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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH GRIMES,  
Plaintiff,  
v.  
M. GROSSJAN, et al.,  
Defendants.

No. 2:17-cv-2394 MCE DB P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se with a civil rights action under 42 U.S.C. § 1983. Before the court are plaintiff’s motion to proceed in forma pauperis, plaintiff’s complaint for screening, and plaintiff’s motion for a temporary restraining order. For the reasons set forth below, the court will grant plaintiff’s motion to proceed in forma pauperis, dismiss the complaint, give plaintiff leave to file an amended complaint, and recommend denial of the motion for a temporary restraining order.

**IN FORMA PAUPERIS**

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct

1 the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and  
2 forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments  
3 of twenty percent of the preceding month's income credited to plaintiff's prison trust account.  
4 These payments will be forwarded by the appropriate agency to the Clerk of the Court each time  
5 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. §  
6 1915(b)(2).

## 7 SCREENING

### 8 I. Legal Standards

9 The court is required to screen complaints brought by prisoners seeking relief against a  
10 governmental entity or an officer or employee of a governmental entity. See 28 U.S.C. §  
11 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims  
12 that are legally "frivolous or malicious," that fail to state a claim upon which relief may be  
13 granted, or that seek monetary relief from a defendant who is immune from such relief. See 28  
14 U.S.C. § 1915A(b)(1) & (2).

15 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
16 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
17 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
18 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
19 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
20 pleaded, has an arguable legal and factual basis. See Franklin, 745 F.2d at 1227.

21 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain  
22 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the  
23 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic  
24 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).

25 However, in order to survive dismissal for failure to state a claim a complaint must contain  
26 more than "a formulaic recitation of the elements of a cause of action;" it must contain factual  
27 allegations sufficient "to raise a right to relief above the speculative level." Bell Atlantic, 550  
28 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the

1 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.  
2 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all  
3 doubts in the plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

4 The Civil Rights Act under which this action was filed provides as follows:

5 Every person who, under color of [state law] . . . subjects, or causes  
6 to be subjected, any citizen of the United States . . . to the deprivation  
7 of any rights, privileges, or immunities secured by the Constitution .  
8 . . shall be liable to the party injured in an action at law, suit in equity,  
9 or other proper proceeding for redress.

10 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the  
11 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See  
12 Monell v. Dept. of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362  
13 (1976). "A person 'subjects' another to the deprivation of a constitutional right, within the  
14 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or  
15 omits to perform an act which he is legally required to do that causes the deprivation of which  
16 complaint is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

## 15 **II. Analysis**

### 16 **A. Allegations of the Complaint**

17 Plaintiff complains of conduct that occurred when he was confined at the California Medical  
18 Facility ("CMF"). He identifies two defendants: M. Grossjan, a correctional officer, and CMF.  
19 Plaintiff alleges that on February 15, 2017, he was returning from the yard when he was stopped  
20 by defendant Grossjan for a patdown search. He complied with the search. When the search was  
21 concluded, he attempted to enter the building by crossing the threshold into the unit N1 dayroom.  
22 Plaintiff alleges that the threshold is "defective" because a metal piece at the base impedes his  
23 ability to pass through on his wheelchair. Because plaintiff did not have someone to push him  
24 across the threshold, he reached out to grasp the door's frame to pull himself through. As he was  
25 pulling his wheelchair through the doorway, Grossjan suddenly grabbed the back of the  
26 wheelchair and jerked it backwards. This caused plaintiff's neck to "snap backwards and  
27 forwards sharply," causing injury to plaintiff's cervical spine.

28 ///

1 Plaintiff suffered numbing pain and tingling pain down both arms. He was also unable to  
2 turn his neck or hold his head up. He sought medical care for this injury. However, he received  
3 no medical care for this injury from anyone at CMF.

4 Plaintiff alleges violations of his Eighth Amendment rights based on the Grossjan's use of  
5 excessive force and CMF's failure to provide safe access through the doorway and failure to  
6 provide medical care. He also alleges due process and equal protection violations. Plaintiff seeks  
7 compensatory damages.

