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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

ROBERT WILLIAM TUNSTALL, JR,
Plaintiff,
v.
JOSEPH BICK, et al.,
Defendants.

No. 2:16-CV-2604-KJM-DMC-P

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court are Plaintiff’s second amended complaint (ECF No. 31), Plaintiff’s emergency motion regarding ADA compliance (ECF No. 39), Plaintiff’s motion for a court order (ECF No. 42), and Plaintiff’s motion for appointment of counsel (ECF No. 43). Plaintiff’s complaint does not clearly state any claims. However, Plaintiff seems to allege violations of the Americans with Disabilities Act (ADA), Plaintiff’s Eighth Amendment right to medical treatment, Plaintiff’s Eighth Amendment right against excessive force, and possibly a claimed violation of Plaintiff’s First Amendment Right to access the courts.

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1 **I. SCREENING REQUIREMENT AND STANDARD**

2 The Court is required to screen complaints brought by prisoners seeking relief
3 against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C.
4 § 1915A(a). The Court must dismiss a complaint or portion thereof if it: (1) is frivolous or
5 malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief
6 from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2).

7 The Federal Rules of Civil Procedure require complaints contain a "...short and
8 plain statement of the claim showing that the pleader is entitled to relief." See McHenry v.
9 Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (quoting Fed. R. Civ. P. 8(a)(1)). Detailed factual
10 allegations are not required, but "[t]hreadbare recitals of the elements of a cause of action,
11 supported by mere conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678
12 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff's
13 allegations are taken as true, courts "are not required to indulge unwarranted inferences." Doe I v.
14 Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation
15 omitted).

16 Prisoners proceeding pro se in civil rights actions are entitled to have their
17 pleadings liberally construed and are afforded the benefit of any doubt. Hebbe v. Pliler, 627 F.3d
18 338, 342 (9th Cir. 2010) (citations omitted). To survive screening, Plaintiff's claims must be
19 facially plausible, which requires sufficient factual detail to allow the Court to reasonably infer
20 that each named defendant is liable for the misconduct alleged, Iqbal, 556 U.S. at 678 (quotation
21 marks omitted); Moss v. United States Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The
22 sheer possibility that a defendant acted unlawfully is not sufficient, and mere consistency with
23 liability falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at 678 (quotation marks
24 omitted); Moss, 572F.3d at 969.

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II. PLAINTIFF’S ALLEGATIONS

Plaintiff’s complaint is largely written in a narrative style, making the claims difficult to identify. This Court has been able to extract allegations of violations of the Americans with Disabilities Act (ADA), Plaintiff’s Eighth Amendment right to medical treatment, Plaintiff’s Eighth Amendment right against excessive force, allegations of a violation of Plaintiff’s First Amendment Right to access courts, and charged violations of Plaintiff’s Fourteenth Amendment right to due process.

III. ANALYSIS

A. Federal Rules of Civil Procedure Rule 8

The Federal Rules of Civil Procedure require complaints contain a “...short and plain statement of the claim showing that the pleader is entitled to relief.” See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (quoting Fed. R. Civ. P. 8(a)(1)). Claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the complaint gives the defendant fair notice of the plaintiff’s claim and the grounds upon which it rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because a plaintiff must allege, with at least some degree of particularity, overt acts by specific defendants which support the claims, vague and conclusory allegations fail to satisfy this standard. Additionally, to survive screening, Plaintiff’s claims must be facially plausible, which requires sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable for the misconduct alleged, Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss v. United States Secret Service, 572 F.3d 962, 969 (9th Cir. 2009).

Here, Plaintiff’s complaint is unclear and does not contain a plain statement of the claims showing that he is entitled to relief. Rather, the complaint contains an unclear narrative requiring this Court to attempt to extract possible claims. It thus cannot be said that Plaintiff has satisfied the requirements of Rule 8. Further, the complaint as currently composed is too convoluted to give Defendants fair notice. This Court has identified potential issues raised by

1 Plaintiff, but it remains unclear if the claim identified are in fact those intended by Plaintiff.
2 Additionally, even if the Court assumes it properly identified Plaintiff's claims, each claim fails
3 on independent substantive grounds as discussed below.

