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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

JOHN ERIC WILLIAMS,  
also known as Michael J. Coleman,  
  
Plaintiff,  
  
v.  
  
L. LOZANO, et al.,  
  
Defendants.

) 1:15-cv-01250-BAM (PC)  
)  
) ORDER DENYING MOTION TO  
) APPOINT COUNSEL  
)  
) (ECF No. 22)  
)  
) ORDER DIRECTING CLERK OF  
) COURT TO RANDOMLY ASSIGN A  
) DISTRICT JUDGE  
)  
) FINDINGS AND RECOMMENDATIONS  
) REGARDING DISMISSAL FOR  
) FAILURE TO STATE A COGNIZABLE  
) CLAIM FOR RELIEF  
)  
) (ECF No. 22)  
)  
) FOURTEEN (14) DAY DEADLINE  
)  
)  
)

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Plaintiff John Eric Williams, aka Michael J. Coleman (“Plaintiff”), is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On December 1, 2017, the Court screened Plaintiff’s first amended complaint and granted him leave to amend only with respect to claims arising in June 2015. (ECF No. 17.) On January 18, 2018, Plaintiff filed a motion for the appointment of counsel, along with his second amended complaint. (ECF Nos. 22 and 23.)

1           **I.       Motion to Appoint Counsel**

2           On January 18, 2018, Plaintiff filed an “Inmate Request for Assistance from the Court”  
3 form. Plaintiff claims that he has a disability under the Americans with Disabilities Act that  
4 makes it hard for him to read, write or understand material regarding his case. He therefore  
5 requests a lawyer. (ECF No. 22.)

6           In addition to the form, Plaintiff also filed a motion for appointment of counsel, which  
7 was incorporated into his second amended complaint. (ECF No. 23 at pp. 16-20.) The motion  
8 and supporting exhibits appear to be a more complete copy of Plaintiff’s prior motion for the  
9 appointment of counsel filed on January 5, 2018, which was denied by the Court on January 11,  
10 2018. (ECF Nos. 18 and 19.) Plaintiff again explains that he is unable to afford counsel, he is  
11 mentally ill and has been placed in mental health crisis beds and mental hospitals, and his  
12 imprisonment limits his ability to litigate. Plaintiff states that his case presents meritorious  
13 claims, as shown by the Court’s screening order that allows him to proceed. Plaintiff argues that  
14 he might suffer retaliation from prison officials for investigating his claim. He further asserts that  
15 the case may be strongly disputed by defendants, and require depositions and evidence better  
16 accessed by counsel.

17           As Plaintiff has been informed, he does not have a constitutional right to appointed  
18 counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), rev’d in part on  
19 other grounds, 154 F.3d 952, 954 n.1 (9th Cir. 1998), and the court cannot require an attorney to  
20 represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. U.S. Dist. Court for the S. Dist.  
21 of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional circumstances the court may  
22 request the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at  
23 1525.

24           Without a reasonable method of securing and compensating counsel, the Court will seek  
25 volunteer counsel only in the most serious and exceptional cases. In determining whether  
26 “exceptional circumstances exist, a district court must evaluate both the likelihood of success on  
27 the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the  
28 complexity of the legal issues involved.” Id. (internal quotation marks and citations omitted).

1 The Court has considered Plaintiff's renewed motion for the appointment of counsel, but  
2 does not find the required exceptional circumstances. Even if it is assumed that Plaintiff is not  
3 well versed in the law and that he has made serious allegations which, if proved, would entitle  
4 him to relief, his case is not exceptional. This Court is faced with similar cases filed by prisoners  
5 proceeding pro se and suffering from physical and mental health conditions almost daily. These  
6 prisoners also must conduct legal research and prosecute claims without the assistance of  
7 counsel. Furthermore, as discussed below, given Plaintiff's failure to state a claim, the Court  
8 cannot find any likelihood of success on the merits. Accordingly, Plaintiff's motion to appoint  
9 counsel is HEREBY DENIED. The Court now turns to the screening of Plaintiff's second  
10 amended complaint.

### 11 **Findings and Recommendations**

#### 12 **II. Screening Requirement and Standard**

13 The Court is required to screen complaints brought by prisoners seeking relief against a  
14 governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. §  
15 1915A(a). Plaintiff's complaint, or any portion thereof, is subject to dismissal if it is frivolous or  
16 malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary  
17 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(A)(b)(1), (2); 28  
18 U.S.C. § 1915(e)(2)(B)(ii).

