

1 On August 13, 2020, pending receipt of the AG's report, petitioner¹ filed a civil rights
2 complaint asserting putative RICO, discrimination and retaliation claims, and requested another
3 application to proceed in forma pauperis. ECF No. 8.

4 On August 19, 2020, the AG submitted a statement that included a declaration from
5 petitioner's clinician, LCSW S. Jacques, who stated that petitioner receives mental health
6 treatment at the Enhanced Outpatient Program (EOP) level of care, receives services through the
7 Developmental Disability Program (DDP), and is assigned to a single cell. ECF No. 9. LCSW
8 Jacques reported that she meets weekly with petitioner and met with him on August 17, 2020 in
9 response to the court's order. Jacques reported that petitioner did not express any specific safety
10 concerns but that he generally feared retaliation from staff for filing lawsuits or submitting inmate
11 appeals. Jacques completed a suicide risk assessment and determined that Wells was not in
12 imminent danger of self-harm. Petitioner objected to the AG report and LCSW Jacques'
13 evaluation on August 31, 2020. ECF No. 12.

14 Meanwhile, on August 10 and 21, 2020, petitioner filed requests for appointment of
15 counsel, ECF Nos. 6, 10, which this court denied without prejudice as premature, ECF Nos. 7, 13.
16 On August 21, 2020, petitioner filed a statement (entitled "supplement") informing the court that
17 he continued to feel unsafe around some correctional officers but that some inmates were now
18 being nicer to him. ECF No. 11. The undersigned informed petitioner that the court lacks
19 authority to consider any matters in this case until petitioner has been granted in forma pauperis
20 status or paid the filing fee, and a cognizable pleading has been filed. ECF No. 13 at 3.

21 On September 14, 2020, petitioner filed a motion to proceed in forma pauperis. ECF No.
22 16. On September 21, 2020, upon the court's request, CDCR forwarded a copy of petitioner's
23 most recent prison trust account statement. ECF No. 19.

24 On September 25, 2020, petitioner filed a motion for preliminary injunction/temporary
25 restraining order. ECF No. 20. Petitioner filed similar requests on September 2 and 4, 2020 and

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28 ¹ The undersigned refers to Mr. Wells as "petitioner" based on his initial filing and the Clerk's
consequent characterization of this case as a habeas action.

1 on October 2, 2020. ECF Nos. 14, 15, 21. He filed two miscellaneous matters on September 14,
2 2020. ECF Nos. 17, 18.

3 The undersigned now recommends the denial of petitioner’s motion for preliminary
4 injunctive relief. Petitioner will be directed to inform the court whether he requests the
5 conversion of this case to a civil rights action and, if so, directs him to file a First Amended
6 Complaint. Finally, this order admonishes petitioner to refrain from filing further documents in
7 this case unless expressly authorized by court order or the applicable federal rules.

8 **II. Petitioner’s Motion for Preliminary Injunctive Relief**

9 Petitioner requests issuance of an “emergency restraining order to stop CDCR from
10 utilizing SNY [Special Needs Yard] inmates from poisoning me with (apond belief) strict nine,
11 rat poison and or some type of poison.” ECF No. 20 at 1 (sic). Petitioner restates this primary
12 concern in multiple ways throughout this motion and in related filings. See generally ECF No.
13 20; see also ECF Nos. 14, 15, 21.