4 **B. Americans with Disabilities Claim**

5 Plaintiff seeks to bring a claim under Title II of the Americans with Disabilities
6 Act (ADA), 42 U.S.C. § 12132. Title II of the ADA "prohibit[s] discrimination on the basis of
7 disability." *Lovell v. Chandler*, 303 F.3d 1039, 1052 (9th Cir. 2002). "To establish a violation of
8 Title II of the ADA, a plaintiff must show that (1) [he] is a qualified individual with a disability;
9 (2) [he] was excluded from participation in or otherwise discriminated against with regard to a
10 public entity's services, programs, or activities; and (3) such exclusion or discrimination was by
11 reason of [his] disability." *Id.*

12 Here, Plaintiff has failed to plead sufficient facts to indicate that he is a qualified
13 individual under the statute or that he was excluded from participation in, or discriminated against,
14 by reason of his disability. Plaintiff alleges that he is disabled due to a brain operation. This
15 conclusory allegation alone, without additional facts, does not establish that Plaintiff is a qualified
16 individual. Plaintiff needs to plead facts establishing that he has a physical or mental impairment
17 that substantially limits one or more major life activities, that he has a record of a physical or
18 mental impairment that substantially limits one or more major life activities, or that he is regarded
19 as having such an impairment. 29 C.F.R. § 1630. Additionally, there are no facts indicating that
20 Plaintiff was not provided proper accommodations or discriminated against by reason of his
21 disability. For these reasons, the ADA claim cannot pass screening.

22 **C. Eighth Amendment Medical Treatment**

23 The treatment a prisoner receives in prison and the conditions under which the
24 prisoner is confined are subject to scrutiny under the Eighth Amendment, which prohibits cruel
25 and unusual punishment. *See Helling v. McKinney*, 509 U.S. 25, 31 (1993); *Farmer v. Brennan*,
26 511 U.S. 825, 832 (1994). The Eighth Amendment "... embodies broad and idealistic concepts
27 of dignity, civilized standards, humanity, and decency." *Estelle v. Gamble*, 429 U.S. 97, 102
28 (1976). Conditions of confinement may, however, be harsh and restrictive. *See Rhodes v.*

1 Chapman, 452 U.S. 337, 347 (1981). Nonetheless, prison officials must provide prisoners with
2 “food, clothing, shelter, sanitation, medical care, and personal safety.” Toussaint v. McCarthy,
3 801 F.2d 1080, 1107 (9th Cir. 1986). A prison official violates the Eighth Amendment only when
4 two requirements are met: (1) objectively, the official’s act or omission must be so serious such
5 that it results in the denial of the minimal civilized measure of life’s necessities; and (2)
6 subjectively, the prison official must have acted unnecessarily and wantonly for the purpose of
7 inflicting harm. See Farmer, 511 U.S. at 834. Thus, to violate the Eighth Amendment, a prison
8 official must have a “sufficiently culpable mind.” See id.

9 Deliberate indifference to a prisoner’s serious illness or injury, or risks of serious
10 injury or illness, gives rise to a claim under the Eighth Amendment. See Estelle, 429 U.S. at 105;
11 see also Farmer, 511 U.S. at 837. This applies to physical as well as dental and mental health
12 needs. See Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982). An injury or illness is
13 sufficiently serious if the failure to treat a prisoner’s condition could result in further significant
14 injury or the “. . . unnecessary and wanton infliction of pain.” McGuckin v. Smith, 974 F.2d
15 1050, 1059 (9th Cir. 1992); see also Doty v. County of Lassen, 37 F.3d 540, 546 (9th Cir. 1994).
16 Factors indicating seriousness are: (1) whether a reasonable doctor would think that the condition
17 is worthy of comment; (2) whether the condition significantly impacts the prisoner’s daily
18 activities; and (3) whether the condition is chronic and accompanied by substantial pain. See
19 Lopez v. Smith, 203 F.3d 1122, 1131-32 (9th Cir. 2000) (en banc).

