UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

GEORGE LIVELL WYNN.

Plaintiff,

VS.

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STATE OF CALIFORNIA: DEPARTMENT OF JUSTICE; OFFICE OF THE ATTORNEY GENERAL KAMALA D. HARRIS.

Defendants.

CASE NO. 13CV1479-MMA (DHB)

ORDER:

SUA SPONTE DISMISSING SECOND AMENDED COMPLAINT WITHOUT PREJUDICE:

DENYING REQUEST FOR APPOINTMENT OF COUNSEL AS MOOT

[Doc. No. 12]

On July 10, 2013, the Court granted Plaintiff George L. Wynn's Amended Motion for Leave to Proceed *In Forma Pauperis* ("IFP"). However, upon undertaking the further analysis required by 28 U.S.C. § 1915(e)(2)(B), the Court sua sponte dismissed Plaintiff's First Amended Complaint ("FAC") because it failed to comply with federal pleading standards or demonstrate plausible liability. [See July 10, 2013 Order, Doc. No. 9.] The Court granted Plaintiff thirty days to file a Second Amended Complaint ("SAC").

On August 9, 2013, Plaintiff filed a SAC. Aside from an added introductory paragraph, the SAC is largely identical to the FAC. As such, the Court remains

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unable to identify with any reasonable degree of certainty the specific nature of Plaintiff's claims. Consequently, defendants have not been given "fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 555 (2007).

Plaintiff appears to claim that California Penal Code § 290.5 violates his equal protection rights by treating him differently than other sex offenders. Section 290.5 provides for automatic registration relief upon receipt of a certificate of rehabilitation for some registered sex offenders, but not others. However, Plaintiff fails to allege that he is similarly situated to those sex offenders who do qualify for automatic registration relief. Nor does he allege that the classification scheme as applied to him is irrational. *See D.M. v. Dep't of Just.*, 209 Cal. App. 4th 1439, 1450 (Cal. Ct. App. 2012) ("[T]o sustain an equal protection challenge to section 290.5, it must be shown that the classification scheme is irrational.").

Thus, Plaintiff's equal protection claim, as currently pled, necessarily fails. Accordingly, the SAC is *sua sponte* **DISMISSED** pursuant to 28 U.S.C. § 1915(e)(2)(B). The Court **GRANTS** Plaintiff thirty (30) days from the date of this order to file a third amended complaint curing the deficiencies noted above and in the Court's July 10, 2013 Order. The Court cautions Plaintiff that submitting a third amended complaint that is largely identical to his previously-filed complaints will not be sufficient to cure the deficiencies and will be subject to immediate dismissal.

Plaintiff's pending request for appointment of counsel is **DENIED** as moot. **IT IS SO ORDERED**.

DATED: August 16, 2013

Hon. Michael M. Anello United States District Judge

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