14 **A. Legal Standards**

15 “A preliminary injunction is an ‘extraordinary and drastic remedy,’ 11A C. Wright, A.
16 Miller, & M. Kane, Federal Practice and Procedure § 2948, p. 129 (2d ed.1995) [] (footnotes
17 omitted); it is never awarded as of right, Yakus v. United States, 321 U.S. 414, 440 (1944).”
18 Munaf v. Geren, 553 U.S. 674, 689-90 (2008). “The sole purpose of a preliminary injunction is
19 to “preserve the status quo ante litem pending a determination of the action on the merits.” Sierra
20 Forest Legacy v. Rey, 577 F.3d 1015, 1023 (9th Cir. 2009) (citing L.A. Memorial Coliseum
21 Comm’n v. NFL, 634 F.2d 1197, 1200 (9th Cir.1980)); see also 11A Charles Alan Wright &
22 Arthur R. Miller, Federal Practice and Procedure, § 2947 (2d ed. 2010)

23 In evaluating the merits of a motion for preliminary injunctive relief, the court considers
24 whether the movant has shown that “he is likely to succeed on the merits, that he is likely to
25 suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his
26 favor, and that an injunction is in the public interest.” Winter v. Natural Resources Defense
27 Council, 555 U.S. 7, 20 (2008); Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009)
28 (quoting Winter). The propriety of a request for injunctive relief hinges on a significant threat of

1 irreparable injury that must be imminent in nature. Caribbean Marine Serv. Co. v. Baldrige, 844
2 F.2d 668, 674 (9th Cir. 1988). A preliminary injunction is appropriate when a plaintiff
3 demonstrates . . . “serious questions going to the merits and a hardship balance [] tips sharply
4 toward the plaintiff, . . . assuming the other two elements of the Winter test are also met.”
5 Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131-32 (9th Cir. 2011).

6 An injunction against individuals who are not parties to the action is strongly disfavored.
7 Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100 (1969).

8 Additionally, in cases brought by prisoners involving conditions of confinement, any
9 preliminary injunction “must be narrowly drawn, extend no further than necessary to correct the
10 harm the court finds requires preliminary relief, and be the least intrusive means necessary to
11 correct the harm.” 18 U.S.C. § 3626(a)(2).

12 **B. Discussion and Recommendation**

13 As discussed more fully below, there is no viable pleading before the court in this case.
14 There are no cognizable claims, and no identifiable defendants. These deficiencies preclude
15 meaningful analysis of the Winter factors. Because there are no cognizable claims before the
16 court, it is impossible to determine whether there are serious questions going to the merits.
17 Petitioner’s wide-ranging allegations that CDCR itself and unidentified CDCR officials are
18 attempting to poison him, are actively poisoning him, and are directing other inmates to poison
19 him, are not susceptible to a narrowly drawn order that would correct the alleged harm while this
20 case proceeds on the merits. Although it is clear that petitioner is alleging a significant threat of
21 irreparable injury, it is equally clear that the generalized preliminary relief he seeks would not
22 necessarily alleviate the alleged threat.

23 For these reasons, the undersigned recommends that the pending motion for preliminary
24 injunctive relief (ECF No. 20) be denied at this time.

25 **III. Petitioner Must Make an Informed Decision Whether to Convert**

26 **This Putative Habeas Corpus Case to a Civil Rights Action**

27 It appears that petitioner is now attempting to pursue a civil rights action. If so, petitioner
28 must expressly request the conversion of this case from a putative habeas corpus action to a civil

1 rights action. These two distinct types of actions involve different standards of substantive
2 review and different remedies, and bear different filing costs that carry different potential
3 consequences.

4 **A. Consequences of Conversion**

5 Petitions for writs of habeas corpus may be filed by persons “in custody pursuant to the
6 judgment of a State court,” and “only on the ground” that the prisoner is in custody in violation of
7 federal law. 28 U.S.C. § 2254(a). Available remedies include modification of a prisoner’s
8 sentence, release from confinement, or retrial of the underlying criminal case. In contrast, civil
9 rights actions filed under 42 U.S.C. § 1983 challenge the conditions of a prisoner’s confinement,
10 not the fact or duration of that confinement, and available remedies include monetary damages
11 and appropriate injunctive relief.