20 The requirement of deliberate indifference is less stringent in medical needs cases
21 than in other Eighth Amendment contexts because the responsibility to provide inmates with
22 medical care does not generally conflict with competing penological concerns. See McGuckin,
23 974 F.2d at 1060. Thus, deference need not be given to the judgment of prison officials as to
24 decisions concerning medical needs. See Hunt v. Dental Dep’t, 865 F.2d 198, 200 (9th Cir.
25 1989). The complete denial of medical attention may constitute deliberate indifference. See
26 Toussaint v. McCarthy, 801 F.2d 1080, 1111 (9th Cir. 1986). Delay in providing medical
27 treatment, or interference with medical treatment, may also constitute deliberate indifference. See
28 Lopez, 203 F.3d at 1131. Where delay is alleged, however, the prisoner must also demonstrate

1 that the delay led to further injury. See McGuckin, 974 F.2d at 1060.

2 Negligence in diagnosing or treating a medical condition does not, however, give
3 rise to a claim under the Eighth Amendment. See Estelle, 429 U.S. at 106. Moreover, a
4 difference of opinion between the prisoner and medical providers concerning the appropriate
5 course of treatment does not give rise to an Eighth Amendment claim. See Jackson v. McIntosh,
6 90 F.3d 330, 332 (9th Cir. 1996).

7 Plaintiff seems to contend that he received deficient medical care. Plaintiff asserts
8 that if he would have been treated for his neurological disorder he would not have received any
9 rules violation reports. However, there are no facts indicating who failed to provide Plaintiff with
10 adequate medical care or how that individual acted with deliberate indifference. Plaintiff states
11 that Defendants Bick and Adams failed to grant some kind of treatment, but it is unclear what that
12 treatment was or why the treatment was denied. For that reason, the claim cannot pass screening.

13 **D. Eighth Amendment Excessive Force**

14 When prison officials stand accused of using excessive force, the core judicial
15 inquiry is “. . . whether force was applied in a good-faith effort to maintain or restore discipline,
16 or maliciously and sadistically to cause harm.” Hudson v. McMillian, 503 U.S. 1, 6-7 (1992);
17 Whitley v. Albers, 475 U.S. 312, 320-21 (1986). The “malicious and sadistic” standard, as
18 opposed to the “deliberate indifference” standard applicable to most Eighth Amendment claims,
19 is applied to excessive force claims because prison officials generally do not have time to reflect
20 on their actions in the face of risk of injury to inmates or prison employees. See Whitley, 475
21 U.S. at 320-21. In determining whether force was excessive, the court considers the following
22 factors: (1) the need for application of force; (2) the extent of injuries; (3) the relationship
23 between the need for force and the amount of force used; (4) the nature of the threat reasonably
24 perceived by prison officers; and (5) efforts made to temper the severity of a forceful response.
25 See Hudson, 503 U.S. at 7. The absence of an emergency situation is probative of whether force
26 was applied maliciously or sadistically. See Jordan v. Gardner, 986 F.2d 1521, 1528 (9th Cir.
27 1993) (en banc). The lack of injuries is also probative. See Hudson, 503 U.S. at 7-9. Finally,
28 because the use of force relates to the prison’s legitimate penological interest in maintaining

1 security and order, the court must be deferential to the conduct of prison officials. See Whitley,
2 475 U.S. at 321-22.

3 Plaintiff asserts he was physically assaulted by a nurse while he was having a
4 seizure, but the nurse in question is not identified anywhere in the complaint. Plaintiff then
5 claims he was assaulted during a medical emergency by officers and nurses, but again fails to
6 identify these individuals. Because there are no individuals named related to these claims, this
7 court cannot assess the validity of the claims. For that reason, this claim too cannot pass
8 screening.

