombly pleading standard and Twombly did not alter
27 courts' treatment of pro se filings; accordingly, we continue to
28 construe pro se filings liberally when evaluating them under

1 Iqbal."). Nevertheless, dismissal for failure to state a claim can
2 be warranted based on either the lack of a cognizable legal theory or
3 the absence of factual support for a cognizable legal theory.
4 Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir.
5 2008). A complaint may also be dismissed for failure to state a
6 claim if it discloses some fact or complete defense that will
7 necessarily defeat the claim. Franklin v. Murphy, 745 F.2d 1221,
8 1228-29 (9th Cir. 1984).

9 10 DISCUSSION

11
12 The Second Amended Complaint contains deficiencies warranting
13 dismissal, although leave to amend will be granted with respect to
14 certain claims and Defendants. See 28 U.S.C. § 1915A(b)(1).

15 16 **A. The Second Amended Complaint Fails to Comply With the Federal** 17 **Rules of Civil Procedure**

18
19 The Court again advises Plaintiff of the following requirements
20 under the Federal Rules of Civil Procedure regarding the formatting
21 of a complaint. A complaint must contain "a short and plain
22 statement of the claim showing that [plaintiff] is entitled to
23 relief." Fed. R. Civ. P. 8(a)(2). "Each allegation must be simple,
24 concise, and direct." Fed. R. Civ. P. 8(d)(1). A complaint violates
25 Rule 8 if a defendant would have difficulty understanding and
26 responding to the complaint. See Cafasso, U.S. ex rel. v. General
27 Dynamics C4 Systems, Inc., 637 F.3d 1047, 1059 (9th Cir. 2011). "A
28

1 party must state its claims or defenses in numbered paragraphs, each
2 limited as far as practicable to a single set of circumstances."
3 Fed. R. Civ. P. 10(b). "[E]ach claim founded on a separate
4 transaction or occurrence . . . must be stated in a separate count."

5 Id.

6
7 As was true of the First Amended Complaint, the Second Amended
8 Complaint names numerous Defendants and includes dozens of pages of
9 exhibits, but its factual allegations are extremely brief and
10 conclusory. Plaintiff's allegations are also almost wholly
11 undifferentiated regarding the specific actions that each Defendant
12 is alleged to have taken. Defendants would have difficulty
13 responding to the Second Amended Complaint. Therefore, dismissal for
14 failure to comply with Rule 8 is appropriate. See McHenry v. Renne,
15 84 F.3d 1172, 1178 (9th Cir. 1996) (dismissal on Rule 8 grounds was
16 warranted where, "[d]espite all the pages, requiring a great deal of
17 time for perusal, one cannot determine from the complaint who is
18 being sued, for what relief, and on what theory, with enough detail
19 to guide discovery").
20

21
22 **B. Plaintiff Fails To Adequately Allege Personal Participation By**
23 **Supervisory Defendants**

24
25 Liability under § 1983 requires a defendant's personal
26 participation. Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989)
27 (citations omitted); see also Iqbal, 556 U.S. at 676 ("Because
28 vicarious liability is inapplicable to Bivens and § 1983 suits, a

1 plaintiff must plead that each Government-official defendant, through
2 the official's own individual actions, has violated the
3 Constitution."). A supervisor is only liable for the constitutional
4 violations of subordinates if the supervisor participated in or
5 directed the violations, or knew of the violations and failed to act
6 to prevent them. Taylor, 880 F.2d at 1045.

7
8 Many of the named Defendants appear to be supervisory officials.
9 (SAC at 3-4, 8-9). Plaintiff asserts that (1) Seibel is "responsible
10 for C/O's under his supervision" and "took it upon his self to
11 address . . . concerns" that Plaintiff had raised to the Warden at
12 RJD; (2) Asuncion and Cano were legally responsible "for the overall
13 operation of [CSP-LAC] and for the welfare of all inmates of that
14 prison;" and (3) when Plaintiff filed the initial Complaint, Steiner
15 was "responsible for the overall conduct of warden[s], correctional
16 officers and inmates in California Department of Corrections and
17 Rehabilitation," and Steiner was also the intended recipient of a
18 2013 "letter of complaint" that Plaintiff wrote regarding the mis-
19 delivery of his mail. (See id. at 8-10).