## 8 **B. Does Plaintiff State Cognizable Claims?**

### 9 **1. Eight Amendment Excessive Force**

#### 10 **a. Legal Standards**

11 The unnecessary and wanton infliction of pain violates the Cruel and Unusual Punishments  
12 Clause of the Eighth Amendment. Hudson v. McMillian, 503 U.S. 1, 5 (1992). For claims  
13 arising out of the use of excessive physical force, the issue is “whether force was applied in a  
14 good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.”  
15 Wilkins v. Gaddy, 559 U.S. 34, 37 (2010) (per curiam) (quoting Hudson, 503 U.S. at 7). The  
16 objective component of an Eighth Amendment claim is contextual and responsive to  
17 contemporary standards of decency, Hudson, 503 U.S. at 8, and although de minimis uses of  
18 force do not violate the Constitution, the malicious and sadistic use of force to cause harm always  
19 violates contemporary standards of decency, regardless of whether or not significant injury is  
20 evident, Wilkins, 559 U.S. at 37-8 (citing Hudson, 503 U.S. at 9-10).

#### 21 **b. Excessive Force Claim**

22 In the present case, plaintiff fails to allege facts sufficient to show that Grossjan violated his  
23 Eighth Amendment rights. Plaintiff states only that Grossjan grabbed his wheelchair and pulled it  
24 quickly backwards. He does not explain why Grossjan did so. Nor does plaintiff provide any  
25 other basis for this court to find that Grossjan pulled plaintiff backwards with the malicious and  
26 sadistic intent to cause him harm. “[Not] every malevolent touch by a prison guard gives rise to  
27 a federal cause of action.” Hudson, 503 U.S. at 9 (citation omitted). That is, “[n]ot every push or  
28 shove . . . violates a prisoner’s constitutional rights.” Id. (citation omitted). “The Eighth

1 Amendment’s prohibition of cruel and unusual punishments necessarily excludes from  
2 constitutional recognition *de minimis* uses of physical force, provided that the use of force is not  
3 of a sort repugnant to the conscience of mankind.” *Id.* at 9–10 (citation omitted). Plaintiff will be  
4 provided an opportunity to allege an Eighth Amendment violation against Grossjan in an  
5 amended complaint.

## 6 **2. Deliberate Indifference to Medical Needs**

### 7 **a. Legal Standards**

8 The unnecessary and wanton infliction of pain constitutes cruel and unusual punishment  
9 prohibited by the Eighth Amendment. *Whitley v. Albers*, 475 U.S. 312, 319 (1986); *Ingraham v.*  
10 *Wright*, 430 U.S. 651, 670 (1977); *Estelle v. Gamble*, 429 U.S. 97, 105-06 (1976). Neither  
11 accident nor negligence constitutes cruel and unusual punishment, as “[i]t is obduracy and  
12 wantonness, not inadvertence or error in good faith, that characterize the conduct prohibited by  
13 the Cruel and Unusual Punishments Clause.” *Whitley*, 475 U.S. at 319.

14 What is needed to show unnecessary and wanton infliction of pain “varies according to the  
15 nature of the alleged constitutional violation.” *Hudson*, 503 U.S. at 5 (citing *Whitley*, 475 U.S. at  
16 320). In order to prevail on a claim of cruel and unusual punishment, however, a prisoner must  
17 allege and prove that objectively he suffered a sufficiently serious deprivation and that  
18 subjectively prison officials acted with deliberate indifference in allowing or causing the  
19 deprivation to occur. *Wilson v. Seiter*, 501 U.S. 294, 298-99 (1991).

20 If a prisoner’s Eighth Amendment claim arises in the context of medical care, the prisoner  
21 must allege and prove “acts or omissions sufficiently harmful to evidence deliberate indifference  
22 to serious medical needs.” *Estelle*, 429 U.S. at 106. An Eighth Amendment medical claim has  
23 two elements: “the seriousness of the prisoner’s medical need and the nature of the defendant’s  
24 response to that need.” *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on  
25 other grounds by *WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997) (en banc).