9 **E. First Amendment Access to Courts**

10 Prisoners have a First Amendment right of access to the courts. See Lewis v.
11 Casey, 518 U.S. 343, 346 (1996); Bounds v. Smith, 430 U.S. 817, 821 (1977); Bradley v. Hall, 64
12 F.3d 1276, 1279 (9th Cir. 1995) (discussing the right in the context of prison grievance
13 procedures). This right includes petitioning the government through the prison grievance process.
14 See id. Prison officials are required to “assist inmates in the preparation and filing of meaningful
15 legal papers by providing prisoners with adequate law libraries or adequate assistance from
16 persons trained in the law.” Bounds, 430 U.S. at 828. The right of access to the courts, however,
17 only requires that prisoners have the capability of bringing challenges to sentences or conditions
18 of confinement. See Lewis, 518 U.S. at 356-57. Moreover, the right is limited to non-frivolous
19 criminal appeals, habeas corpus actions, and § 1983 suits. See id. at 353 n.3 & 354-55.
20 Therefore, the right of access to the courts is only a right to present these kinds of claims to the
21 court, and not a right to discover claims or to litigate them effectively once filed. See id. at 354-
22 55.

23 As a jurisdictional requirement flowing from the standing doctrine, the prisoner
24 must allege an actual injury. See id. at 349. “Actual injury” is prejudice with respect to
25 contemplated or existing litigation, such as the inability to meet a filing deadline or present a non-
26 frivolous claim. See id.; see also Phillips v. Hust, 477 F.3d 1070, 1075 (9th Cir. 2007). Delays in
27 providing legal materials or assistance which result in prejudice are “not of constitutional
28 significance” if the delay is reasonably related to legitimate penological purposes. Lewis, 518

1 U.S. at 362.

2 Plaintiff asserts because he was not provided a staff assistant as his alleged
3 disability requires, and because he was denied physical access to the law library and paging
4 system, he was unable to access the courts. It is unclear how the denial of physical access to the
5 law library and the paging system rose to the level of a First Amendment violation. It is also
6 unclear what actual injury has occurred. In other words it is unclear how the alleged acts
7 prevented Plaintiff from accessing the courts. Thus, this claim cannot pass screening.

8 **F. Due Process**

9 The Due Process Clause protects prisoners from being deprived of life, liberty, or
10 property without due process of law. Wolff v. McDonnell, 418 U.S. 539, 556 (1974). In order to
11 state a claim of deprivation of due process, a plaintiff must allege the existence of a liberty or
12 property interest for which the protection is sought. See Ingraham v. Wright, 430 U.S. 651, 672
13 (1977); Bd. of Regents v. Roth, 408 U.S. 564, 569 (1972). Due process protects against the
14 deprivation of property where there is a legitimate claim of entitlement to the property. See Bd.
15 of Regents, 408 U.S. at 577. Protected property interests are created, and their dimensions are
16 defined, by existing rules that stem from an independent source – such as state law – and which
17 secure certain benefits and support claims of entitlement to those benefits. See id.

18 Liberty interests can arise both from the Constitution and from state law. See
19 Hewitt v. Helms, 459 U.S. 460, 466 (1983); Meachum v. Fano, 427 U.S. 215, 224-27 (1976);
20 Smith v. Sumner, 994 F.2d 1401, 1405 (9th Cir. 1993). In determining whether the Constitution
21 itself protects a liberty interest, the court should consider whether the practice in question “. . . is
22 within the normal limits or range of custody which the conviction has authorized the State to
23 impose.” Wolff, 418 U.S. at 557-58; Smith, 994 F.2d at 1405. Applying this standard, the
24 Supreme Court has concluded that the Constitution itself provides no liberty interest in good-time
25 credits, see Wolff, 418 U.S. at 557; in remaining in the general population, see Sandin v. Conner,
26 515 U.S. 472, 485-86 (1995); in not losing privileges, see Baxter v. Palmigiano, 425 U.S. 308,
27 323 (1976); in staying at a particular institution, see Meachum, 427 U.S. at 225-27; or in
28 remaining in a prison in a particular state, see Olim v. Wakinekona, 461 U.S. 238, 245-47 (1983).