12 If a prisoner qualifies for in forma pauperis status, the filing fee of \$5.00 for a habeas
13 action is waived, while the filing fee of \$350.00 for a civil rights action is paid over time from the
14 prisoner’s trust account. Obtaining in forma pauperis status to pursue a civil rights action may
15 impact the prisoner’s eligibility for in forma pauperis status in future civil rights cases. See 28
16 U.S.C. § 1915(g) (prohibiting in forma pauperis status to prisoners who have had three or more
17 cases dismissed as frivolous, malicious or for failure to state a claim). The same potential
18 consequence does not apply to grants of in forma pauperis status in subsequent habeas filings.

19 “A district court may construe a petition for habeas corpus to plead a cause of action
20 under § 1983 after notifying and obtaining informed consent from the prisoner.” Nettles v.
21 Grounds, 830 F.3d 922, 936 (2016) (en banc). “If the complaint is amenable to conversion on its
22 face, meaning it names the correct defendants and seeks the correct relief, the court may
23 recharacterize the petition so long as it warns the pro se litigant of the consequences of the
24 conversion and provides an opportunity for the litigant to withdraw or amend his or her
25 complaint.” Id. (quoting Glaus v. Anderson, 408 F.3d 382, 388 (7th Cir. 2005)).

26 With the exception of the initial document petitioner filed in this case, which he
27 characterized as a request for habeas relief, petitioner’s filings appear to challenge only the
28 conditions of his confinement and thus indicate that he is attempting to pursue a civil rights

1 action. The recently filed complaint seeks petitioner’s release from prison and “20 million
2 dollars.” ECF No. 8 at 6. Although release from prison is not a generally available remedy in a
3 civil rights action, monetary damages may be pursued.

4 Plaintiff’s initial request for habeas relief cannot be converted to a civil rights complaint
5 because it does not state a coherent claim or name correct defendants. The putative complaint,
6 ECF No. 8, is also deficient for the reasons explained below. Accordingly, if petitioner wishes to
7 convert this case to a civil rights action in light of the consequences outlined above, he must
8 expressly make such request on the form provided with this order and file the form together with
9 a proposed First Amended Complaint. Thereafter the court will address the pending motion to
10 proceed in forma pauperis (ECF No. 16).

11 **B. The Complaint Fails to State a Cognizable Claim**

12 The putative complaint (ECF No. 8) identifies three claims, none of which are cognizable
13 as framed. The first claim is premised on the Racketeer Influenced and Corrupt Organizations
14 (RICO) Act, 18 U.S.C. § 1964, based on allegations of “a pervasive pattern within all CDCR
15 culture of criminal activity of custody and the covering up of the activity.” ECF No. 8 at 3.² “To
16 state a civil RICO claim, plaintiffs must allege: (1) conduct (2) of an enterprise (3) through a
17 pattern (4) of racketeering activity (5) causing injury to plaintiff’s ‘business or property.’” Ove v.
18 Gwinn, 264 F.3d 817, 825 (9th Cir. 2001) (citing 18 U.S.C. § 1964(c)). “To demonstrate injury
19 for RICO purposes, plaintiffs must show proof of concrete financial loss, and not mere injury to a
20 valuable intangible property interest. Personal injuries are not compensable under RICO.” Id.
21 (citation omitted). As a result, “[c]ivil rights violations . . . do not fall within the statutory
22 definition of ‘racketeering activity.’” Bowen v. Oistead, 125 F.3d 800, 806 (9th Cir. 1997).

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24 ² Petitioner makes wide ranging allegations including “assaults on inmates, falsified documents,
25 lost, misplaced and mishandled appeals,” that correctional officers “use drugs cellphones etc. to
26 control SNY prison gangs and use them to attack other inmates;” “embezzling of third-party
27 beneficiary funds;” and “conspiracy between mental health, medical and CDCR to deny inmates
28 rights.” ECF No. 8 at 3. Petitioner alleges that he’s been retaliated against for appealing these
matters, assaulted, received multiple false Rules Violation Reports (RVRs), and is “overly
stressed” because “[i]t’s super hard to navigate the prison environment . . . [which] is corrupt.”
Id.