26 A medical need is serious “if the failure to treat the prisoner’s condition could result in  
27 further significant injury or the ‘unnecessary and wanton infliction of pain.’” *McGuckin*, 974  
28 F.2d at 1059 (quoting *Estelle*, 429 U.S. at 104). Indications of a serious medical need include

1 “the presence of a medical condition that significantly affects an individual's daily activities.” Id.  
2 at 1059-60. By establishing the existence of a serious medical need, a prisoner satisfies the  
3 objective requirement for proving an Eighth Amendment violation. Farmer v. Brennan, 511 U.S.  
4 825, 834 (1994).

5 If a prisoner establishes the existence of a serious medical need, he must then show that  
6 prison officials responded to the serious medical need with deliberate indifference. See Farmer,  
7 511 U.S. at 834. In general, deliberate indifference may be shown when prison officials deny,  
8 delay, or intentionally interfere with medical treatment, or may be shown by the way in which  
9 prison officials provide medical care. Hutchinson v. United States, 838 F.2d 390, 393-94 (9th  
10 Cir. 1988).

11 Before it can be said that a prisoner's civil rights have been abridged with regard to medical  
12 care, “the indifference to his medical needs must be substantial. Mere ‘indifference,’  
13 ‘negligence,’ or ‘medical malpractice’ will not support this cause of action.” Broughton v. Cutter  
14 Laboratories, 622 F.2d 458, 460 (9th Cir. 1980) (citing Estelle, 429 U.S. at 105-06); see also  
15 Toguchi v. Soon Hwang Chung, 391 F.3d 1051, 1057 (9th Cir. 2004) (“Mere negligence in  
16 diagnosing or treating a medical condition, without more, does not violate a prisoner's Eighth  
17 Amendment rights.”); McGuckin, 974 F.2d at 1059 (same). Deliberate indifference is “a state of  
18 mind more blameworthy than negligence” and “requires ‘more than ordinary lack of due care for  
19 the prisoner's interests or safety.’” Farmer, 511 U.S. at 835.

20 Delays in providing medical care may manifest deliberate indifference. Estelle, 429 U.S. at  
21 104-05. To establish a claim of deliberate indifference arising from delay in providing care, a  
22 plaintiff must show that the delay was harmful. See Hallett v. Morgan, 296 F.3d 732, 745-46 (9th  
23 Cir. 2002); Berry v. Bunnell, 39 F.3d 1056, 1057 (9th Cir. 1994); McGuckin, 974 F.2d at 1059;  
24 Wood v. Housewright, 900 F.2d 1332, 1335 (9th Cir. 1990); Hunt v. Dental Dep't, 865 F.2d 198,  
25 200 (9th Cir. 1989); Shapley v. Nevada Bd. of State Prison Comm'rs, 766 F.2d 404, 407 (9th Cir.  
26 1985). In this regard, “[a] prisoner need not show his harm was substantial; however, such would  
27 provide additional support for the inmate's claim that the defendant was deliberately indifferent to  
28 his needs.” Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006).

1 Finally, mere differences of opinion between a prisoner and prison medical staff or between  
2 medical professionals as to the proper course of treatment for a medical condition do not give rise  
3 to a § 1983 claim. See Toguchi, 391 F.3d at 1058; Jackson v. McIntosh, 90 F.3d 330, 332 (9th  
4 Cir. 1996); Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989); Franklin v. Oregon, 662 F.2d  
5 1337, 1344 (9th Cir. 1981).

### 6 **b. Medical Claim**

7 Plaintiff alleges he requested, and was denied, any medical care for his injuries. Plaintiff  
8 identifies only defendant CMF. However, CMF is not a proper defendant in this § 1983 action.  
9 Section 1983 requires a showing of a violation committed by a “person acting under the color of  
10 state law.” If plaintiff wishes to pursue a claim for the denial of medical care, he must identify a  
11 person or persons who were responsible for failing to provide that care. Plaintiff will be given the  
12 opportunity to file an amended complaint to state a claim for deliberate indifference to his serious  
13 medical needs.