19 A complaint must contain "a short and plain statement of the claim showing that the  
20 pleader is entitled to relief. . . ." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
21 required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere  
22 conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937,  
23 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65  
24 (2007)). While a plaintiff's allegations are taken as true, courts "are not required to indulge  
25 unwarranted inferences." Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)  
26 (internal quotation marks and citation omitted).

27 To survive screening, Plaintiff's claims must be facially plausible, which requires  
28 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable

1 for the misconduct alleged. Iqbal, 556 U.S. at 678, 129 S. Ct. at 1949 (quotation marks omitted);  
2 Moss v. United States Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility  
3 that a defendant acted unlawfully is not sufficient, and mere consistency with liability falls short  
4 of satisfying the plausibility standard. Iqbal, 556 U.S. at 678, 129 S. Ct. at 1949 (quotation marks  
5 omitted); Moss, 572 F.3d at 969. Courts are required to liberally construe pro se prisoner  
6 complaints. Estelle v. Gamble, 429 U.S. 97, 106, 97 S. Ct. 285, 292 (1976).

### 7 **III. Plaintiff's Factual Allegations**

8 Plaintiff is currently housed at California State Prison, Lancaster, in Lancaster,  
9 California. The events in the amended complaint are alleged to have occurred while Plaintiff  
10 was housed at Wasco State Prison. Plaintiff names the following Defendants: (1) Department of  
11 Corrections; (2) Holland, Mental Health Clinician at Wasco State Prison; and (3) unidentified  
12 defendants “[t]o be named at or with Discovery.” (ECF No. 23 at p. 2.)

13 In his amended complaint, which totals 100 pages inclusive of exhibits, Plaintiff alleges  
14 as follows: The names of the prison staff that had an active part in violating his civil rights are  
15 documented on a 602 that an appeals coordinator might have at Wasco State Prison. Defendant  
16 Holland was Plaintiff's clinician at that time and Plaintiff gave him most of that information.  
17 When Plaintiff went to the Correctional Officers and Program Office, the Sergeant and  
18 Correctional Officer that Plaintiff talked to on the day he was moved from 3 to 4 building instead  
19 of Ad-Seg will be easy to identify because the shift will be documented in the computer.  
20 Plaintiff alleges that prison staff ignored his pleas for safety and he did everything the prison  
21 asked him to say and do to receive protection, but his pleas were ignored. Plaintiff alleges that  
22 he was placed in a more dangerous situation instead of being placed in Ad-Seg and he suffered  
23 every day mentally and emotionally until he was finally assaulted and hospitalized.

24 After Plaintiff received a threatening note and was approached and threatened, he was  
25 moved to the building next door instead of being placed in Ad-Seg. Unknown persons wanted  
26 Plaintiff even more because their house was searched, so they knew that Plaintiff told on them.  
27 That was the reason Plaintiff was threatened in the first place.

28 When Plaintiff was moved from 3 to 4 building, one of Plaintiff's enemies followed him

1 to 4 building. Finally, with the help from a clinician, Plaintiff was moved to 2 building on the  
2 same yard instead of Ad-Seg. These kinds of moves continued after Plaintiff was supposed to be  
3 moved off of the yard after the first threat. Plaintiff alleges that, two months prior, he was  
4 stabbed and assaulted. During the entire time, Plaintiff was a mental patient and had just come  
5 out of a crisis bed. It was obvious that he was moved for safety issues because he was a mental  
6 health patient in a mental health building and was moved to a non-mental health building.

7 Plaintiff alleges that he filed emergency 602s with the staff names of who he told about  
8 the threat and the Sergeant that had pulled Plaintiff into his office. Plaintiff gave the Sergeant  
9 the threatening note and the names of the inmates threatening him. Plaintiff asserts that he was  
10 supposed to be placed in protected custody, but was instead placed in another building on the  
11 same yard. Plaintiff also went to Defendant Holland and they tried every way possible to get  
12 Plaintiff into protected custody before he was assaulted. Plaintiff also told the unit classification  
13 and Idtt committee.