1 Because petitioner cannot show a concrete financial loss to his business or property as a
2 result of the broadly alleged conduct, his allegations fail to state a cognizable RICO claim. This
3 defect cannot be cured by amendment. If petitioner realleges a RICO claim in an amended
4 complaint, the undersigned will recommend its dismissal.

5 The second claim alleges discrimination on the ground that “mental health inmates” are
6 not assigned the same jobs or other opportunities as “regular inmates.” ECF No. 8 at 4.³
7 Petitioner cannot pursue a claim on behalf of other prisoners. See *McShane v. United States*, 366
8 F.2d 286, 288 (9th Cir. 1966) (a litigant appearing pro se has no authority to represent anyone
9 other than himself). Moreover, “[p]risoners have no constitutional right to a prison job or
10 educational opportunities. Prisoners have no protected constitutional right to any work
11 assignment.” *Easley v. Jett*, 29 F.3d 631 (9th Cir. 1994) (citations omitted).

12 Liberally construed, petitioner’s allegations suggest an equal protection claim on the
13 ground that he, as a member of the putative class of prisoners receiving mental health care, is
14 denied programming offered to prisoners who are not members of that class. The Equal
15 Protection Clause of the Fourteenth Amendment requires that persons who are similarly situated
16 be treated alike. *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439 (1985).
17 Challenges to state policies premised on a “suspect classification” (e.g. race, religion or national
18 origin) or that burden the exercise of a fundamental constitutional right are analyzed under a
19 “strict scrutiny” standard requiring that the challenged policy be narrowly tailoring to serve a
20 compelling governmental interest. See e.g. *Ball v. Massanari*, 254 F.3d 817, 823 (9th Cir. 2001)
21 (citation omitted). Challenges premised on a “quasi-suspect classification” (e.g. gender or
22 illegitimacy) are analyzed under an “intermediate” scrutiny standard requiring that the challenged
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24 ³ Petitioner explains, ECF No. 8 at 4:

25 Mental Health inmates are discriminated on with respect to
26 vocational jobs. At Salinas Valley they only let us come out on porter
27 job for 15 mins. We are last for canteen, we do not get cleaning
28 supplies, they treat us really bad as if we are the problem. CDCR has
conspired with mental health to . . . not report violations or
mistreatment of patients. Clinicians violate their Hippocratic oaths
at their obligations to their patients.

1 policy bear a substantial relationship to an important governmental interest. Id. (citation omitted).

2 However, “neither prisoners nor mentally ill persons qualify as a protected class for equal
3 protection purposes.” Garrett v. Gastello, 2020 WL 3963749, at *6, 2020 U.S. Dist. LEXIS
4 122683 (C.D. Cal. July 13, 2020) (Case No. 20-cv-4057 PA (JEM)) (citing City of Cleburne, 473
5 U.S. at 445-46, and Heller v. Doe by Doe, 509 U.S. 312, 321 (1993)); accord, Ardds v. Hicks,
6 2020 WL 4547119 at *8, 2020 U.S. Dist. LEXIS 140969 (E.D. Cal. Aug. 6, 2020) (Case No.
7 1:18-cv1324 DAD BAM PC), report and recommendation adopted, 2020 WL 5203484, 2020
8 U.S. Dist. LEXIS 159475 (E.D. Cal. Sept. 1, 2020); Wells v. Kendall, 2019 WL 1787172, at *6,
9 2019 U.S. Dist. LEXIS 69818 (E.D. Cal. Apr. 24, 2019) (Case No. 2:17-cv-2709 AC P) (citations
10 omitted).