## 14 **3. Due Process and Equal Protection**

### 15 **a. Legal Standards**

16 Under the Due Process Clause of the Fourteenth Amendment, the state cannot “deprive any  
17 person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1. A  
18 due process claim requires a constitutionally protected liberty or property interest. Ingraham v.  
19 Wright, 430 U.S. 651, 672 (1977). “Constitutionally protected liberty interests can arise under  
20 either state law or the Due Process Clause.” Duffy v. Riveland, 98 F.3d 447, 456-57 (9th Cir.  
21 1996) (citing Hernandez v. Johnston, 833 F.2d 1316, 1318 (9th Cir. 1987)). The Constitution  
22 itself does not confer on inmates a liberty interest in avoiding the more adverse conditions of  
23 confinement. Wilkinson v. Austin, 545 U.S. 209, 221 (2005) (citing Meachum v. Fano, 427 U.S.  
24 215, 225 (1976)).

25 The Equal Protection Clause requires that persons who are similarly situated be treated alike.  
26 City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439 (1985); Hartmann v. Calif.  
27 Dept. of Corrs. and Rehab., 707 F.3d 1114, 1123 (9th Cir. 2013); Furnace v. Sullivan, 705 F.3d  
28 1021, 1030 (9th Cir. 2013); Shakur v. Schriro, 514 F.3d 878, 891 (9th Cir. 2008). An equal

1 protection claim may be established by showing that defendants intentionally discriminated  
2 against plaintiff based on his membership in a protected class, Hartmann, 707 F.3d at 1123, or  
3 that similarly situated individuals were intentionally treated differently without a rational  
4 relationship to a legitimate state purpose, Engquist v. Oregon Dept. of Agriculture, 553 U.S. 591,  
5 601–02 (2008). An Equal Protection claim may also exist where a policy that is neutral on its  
6 face has a disproportionate, or “disparate,” impact on an identifiable group. Village of Arlington  
7 Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 264-66 (1977).

8 Disability is not a suspect class for Equal Protection purposes. Pierce v. County of Orange,  
9 526 F.3d 1190, 1225 (9th Cir. 2008). In determining whether a disabled inmate is similarly  
10 situated to non-disabled inmates, the Court should ask “whether the disabled plaintiff is equally  
11 capable for the purpose at issue.” Hansen v. Rimel, 104 F.3d 189, 190 (8th Cir. 1997), see also  
12 Clark v. California, No. C 96–1486 FMS, 1998 WL 242688, \*4–5 (N.D. Cal. May 11, 1998)  
13 (where developmentally disabled prisoners lacked skills to fill out forms, thereby limiting their  
14 access to medical care and educational programming, for purposes of Equal Protection analysis  
15 they were not similarly situated to non-developmentally disabled prisoners). Claims brought  
16 under any theory must satisfy the intent requirement, that is, the plaintiff must show that some  
17 discriminatory purpose underlies the policy. See Village of Arlington Heights, 429 U.S. at 264-  
18 66; Pierce, 526 F.3d at 1225.

#### 19 **b. Plaintiff’s Fourteenth Amendment Claims**

20 Plaintiff fails to allege claims under either the Due Process or Equal Protection Clauses. He  
21 does not allege that he was deprived of his liberty or property without due process of law. To the  
22 extent he is arguing that the prison failed to make a record of his injuries, that does not involve  
23 due process concerns and is covered by his claim for deliberately indifferent medical care. With  
24 respect to plaintiff’s citation to the equal protection clause, he fails to show any sort of intentional  
25 discrimination. These claims should be dismissed without leave to amend.

#### 26 **C. Filing an Amended Complaint**

27 If plaintiff wishes to continue with this action, he must file an amended complaint that  
28 addresses the problems with his complaint that are explained above. Plaintiff is advised that in an



1 amended complaint he must clearly identify each defendant and the action that defendant took  
2 that violated his constitutional rights. The court is not required to review exhibits to determine  
3 what plaintiff's charging allegations are as to each named defendant. If plaintiff wishes to add a  
4 claim, he must include it in the body of the complaint. The charging allegations must be set forth  
5 in the amended complaint so defendants have fair notice of the claims plaintiff is presenting.  
6 That said, plaintiff need not provide every detailed fact in support of his claims. Rather, plaintiff  
7 should provide a short, plain statement of each claim. See Fed. R. Civ. P. 8(a).