20
21 Plaintiff's allegations against Asuncion and Cano appear to be
22 based purely on vicarious liability, which is inapplicable in a
23 § 1983 action, and his allegations that Seibel and Steiner were
24 personally involved in violating his constitutional rights are vague
25 and conclusory at best. Because "[v]ague and conclusory allegations
26 of official participation in civil rights violations are not
27 sufficient to withstand a motion to dismiss," Ivey v. Bd. Of Regents,
28 673 F.2d 266, 268 (9th Cir. 1982); see also Bruns v. Nat'l Credit

1 Union Admin., 122 F.3d 1251, 1257 (9th Cir. 1997), Plaintiff has not
2 stated a claim against the aforementioned Defendants. Plaintiff's
3 claims against these Defendants must be dismissed with leave to
4 amend.

5
6 **C. Plaintiff Must Identify Any Unidentified Defendants Before The**
7 **Court May Order Service Of Process**
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9 The Second Amended Complaint also names but does not identify
10 several Defendants, i.e., the John Doe officers responsible for
11 delivering the mail at PVSP. (SAC at 3, 8). Although a plaintiff's
12 complaint may name unidentified defendants, see Wakefield v.
13 Thompson, 177 F.3d 1160, 1163 (9th Cir. 1999) (complaint may name
14 fictitious "Doe" defendants if defendants' identities are unknown
15 when an action is commenced), a plaintiff must provide the Court
16 identifying information sufficient to permit the United States
17 Marshal to effect service of process before the Court may order
18 service. Therefore, a plaintiff should generally be given an
19 opportunity to discover the names of unknown defendants. See
20 Gillespie v. Civiletti, 629 F.2d 637, 642-43 (9th Cir. 1980).

21
22 It is premature to order discovery because the Second Amended
23 Complaint is defective for reasons unrelated to the naming of unknown
24 defendants. See Wakefield, 177 F.3d at 1163. However, Plaintiff is
25 advised that, if he pursues this action, he may be required to
26 conduct discovery to determine the identities of any unknown
27 defendants and provide the United States Marshal with enough
28 information to effect service.

1 Plaintiff is also advised that he must establish that every
2 Defendant, including every unknown defendant, had personal
3 involvement in the civil rights violations alleged or that the
4 Defendant's action or inaction caused the harm suffered. See Starr
5 v. Baca, 652 F.3d 1202, 1207 (9th Cir. 2011). As discussed supra,
6 Plaintiff's claims are generally vague and conclusory and, at this
7 stage, he has not provided sufficient allegations to permit the Court
8 to conclude that any individual unknown Defendant violated
9 Plaintiff's civil rights.

10
11 **D. Plaintiff's Claims For Damages Against State Officials In Their**
12 **Official Capacities Must Be Dismissed**

13
14 Some of Plaintiff's claims for money damages are brought against
15 state officers in their official capacities. (See SAC at 3-4, 12).
16 However, the Eleventh Amendment bars actions in federal court for
17 money damages against state officers sued in their official
18 capacities. See Will v. Michigan Department of State Police, 491
19 U.S. 58, 71 (1989); Krainski v. Nevada ex rel. Bd. of Regents of
20 Nevada System of Higher Educ., 616 F.3d 963, 967-68 (9th Cir. 2010).
21 Therefore, any damages claims against state officers in their
22 official capacities must be dismissed.

23
24 **E. Plaintiff Fails To State A Claim For Relief**

25
26 Plaintiff's principal claim is that Defendants have withheld or
27 mis-delivered his mail. (SAC at 9-10). Prisoners have a First
28 Amendment right to send and receive mail. See Thornburgh v. Abbott,

1 490 U.S. 401, 407 (1989). Restrictions on mail are analyzed under
2 the reasonableness standard set forth in Turner v. Safley, 482 U.S.
3 78, 89-91 (1987). See Thornburgh, 490 U.S. at 409-14. Under Safley,
4 when a prison regulation impinges on inmates' constitutional rights,
5 the regulation is valid if it is reasonably related to legitimate
6 penological interests. 482 U.S. at 89.