14 Plaintiff further alleges that one threat came from an incident that had just happened at  
15 the Fresno County Jail. Plaintiff told the Sergeant and Correctional Officer about the threat. The  
16 Sergeant and the Correctional Officer interviewed Plaintiff and would have to move him from a  
17 mental health building to a non-mental health building. Plaintiff asserts that he and Inmate Wade  
18 were separated as cellies the Fresno County Jail because of an argument or fight.

19 Plaintiff forwards claims for the violation of his Eighth and Fourteenth Amendment  
20 rights. As relief, he seeks an out of state transfer and parole, mental health with job placement,  
21 placement in a long-term DSH program until he is transferred out of state, appointment of  
22 counsel, compensatory and punitive damages and a single cell.

### 23 **III. Discussion**

#### 24 **A. Federal Rule of Civil Procedure 8**

25 Pursuant to Federal Rule of Civil Procedure 8, a complaint must contain “a short and  
26 plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a).  
27 As noted above, detailed factual allegations are not required, but “[t]hreadbare recitals of the  
28 elements of a cause of action, supported by mere conclusory statements, do not suffice.” Iqbal,

1 556 U.S. at 678 (citation omitted). Plaintiff must set forth “sufficient factual matter, accepted as  
2 true, to ‘state a claim to relief that is plausible on its face.’ ” Iqbal, 556 U.S. at 678 (quoting  
3 Twombly, 550 U.S. at 555). While factual allegations are accepted as true, legal conclusions are  
4 not. Id.; see also Twombly, 550 U.S. at 556–557; Moss, 572 F.3d at 969.

5 As with Plaintiff’s prior complaints, Plaintiff’s second amended complaint is neither  
6 short nor plain. It is difficult to read and understand, lacking dates, names and other necessary  
7 factual information, including what happened, when it happened and who was involved. The  
8 Court will not expend its otherwise taxed resources to sort through the nearly 80 pages of  
9 exhibits attached to the amended complaint, the majority of which are unrelated to the  
10 allegations in this action, in order to find a colorable claim for relief. Despite being provided  
11 with the relevant pleading standard and a final opportunity to amend his complaint, Plaintiff has  
12 been unable to cure this deficiency.

### 13 **B. California Department of Corrections and Rehabilitation**

14 Plaintiff seeks to bring claims against the California Department of Corrections and  
15 Rehabilitation (“CDCR”). However, the CDCR is not a proper party to this action. The  
16 Eleventh Amendment prohibits federal courts from hearing a Section 1983 lawsuit in which  
17 damages or injunctive relief is sought against state agencies (such as the CDCR) and individual  
18 prisons, absent “a waiver by the state or a valid congressional override . . . .” Dittman v.  
19 California, 191 F.3d 1020, 1025 (9th Cir. 1999). “The Eleventh Amendment bars suits which  
20 seek either damages or injunctive relief against a state, ‘an arm of the state,’ its instrumentalities,  
21 or its agencies.” See Fireman’s Fund Ins. Co. v. City of Lodi, Cal., 302 F.3d 928, 957 n. 28 (9th  
22 Cir. 2002) (internal quotation and citations omitted), cert. denied, 538 U.S. 961 (2003). “The  
23 State of California has not waived its Eleventh Amendment immunity with respect to claims  
24 brought under § 1983 in federal court . . . .” Dittman, 191 F.3d at 1025–26 (citing Atascadero  
25 State Hosp. v. Scanlon, 473 U.S. 234, 241 (1985)); see also Brown v. Cal. Dep’t. of Corr., 554  
26 F.3d 747, 752 (9th Cir. 2009).

### 27 **C. Eighth Amendment – Deliberate Indifference to Safety & Failure to Protect**

28 The Eighth Amendment protects prisoners from inhumane methods of punishment and

1 from inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir.  
2 2005). Prison officials must provide prisoners with medical care and personal safety and must  
3 take reasonable measures to guarantee the safety of the inmates. Farmer v. Brennan, 511 U.S.  
4 825, 832-33 (11994) (internal citations and quotations omitted). In a “failure-to-protect” Eighth  
5 Amendment violation claim, an inmate must show that a prison official’s act or omission (1) is  
6 objectively, sufficiently serious, and (2) the official is deliberately indifferent to inmate’s health  
7 or safety. Id. at 834; Hearns v. Terhune, 413 F.3d 1036, 1040-41 (9th Cir. 2005). The failure of  
8 prison officials to protect inmates from attacks by other inmates may rise to the level of an  
9 Eighth Amendment violation where prison officials know of and disregard a substantial risk of  
10 serious harm to the plaintiff. E.g., Farmer, 522 U.S. at 847; Hearns, 413 F.3d at 1040.