8 Any amended complaint must show the federal court has jurisdiction, the action is brought in  
9 the right place, and plaintiff is entitled to relief if plaintiff's allegations are true. It must contain a  
10 request for particular relief. Plaintiff must identify as a defendant only persons who personally  
11 participated in a substantial way in depriving plaintiff of a federal constitutional right. Johnson v.  
12 Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a  
13 constitutional right if he does an act, participates in another's act or omits to perform an act he is  
14 legally required to do that causes the alleged deprivation).

15 In an amended complaint, the allegations must be set forth in numbered paragraphs. Fed. R.  
16 Civ. P. 10(b). Plaintiff may join multiple claims if they are all against a single defendant. Fed. R.  
17 Civ. P. 18(a). If plaintiff has more than one claim based upon separate transactions or  
18 occurrences, the claims must be set forth in separate paragraphs. Fed. R. Civ. P. 10(b).

19 The federal rules contemplate brevity. See Galbraith v. County of Santa Clara, 307 F.3d  
20 1119, 1125 (9th Cir. 2002) (noting that "nearly all of the circuits have now disapproved any  
21 heightened pleading standard in cases other than those governed by Rule 9(b)"); Fed. R. Civ. P.  
22 84; cf. Rule 9(b) (setting forth rare exceptions to simplified pleading). Plaintiff's claims must be  
23 set forth in short and plain terms, simply, concisely and directly. See Swierkiewicz v. Sorema  
24 N.A., 534 U.S. 506, 514 (2002) ("Rule 8(a) is the starting point of a simplified pleading system,  
25 which was adopted to focus litigation on the merits of a claim."); Fed. R. Civ. P. 8.

26 An amended complaint must be complete in itself without reference to any prior pleading.  
27 E.D. Cal. R. 220. Once plaintiff files an amended complaint, the original pleading is superseded.

28 ///

1 By signing an amended complaint, plaintiff certifies he has made reasonable inquiry and has  
2 evidentiary support for his allegations, and for violation of this rule the court may impose  
3 sanctions sufficient to deter repetition by plaintiff or others. Fed. R. Civ. P. 11.

## 4 MOTION FOR TEMPORARY RESTRAINING ORDER

### 5 I. Legal Standards

6 A party requesting preliminary injunctive relief must show that “he is likely to succeed on  
7 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the  
8 balance of equities tips in his favor, and that an injunction is in the public interest.” Winter v.  
9 Natural Res. Def. Council, 555 U.S. 7, 20 (2008). The propriety of a request for injunctive relief  
10 hinges on a significant threat of irreparable injury that must be imminent in nature. Caribbean  
11 Marine Serv. Co. v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988).

12 Alternatively, under the so-called sliding scale approach, as long as the plaintiff  
13 demonstrates the requisite likelihood of irreparable harm and can show that an injunction is in the  
14 public interest, a preliminary injunction may issue so long as serious questions going to the merits  
15 of the case are raised and the balance of hardships tips sharply in plaintiff’s favor. Alliance for  
16 the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131-36 (9th Cir. 2011) (concluding that the  
17 “serious questions” version of the sliding scale test for preliminary injunctions remains viable  
18 after Winter).

19 The principal purpose of preliminary injunctive relief is to preserve the court’s power to  
20 render a meaningful decision after a trial on the merits. See 9 Charles Alan Wright & Arthur R.  
21 Miller, Federal Practice and Procedure § 2947 (3d ed. 2014). Implicit in this required showing is  
22 that the relief awarded is only temporary and there will be a full hearing on the merits of the  
23 claims raised in the injunction when the action is brought to trial. Preliminary injunctive relief is  
24 not appropriate until the court finds that the plaintiff’s complaint presents cognizable claims. See  
25 Zepeda v. United States Immigration Serv., 753 F.2d 719, 727 (9th Cir. 1985) (“A federal court  
26 may issue an injunction if it has personal jurisdiction over the parties and subject matter  
27 jurisdiction over the claims . . .”).