7
8 To determine the reasonableness of the regulation, a court must
9 consider the following: (1) whether there is a "valid, rational
10 connection" between the regulation and the legitimate government
11 interest put forward to justify it, (2) "whether there are
12 alternative means of exercising the right," (3) the impact that the
13 "accommodation of the asserted constitutional right will have on
14 guards and other inmates," and (4) "the absence of ready
15 alternatives." Id. at 89-90. Prison officials may lawfully examine
16 a prisoner's communications, United States v. Wilson, 447 F.2d 1, 8
17 n.4 (9th Cir. 1971), and inspect non-legal mail for contraband,
18 Witherow v. Paff, 52 F.3d 264, 265 (9th Cir. 1995). A short delay in
19 mail delivery generally does not violate an inmate's First Amendment
20 rights, Crofton v. Roe, 170 F.3d 957, 961 (9th Cir. 1999), and
21 isolated disruption of an inmate's mail is not usually sufficient to
22 violate the Constitution, Davis v. Goord, 320 F.3d 346, 351 (2d. Cir.
23 2003); Gardner v. Howard, 109 F.3d 427, 431 (8th Cir. 1997); Smith v.
24 Maschner, 899 F.2d 940, 944 (10th Cir. 1990).

25
26 Plaintiff's claims regarding the mis-delivery of his mail are
27 deficient as currently pled. As noted supra, Plaintiff's claims are
28 set forth only generally and conclusorily, and his allegations

1 provide insufficient factual detail to permit the Court to perform
2 the plausibility analysis required by 28 U.S.C. § 1915A, Twombly, and
3 Iqbal. Given that numerous restrictions on prisoner mail are
4 permissible under Safley's reasonableness standard, it is
5 particularly important that Plaintiff provide enough factual detail
6 to permit the Court to evaluate whether Plaintiff has plausibly
7 alleged that his rights were violated. Plaintiff's claims related to
8 the mis-delivery of his mail are insufficiently pled and must
9 therefore be dismissed with leave to amend.

10
11 Plaintiff also alleges that Defendants have given him
12 "meaningless write-ups" to punish him for taking legal action and
13 have placed him on loss-of-privileges status because he "went to a
14 ADA table (wheelchair) instead of a regular table[.]" (SAC at 11).
15 These allegations may be intended to state a First Amendment
16 retaliation claim or a claim under the Americans with Disabilities
17 Act ("ADA").

18
19 "'A prisoner suing prison officials under Section 1983 for
20 retaliation must allege that he was retaliated against for exercising
21 his constitutional rights and that the retaliatory action does not
22 advance legitimate penological goals, such as preserving
23 institutional order and discipline.'" Bruce v. Ylst, 351 F.3d 1283,
24 1288 (9th Cir. 2003) (citations omitted). Additionally, the
25 "plaintiff must allege that the defendant's [retaliatory] actions
26 caused him some injury." Resnick v. Hayes, 213 F.3d 443, 449 (9th
27 Cir. 2000). Thus, in the prison context, a viable claim of First
28 Amendment retaliation entails five basic elements: (1) An assertion

1 that a state actor took some adverse action against an inmate
2 (2) because of (3) that prisoner's protected conduct, and that such
3 action (4) chilled the inmate's exercise of his First Amendment
4 rights, and (5) the action did not reasonably advance a legitimate
5 correctional goal. Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir.
6 2009).