1 In determining whether state law confers a liberty interest, the Supreme Court has
2 adopted an approach in which the existence of a liberty interest is determined by focusing on the
3 nature of the deprivation. See Sandin v. Connor, 515 U.S. 472, 481-84 (1995). In doing so, the
4 Court has held that state law creates a liberty interest deserving of protection only where the
5 deprivation in question: (1) restrains the inmate’s freedom in a manner not expected from the
6 sentence; and (2) “imposes atypical and significant hardship on the inmate in relation to the
7 ordinary incidents of prison life.” Id. at 483-84. Prisoners in California have a liberty interest in
8 the procedures used in prison disciplinary hearings where a successful claim would not
9 necessarily shorten the prisoner’s sentence. See Ramirez v. Galaza, 334 F.3d 850, 853, 859 (9th
10 Cir. 2003) (concluding that a due process challenge to a prison disciplinary hearing which did not
11 result in the loss of good-time credits was cognizable under § 1983); see also Wilkinson v.
12 Dotson, 544 U.S. 74, 82 (2005) (concluding that claims which did not seek earlier or immediate
13 release from prison were cognizable under § 1983).

14 Where a prisoner alleges the deprivation of a liberty or property interest caused by
15 the random and unauthorized action of a prison official, there is no claim cognizable under 42
16 U.S.C. § 1983 if the state provides an adequate post-deprivation remedy. See Zinermon v. Burch,
17 494 U.S. 113, 129-32 (1990); Hudson v. Palmer, 468 U.S. 517, 533 (1984). A state’s post-
18 deprivation remedy may be adequate even though it does not provide relief identical to that
19 available under § 1983. See Hudson, 468 U.S. at 531 n.11. A due process claim is not barred,
20 however, where the deprivation is foreseeable and the state can therefore be reasonably expected
21 to make pre-deprivation process available. See Zinermon, 494 U.S. at 136-39. An available
22 state common law tort claim procedure to recover the value of property is an adequate remedy.
23 See id. at 128-29.

24 Finally, with respect to prison disciplinary proceedings, due process requires
25 prison officials to provide the inmate with: (1) a written statement at least 24 hours before the
26 disciplinary hearing that includes the charges, a description of the evidence against the inmate,
27 and an explanation for the disciplinary action taken; (2) an opportunity to present documentary
28 evidence and call witnesses, unless calling witnesses would interfere with institutional security;

1 and (3) legal assistance where the charges are complex or the inmate is illiterate. See Wolff, 418
2 U.S. at 563-70. Due process is satisfied where these minimum requirements have been met, see
3 Walker v. Sumner, 14 F.3d 1415, 1420 (9th Cir. 1994), and where there is “some evidence” in the
4 record as a whole which supports the decision of the hearing officer, see Superintendent v. Hill,
5 472 U.S. 445, 455 (1985). The “some evidence” standard is not particularly stringent and is
6 satisfied where “there is any evidence in the record that could support the conclusion reached.”
7 Id. at 455-56. However, a due process claim challenging the loss of good-time credits as a result
8 of an adverse prison disciplinary finding is not cognizable under § 1983 and must be raised by
9 way of habeas corpus. See Blueford v. Prunty, 108 F.3d 251, 255 (9th Cir. 1997).