28 ///

1 In cases brought by prisoners involving conditions of confinement, any preliminary  
2 injunction “must be narrowly drawn, extend no further than necessary to correct the harm the  
3 court finds requires preliminary relief, and be the least intrusive means necessary to correct that  
4 harm.” 18 U.S.C. § 3626(a)(2). Further, an injunction against individuals not parties to an action  
5 is strongly disfavored. See Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 110  
6 (1969) (“It is elementary that one is not bound by a judgment . . . resulting from litigation in  
7 which he is not designated as a party . . .”).<sup>1</sup>

## 8 II. Analysis

9 Plaintiff, who is now incarcerated at R.J. Donovan Correctional Facility in San Diego,  
10 contends that he has been in administrative segregation for a month and during that time has been  
11 denied his legal paperwork and the prison has failed to provide him with a copy of his trust  
12 account statement. (ECF No. 19.) It appears that plaintiff is asking the court to order the prison  
13 to provide that statement so that plaintiff may file it in this case. However, the court does not  
14 require a copy of plaintiff’s trust account statement. The prison provided the court with copy of  
15 that statement in November 2017. (ECF No. 5.) The court’s recent orders were an attempt to  
16 have plaintiff file a signed affidavit in support of his request to proceed in forma pauperis. On  
17 August 16, plaintiff did file a signed affidavit. As stated above, his request to proceed in forma  
18 pauperis is now complete and will be granted. Accordingly, plaintiff’s request for injunctive  
19 relief is moot.

## 20 CONCLUSION

21 For the foregoing reasons, and good cause appearing, IT IS HEREBY ORDERED as  
22 follows:

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23  
24 <sup>1</sup> However, the fact that injunctive relief is sought from one not a party to litigation does not  
25 automatically preclude the court from acting. The All Writs Act, 28 U.S.C. § 1651(a) permits the  
26 court to issue writs “necessary or appropriate in aid of their jurisdictions and agreeable to the  
27 usages and principles of law.” The All Writs Act is meant to aid the court in the exercise and  
28 preservation of its jurisdiction. Plum Creek Lumber Co. v. Hutton, 608 F.2d 1283, 1289 (9th Cir.  
1979). The United States Supreme Court has authorized the use of the All Writs Act in  
appropriate circumstances against persons or entities not a party to the underlying litigation.  
United States v. New York Telephone Co., 434 U.S. 159, 174 (1977).


- 1 1. Plaintiff's motion to proceed in forma pauperis (ECF No. 20) is granted.
- 2 2. Plaintiff's complaint is dismissed with leave to amend.
- 3 3. Plaintiff is granted thirty days from the date of service of this order to file an amended
- 4 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules
- 5 of Civil Procedure, and the Local Rules of Practice. The amended complaint must bear
- 6 the docket number assigned this case and must be labeled "First Amended Complaint."
- 7 Plaintiff's failure to file an amended complaint within the time provided, or otherwise
- 8 respond to this order, may result in dismissal of this case.
- 9 4. The Clerk of the Court is directed to send plaintiff a copy of the prisoner complaint form
- 10 used in this district.

11 Further, IT IS RECOMMENDED that:

- 12 1. Defendant CMF be dismissed from this action with prejudice.
- 13 2. Plaintiff's claims for due process and equal protection be dismissed from this action with
- 14 prejudice.
- 15 3. Plaintiff's motion for a temporary restraining order (ECF No. 19) be denied as moot.

16 These findings and recommendations will be submitted to the United States District Judge  
17 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
18 after being served with these findings and recommendations, plaintiff may file written objections  
19 with the court. The document should be captioned "Objections to Magistrate Judge's Findings  
20 and Recommendations." Plaintiff is advised that failure to file objections within the specified  
21 time may result in waiver of the right to appeal the district court's order. Martinez v. Ylst, 951  
22 F.2d 1153 (9th Cir. 1991).

23 Dated: September 18, 2018

24  
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26   
DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE

27 DLB:9  
28 DLB1/prisoner-civil rights/grim2394.scrn