7
8 Title II of the Americans with Disabilities Act (ADA)
9 "prohibit[s] discrimination on the basis of disability." Lovell v.
10 Chandler, 303 F.3d 1039, 1052 (9th Cir. 2002). Title II provides
11 that "no qualified individual with a disability shall, by reason of
12 such disability, be excluded from participation in or be denied the
13 benefits of the services, programs, or activities of a public entity,
14 or be subject to discrimination by such entity." 42 U.S.C. § 12132.
15 Title II of the ADA applies to inmates in state prisons.
16 Pennsylvania Dept. of Corrections v. Yeskey, 524 U.S. 206, 213
17 (1998). "To establish a violation of Title II of the ADA, a
18 plaintiff must show that (1) [he] is a qualified individual with a
19 disability; (2) [he] was excluded from participation in or otherwise
20 discriminated against with regard to a public entity's services,
21 programs, or activities; and (3) such exclusion or discrimination was
22 by reason of [his] disability." Lovell, 303 F.3d at 1052. The ADA
23 also provides that "[n]o person shall discriminate against any
24 individual because such individual has opposed any act or practice
25 made unlawful by this chapter." See also 42 U.S.C. § 12203(a).

26
27 Plaintiff's Second Amended Complaint does not adequately allege
28 a First Amendment retaliation claim or a claim under the ADA.

1 Particularly, Plaintiff provides no facts or "chronology of events"
2 tending to show a plausible causal connection between the adverse
3 actions alleged and Plaintiff's complaints or a disability. See
4 Watison v. Carter, 668 F.3d 1108, 1114 (9th Cir. 2012); Lovell, 303
5 F.3d at 1052; see also Iqbal, 556 U.S. at 678.

6
7 Because Plaintiff fails to state a cognizable claim for relief,
8 the Second Amended Complaint must be dismissed with leave to amend.

9
10 **CONCLUSION**

11
12 For the reasons discussed above, Plaintiff's claims are
13 DISMISSED WITH LEAVE TO AMEND to correct the aforementioned defects.

14
15 If Plaintiff still wishes to pursue this action, he shall file a
16 Third Amended Complaint **no later than 30 days from the date of this**
17 **Order or no later than March 23, 2017**. The Third Amended Complaint
18 **must cure the pleading defects discussed above and shall be complete**
19 **in itself without reference to any prior pleading. See L.R. 15-2**
20 **("Every amended pleading filed as a matter of right or allowed by**
21 **order of the Court shall be complete including exhibits. The amended**
22 **pleading shall not refer to the prior, superseded pleading.").** This
23 **means that Plaintiff must allege and plead any viable claims in any**
24 **prior complaint again.**

25
26 In any Third Amended Complaint, Plaintiff should identify the
27 nature of each separate legal claim and confine his allegations to
28 those operative facts supporting each of his claims. For each

1 separate legal claim, Plaintiff should state the civil right that has
2 been violated and the supporting facts for that claim only. Pursuant
3 to Federal Rule of Civil Procedure 8(a), all that is required is a
4 "short and plain statement of the claim showing that the pleader is
5 entitled to relief." However, Plaintiff is advised that the
6 allegations in the Third Amended Complaint should be consistent with
7 the authorities discussed above. In addition, the Third Amended
8 Complaint may not include new Defendants or claims not reasonably
9 related to the allegations in the previously filed complaints.
10 **Plaintiff is strongly encouraged to once again utilize the standard**
11 **civil rights complaint form when filing any amended complaint, a copy**
12 **of which is attached.**

13
14 Plaintiff is explicitly cautioned that failure to timely file a
15 Third Amended Complaint, or failure to correct the deficiencies
16 described above, may result in a recommendation that this action, or
17 portions thereof, be dismissed with prejudice for failure to
18 prosecute and/or failure to comply with court orders. See Fed. R.
19 Civ. P. 41(b).

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1 Plaintiff is further advised that if he no longer wishes to
2 pursue this action in its entirety or with respect to particular
3 Defendants or claims, he may voluntarily dismiss all or any part of
4 this action by filing a Notice of Dismissal in accordance with
5 Federal Rule of Civil Procedure 41(a)(1). A form Notice of Dismissal
6 is attached for Plaintiff's convenience.

7
8 IT IS SO ORDERED.

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10 Dated: February 21, 2017

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12 _____/s/_____
13 ALKA SAGAR
14 United States Magistrate Judge
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