11 Where, as here, “a state policy does not adversely affect a suspect class or impinge upon a
12 fundamental right, all that is constitutionally required of the state’s program is that it be rationally
13 related to a legitimate state objective.” Coakley v. Murphy, 884 F.2d 1218, 1221–22 (9th Cir.
14 1989). Therefore, even if, as a matter of prison policy, inmates receiving mental health treatment
15 are not offered the same jobs or programming opportunities offered to other prisoners, the policy
16 “is valid if it is reasonably related to legitimate penological interests.” Turner v. Safley, 482 U.S.
17 78, 89 (1987).⁴ Petitioner alleges no facts to support an inference that the differential treatment
18 he challenges lacks a legitimate penological purpose. Cf. e.g. Washington v. Harper, 494 U.S.
19 210, 225 (1990) (prison officials have a “duty to take reasonable measures for the prisoners’ own
20 safety”).

21 Because there are no federal constitutional grounds upon which petitioner can challenge
22 his work assignment, either individually or on behalf of other prisoners, his allegations fail to

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24 ⁴ In Turner, the Supreme Court identified four factors for determining whether a regulation is
25 reasonably related to legitimate penological interests: (1) whether there is a “valid, rational
26 connection between the prison regulation and the legitimate governmental interest put forward to
27 justify it;” (2) “whether there are alternative means of exercising the right that remain open to
28 prison inmates;” (3) “the impact accommodation of the asserted constitutional right will have on
guards and other inmates and on the allocation of prison resources generally;” and (4) the
“absence of ready alternatives,” or, in other words, whether the rule at issue is an “exaggerated
response to prison concerns.” Turner, 482 U.S. at 89-90.

1 state a cognizable claim. These deficiencies do not appear curable. If petitioner realleges a
2 discrimination claim in an amended complaint based only on his status as a prisoner receiving
3 mental health care, the undersigned will recommend its dismissal.

4 Third and finally, petitioner makes wide-ranging allegations in support of a putative
5 retaliation claim. Petitioner alleges:

6 I've experienced overwhelming issues with inmates that have been
7 stimulated and instigated by custody. I've received multiple falsified
8 115s and falsified medical records to get me removed from the DDP
9 program so CDCR can retaliate set up for fake assaults without San
10 Quentin Law Office interfering. My legal mail tampered with, not
being sent to San Quentin Law Office and fake letters sent back to
me to make me believe they got my letter. [State how you were
injured:] Suicide attempts, being assaulted, violated rights,
discouraged from redressing the government.

11 ECF No. 8 at 5.

12 “Within the prison context, a viable claim of First Amendment retaliation entails five
13 basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2)
14 because of (3) that prisoner’s protected conduct, and that such action (4) chilled the inmate’s
15 exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate
16 correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005) (fn. and citations
17 omitted).

18 Petitioner’s allegations do not identify his protected conduct, how any specific adverse
19 actions were in response to such protected conduct, or whose conduct he challenges. Therefore,
20 petitioner’s allegations do not state a cognizable retaliation claim. Subject to the requirements set
21 forth below in filing a proposed First Amended Complaint, petitioner may again attempt to state a
22 retaliation claim in an amended complaint.

23 **C. Leave to File a First Amended Complaint**

24 Due to the deficiencies in petitioner’s complaint, the case is not suitable for sua sponte
25 conversion to a civil rights action. See Nettles, 830 F.3d at 936. Should petitioner choose to
26 convert this case to a civil rights action, he must so inform the court and file a proposed First
27 Amended Complaint (FAC). Petitioner is informed of the following requirements for stating a
28 cognizable claim in a FAC.