11 Plaintiff’s second amended complaint fails to state a cognizable failure to protect claim.  
12 Plaintiff’s allegations are too vague and conclusory to state a claim. Even without properly  
13 naming the defendants, the amended complaint omits critical factual information regarding what  
14 happened and how prison officials reportedly failed to protect him from some unspecified attack.  
15 More importantly, it appears from Plaintiff’s allegations that prison officials repeatedly moved  
16 him to different buildings in response to his expressed concerns. Despite being provided with  
17 the relevant legal standard, Plaintiff has been unable to cure the deficiencies in this claim.

#### 18 **D. Fourteenth Amendment – Equal Protection**

19 The Equal Protection Clause requires that persons who are similarly situated be treated  
20 alike. City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 439 (1985); Shakur v.  
21 Schriro, 514 F.3d 878, 891 (9th Cir. 2008). An equal protection claim may be established by  
22 showing that Defendants intentionally discriminated against Plaintiff based on his membership in  
23 a protected class, Comm. Concerning Cmty. Improvement v. City of Modesto, 583 F.3d 690,  
24 702–03 (9th Cir. 2009); Serrano v. Francis, 345 F.3d 1071, 1082 (9th Cir. 2003), Lee v. City of  
25 Los Angeles, 250 F.3d 668, 686 (9th Cir. 2001), or that similarly situated individuals were  
26 intentionally treated differently, Engquist v. Oregon Dep’t of Agric., 553 U.S. 591, 601–02  
27 (2008); Vill. of Willowbrook v. Olech, 528 U.S. 562, 564 (2000); Lazy Y Ranch Ltd. v. Behrens,  
28 546 F.3d 580, 592 (9th Cir. 2008); N. Pacifica LLC v. City of Pacifica, 526 F.3d 478, 486 (9th

1 Cir. 2008).

2 Plaintiff fails to sufficiently allege facts demonstrating that he is a member of a protected  
3 class or that he was intentionally treated differently from other similarly situated inmates. Given  
4 the nature of the underlying action, it does not appear that Plaintiff could state a colorable Equal  
5 Protection claim even if additional leave to amend were granted.

6 **E. Fourteenth Amendment – Due Process**

7 Plaintiff makes several allegations about his 602 appeal process and no timely responses,  
8 which the Court presumes is the basis of Plaintiff’s due process claim. However, to the extent  
9 Plaintiff seeks to allege a claim for failure to process his grievances, he may not do so. Prison  
10 officials are not required under federal law to process inmate grievances in a specific way or to  
11 respond to them in a favorable manner. Prisoners do not have a “separate constitutional  
12 entitlement to a specific prison grievance procedure.” Ramirez v. Galaza, 334 F.3d 850, 860 (9th  
13 Cir. 2003) (citing Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988)). Even the non-existence  
14 of, or the failure of prison officials to properly implement, an administrative appeals process  
15 within the prison system does not raise constitutional concerns. Mann, 855 F.2d at 640; see also  
16 Buckley v. Barlow, 997 F.2d 494, 495 (8th Cir. 1993). At all times plaintiff retained the option  
17 of commencing a civil action on a specific substantive claim that he had attempted to exhaust  
18 through the prison’s grievance system but for which he contends administrative remedies were  
19 effectively unavailable. Sapp v. Kimbrell, 623 F.3d 813, 822-23 (9th Cir. 2010) (administrative  
20 remedies plainly unavailable if grievance was screened out for improper reasons).

21 **F. Injunctive Relief**

22 Plaintiff is no longer housed at Wasco State Prison, where he alleges the incident  
23 occurred. Therefore, any injunctive relief he seeks against officials at Wasco is moot. See  
24 Andrews v. Cervantes, 493 F.3d 1047, 1053 n.5 (9th Cir. 2007) (prisoner’s claims for injunctive  
25 relief generally become moot upon transfer) (citing Johnson v. Moore, 948 F.2d 517, 519 (9th  
26 Cir. 1991) (per curiam) (holding claims for injunctive relief “relating to [a prison’s] policies are  
27 moot” when the prisoner has been moved and “he has demonstrated no reasonable expectation of  
28 returning to [the prison]”)).