10 Here Plaintiff seems to allege that he was not provided proper communication at
11 the rules violation report hearing. It is unclear what this means. Because there is simply a lack of
12 clarity as to how his due process rights were violated and by who, this Court cannot engage in a
13 substantive evaluation of the claim. Plaintiff is instructed to review requirements of a due process
14 claim discussed above in amending his complaint. For this reason, this claim cannot pass
15 screening.

16 17 **IV. AMENDING THE COMPLAINT**

18 Because it may be possible that some of the deficiencies identified in this order
19 may be cured by amending the complaint, plaintiff is entitled to leave to amend prior to dismissal
20 of the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).
21 Plaintiff is informed that, as a general rule, an amended complaint supersedes the original
22 complaint. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following
23 dismissal with leave to amend, all claims alleged in the original complaint which are not alleged
24 in the amended complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987).
25 Therefore, if plaintiff amends the complaint, the court cannot refer to the prior pleading in order
26 to make plaintiff’s amended complaint complete. See Local Rule 220. An amended complaint
27 must be complete in itself without reference to any prior pleading. See id.

28 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the

1 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See
2 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how
3 each named defendant is involved, and must set forth some affirmative link or connection
4 between each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d
5 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

6 Finally, plaintiff is warned that failure to file an amended complaint within the
7 time provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at
8 1260-61; see also Local Rule 110. Plaintiff is also warned that a complaint which fails to comply
9 with Rule 8 may, in the court's discretion, be dismissed with prejudice pursuant to Rule 41(b).
10 See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

11 12 V. MISCELLANEOUS MOTIONS

13 A. Motion for Appointment of Counsel

14 The United States Supreme Court has ruled that district courts lack authority to
15 require counsel to represent indigent prisoners in § 1983 cases. See Mallard v. United States Dist.
16 Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court may request the
17 voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935
18 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).
19 A finding of "exceptional circumstances" requires an evaluation of both the likelihood of success
20 on the merits and the ability of the plaintiff to articulate his claims on his own in light of the
21 complexity of the legal issues involved. See Terrell, 935 F.2d at 1017. Neither factor is
22 dispositive and both must be viewed together before reaching a decision. See id. In Terrell, the
23 Ninth Circuit concluded the district court did not abuse its discretion with respect to appointment
24 of counsel because:

25 . . . Terrell demonstrated sufficient writing ability and legal knowledge to
26 articulate his claim. The facts he alleged and the issues he raised were not
27 of substantial complexity. The compelling evidence against Terrell made it
28 extremely unlikely that he would succeed on the merits.

Id. at 1017.

1 In the present case, the Court does not at this time find the required exceptional
2 circumstances. Plaintiff complaint identifies no issues that are capable of passing the screening
3 stage. For this reason, Plaintiff currently has no likelihood of succeeding on the merits of any of
4 his claims. On this basis alone, the Court denies Plaintiff's motion for appointment of counsel.

5 **B. Motion for Court Order**

6 Plaintiff's motion for a court order seeks for this Court to act on his previously
7 filed motions. As this order addresses Plaintiff's complaint and all pending motions, this motion
8 is denied as moot.

9 **C. Emergency Motion Regarding ADA Compliance**

10 Plaintiff's Emergency Motion Regarding ADA Compliance is unclear and
11 seemingly incomplete. It seems to build on some of the claims outlined in the complaint and
12 largely seeks the same relief. Because the motion seems to simply restate the relief sought in the
13 complaint, the motion is denied.

14
15 **VI. CONCLUSION**

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. Plaintiff's second amended complaint is dismissed with leave to amend;
- 18 2. Plaintiff shall file a third amended complaint within 30 days of the date of
19 service of this order.
- 20 3. Plaintiff's request for the appointment of counsel (ECF No. 43) is denied.
- 21 4. Plaintiff's motion for a court order (ECF No. 42) is denied; and
- 22 5. Plaintiff's emergency motion for ADA compliance (ECF No. 39) is denied.

23
24 Dated: May 10, 2019



25 DENNIS M. COTA
26 UNITED STATES MAGISTRATE JUDGE