1 Section 1983 authorizes a federal civil rights action against any “person” who acts under
2 color of state law. See 42 U.S.C. § 1983. “Persons” under Section 1983 do not include a state or
3 its entities, or state employees acting in their official capacities. See Will v. Michigan Dept. of
4 State Police, 491 U.S. 58 (1989); see also Kentucky. Graham, 473 U.S. 159 (1985) (the Eleventh
5 Amendment bars damages action against a state and its entities in federal court). Therefore, to
6 state a cognizable civil rights claim under Section 1983, a plaintiff must allege: (1) the violation
7 of a specific federal constitutional or statutory right; and (2) that the violation was committed by a
8 person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988). A plaintiff
9 must allege facts showing each defendant’s personal involvement in the alleged violation.
10 Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989). Officials cannot be sued on a respondeat
11 theory they are liable for the conduct of their subordinates. Ashcroft v. Iqbal, 556 U.S. 662, 679
12 (2009). Rather, a supervisor may be held liable for the acts of his or her subordinates only if the
13 supervisor participated in or directed the violations, or knew of the violations of subordinates and
14 failed to act to prevent them. See Corales v. Bennett, 567 F.3d 554, 570 (9th Cir. 2009) (citations
15 and internal quotation marks omitted).

16 Cognizable claims must allege an actual connection or link between the challenged
17 conduct of specifically identified, individual, defendants and the violation of plaintiff’s rights.
18 See Monell v. Department of Social Servs., 436 U.S. 658 (1978). “A person ‘subjects’ another to
19 the deprivation of a constitutional right, within the meaning of § 1983, if he does an affirmative
20 act, participates in another’s affirmative acts or omits to perform an act which he is legally
21 required to do that causes the deprivation of which complaint is made.” Johnson v. Duffy, 588
22 F.2d 740, 743 (9th Cir. 1978); see also Leer v. Murphy, 844 F.2d 628, 633 (9th Cir.1988) (“The
23 inquiry into causation must be individualized and focus on the duties and responsibilities of each
24 individual defendant whose acts or omissions are alleged to have caused a constitutional
25 deprivation.”). There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative
26 link or connection between a specific defendant’s actions and the claimed deprivation. Rizzo v.
27 Goode, 423 U.S. 362, 371 (1976). Vague and conclusory allegations of official participation in

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1 civil rights violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir.
2 1982).

3 A FAC must be complete in itself without reference to any prior pleading; each claim and
4 the involvement of each defendant must be sufficiently alleged. See Local Rule 220; Loux v.
5 Rhay, 375 F.2d 55, 57 (9th Cir. 1967). A FAC must identify each defendant, the challenged
6 conduct of each defendant, and describe how the challenged conduct deprived plaintiff of his
7 rights. A FAC must be on the form complaint provided with this order, labeled “First Amended
8 Complaint,” and provide the same case number reflected on this order. The SAC must be
9 complete in itself without reference to the original complaint. See Local Rule 15-220;

10 A FAC will be screened by the court pursuant to 28 U.S.C. § 1915A. Failure to file a
11 FAC within thirty days will result in a recommendation that this entire action be dismissed
12 without prejudice.

13 **IV. Additional Filings**

14 Also pending is petitioner’s “motion for intervention and request for judicial notice.”
15 ECF No. 15. This rambling filing alleges, inter alia, that systemic bias, retaliation, fraud and
16 embezzlement is pervasive throughout CDCR based on petitioner’s experience at the ten prisons
17 in which he’s been incarcerated; that petitioner is unable to obtain necessary mental health
18 treatment or rehabilitation and vocational services; that petitioner was recently assaulted by
19 several correctional officers (apparently officers Cook, Beckham, Laughren); and that petitioner’s
20 life continues to be in jeopardy. Petitioner requests generally that this court “intervene” and, inter
21 alia, that LCSW Jacques and “all officers” be added as defendants and prison camera recordings
22 be preserved.

23 This motion will be denied for the reasons set forth above in support of the undersigned’s
24 recommendation concerning petitioner’s motion for preliminary injunctive relief. Without a valid
25 pleading, claims or defendants in this case, the court has no authority to intervene or rule on the
26 matters presently asserted by petitioner.

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1 For the same reasons, the undersigned acknowledges but does not further respond to
2 petitioner's other wide-ranging filings. See ECF Nos. 17, 18, 21, 22. All pending requests will
3 be denied as premature.

4 **V. Admonition to Petitioner**

5 Petitioner's excessive filings have required a disproportionate amount of attention and
6 time from this court and the Office of the California Attorney General, compared to the many
7 other cases also pending before this court. *Petitioner is hereby directed to refrain from filing*
8 *further documents in this case unless so directed by the court or authorized by court rules of the*
9 *Federal Rules of Civil Procedure*. Failure to abide by this admonishment may result in the
10 imposition of monetary or nonmonetary sanctions, including a recommendation that this action be
11 dismissed. See Local Rule 110 ("Failure . . . of a party to comply with these [Local] Rules or
12 with any order of the Court may be grounds for imposition by the Court of any and all sanctions
13 authorized by statute or Rule or within the inherent power of the Court.").

14 **VI. Summary for Pro Se Litigant**

15 You began this case as a habeas corpus action, then you filed a proposed civil rights
16 complaint. Different filing fees apply to the two kinds of actions, as well as different rules
17 governing in forma pauperis status. If you want this to be a civil rights lawsuit, you must let the
18 court know by completing the attached Notice of Election and Submission and returning it within
19 30 days.

20 Your initial proposed complaint does not state any claim that can go forward. If you ask
21 to change this case to a civil rights action, you must file a proposed First Amended Complaint
22 (FAC) with your Notice of Election and Submission. The court will then convert this case to a
23 civil rights action, address your request to proceed in forma pauperis, and screen your FAC
24 pursuant to 28 U.S.C. § 1915A.

25 If you wish, you may also request the voluntary dismissal of this action without prejudice.

26 **VII. Conclusion**

27 **For the foregoing reasons, IT IS HEREBY ORDERED that:**

28 1. Petitioner shall, within thirty (30) days after service of this order, complete and return

1 the attached Notice of Election and Submission, and thereby inform the court whether petitioner
2 chooses to convert this case to a civil rights action under 42 U.S.C. § 1983.

3 2. If petitioner chooses to convert this case to a civil rights action he shall also, within
4 thirty (30) days after service of this order, submit a proposed First Amended Complaint (FAC) on
5 the form provided herewith.

6 3. Petitioner may, alternatively, request that this action be voluntarily dismissed without
7 prejudice.

8 4. The court defers ruling on petitioner's motion to proceed in forma pauperis, see ECF
9 Nos. 16, 19, pending petitioner's response to this order.

10 5. The motion at ECF No. 15, to the extent it seeks relief other than preliminary
11 injunctive relief, is DENIED. All other outstanding requests for non-dispositive court actions are
12 denied as premature.

13 6. The Clerk of the Court is directed to:

14 a. Send to petitioner, with a copy of this order, a blank form complaint used by
15 prisoners in this district to pursue a civil rights action under 42 U.S.C. § 1983;

16 b. Randomly assign a district judge to this case.

17 **Further, for the foregoing reasons, IT IS HEREBY RECOMMENDED that**
18 **petitioner's motion for preliminary injunctive relief, ECF No. 20, be DENIED.**

19 These findings and recommendations are submitted to the United States District Judge
20 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one (21)
21 days after being served with these findings and recommendations, petitioner may file written
22 objections with the court. Such document should be captioned "Objections to Magistrate Judge's
23 Findings and Recommendations." Petitioner is advised that failure to file objections within the
24 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
25 F.2d 1153 (9th Cir. 1991).

26 DATED: October 15, 2020

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28 ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANDRE WELLS,
Petitioner,
v.
GAVIN NEWSOME,
Respondent.

No. 2:20-cv-1557 AC P

NOTICE OF ELECTION
and SUBMISSION

I, Andre Wells, request that this case be converted to a civil rights action under 42 U.S.C. § 1983:

- Yes**; and I am submitting a proposed First Amended Complaint.
- No**; I request the voluntary dismissal of this case without prejudice.

I, Andre Wells, have included a proposed First Amended Complaint:

- Yes**
- No**

Date

Signature