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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RAUL ARELLANO, JR.,

Plaintiff,

v.

COUNTY OF SAN DIEGO et al.,

Defendants.

Case No.: 3:14-cv-02404-JO-KSC

**ORDER GRANTING DEFENDANTS’
MOTION TO DISMISS**

Plaintiff Raul Arellano, Jr. is a state prisoner incarcerated at Richard J. Donovan Correctional Facility. Proceeding *pro se* and *in forma pauperis* (IFP), he filed a second amended civil rights complaint alleging that federal marshals violated his constitutional rights when they arrested him in Mexico. *See* Dkt. 62 (“SAC”). Defendant United States filed a motion to dismiss the SAC. Dkt. 209. Because Plaintiff is proceeding IFP, the Court also screens his amended complaint pursuant to 28 U.S.C. § 1915 in addition to addressing the United States’ motion to dismiss. For the reasons explained below, the Court grants the motion to dismiss and also dismisses the remaining claims in this case.

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1 **I. BACKGROUND**

2 Plaintiff’s suit centers on his allegations that federal marshals used excessive force
3 when they arrested him in Mexico pursuant to a warrant. On January 4, 2010, the San
4 Diego County Superior Court in El Cajon issued a warrant for Plaintiff’s arrest after he
5 failed to appear for a court hearing. Dkt. 62 (“SAC”) at 8. U.S. Marshal P. Beal organized
6 an operation to capture Plaintiff while he was in Mexico. *Id.* at 13. On November 7, 2010,
7 U.S. Marshal Jesus Guerrero and Mexican state agents from the Policia Estatal Preventiva
8 (“PEP”) located and arrested Plaintiff inside a hotel lobby in Tijuana, Mexico. Dkt. 62
9 (“Arrest Report”) at 1. Plaintiff resisted arrest but was eventually taken into custody. *Id.*

10 Plaintiff alleges that officials threatened and attacked him both during and after his
11 arrest. Marshal Guerrero kicked a handcuffed Plaintiff in the ribs and told him “[this] is
12 Mexico and [I] can do what [I] want because no policy prevents [me from doing so].” SAC
13 at 8. Guerrero further threatened Plaintiff by informing him that the Mexican agents are
14 “going to make sure you understand why [you are] better off not saying [anything] when
15 you get transferred to San Diego County Jail.” *Id.* at 8–9. After Plaintiff’s arrest, the
16 Mexican PEP agents escorted Plaintiff into a vehicle where they tortured him for two hours.
17 *Id.* at 9. When Plaintiff arrived at an immigration facility in Mexicali, PEP agents
18 continued to torture him. *Id.* at 9–10; Arrest Report at 1. On November 10, 2010, PEP
19 agents deported Plaintiff to the United States where Guerrero transported Plaintiff to the
20 San Diego County Central Jail (“Central Jail”). SAC at 11; Arrest Report at 2.

21 Based on the above facts, Plaintiff filed suit against (1) the County of San Diego; (2)
22 the City of San Diego; (3) the City of El Cajon; (4) Guerrero Bail Bonds; (5) bondsman
23 Henry L. Guerrero; (6) the San Diego Regional Fugitive Task Force; (7) the United States
24 Marshal’s Office; (8) U.S. Marshal Jesus Guerrero; (9) U.S. Marshal P. Beal; and (10) the
25 United States for violating his constitutional rights during his arrest and detention in
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1 Mexico. After a series of Court orders,¹ the only defendants currently remaining in this
2 action are U.S. Marshals Guerrero and Beal and the United States. *See* Dkts. 58, 87, 181.
3 Against Guerrero, Plaintiff alleges claims for violation of 42 U.S.C. §§ 1985(3) and 1986;
4 and a *Bivens* claim for use of excessive force in violation of the Fourth Amendment.
5 Against Beal, Plaintiff alleges a claim for violation of 42 U.S.C. § 1983. Against the United
6 States, Plaintiff alleges various tort claims of (1) negligence; (2) assault; (3) battery; (4)
7 false imprisonment; and (5) intentional infliction of emotional distress.

8 Defendant United States filed a motion to dismiss for lack of jurisdiction because
9 Plaintiff failed to exhaust his tort claims against the government. It argues Plaintiff did not
10 present these tort claims against the United States to the appropriate federal agency prior
11 to filing this suit. SAC at 3; Dkt. 209-1 (“Kim Decl.”) at ¶¶ 3–6.

12 II. LEGAL STANDARD

13 A party may challenge a complaint under Federal Rule of Civil Procedure 12(b)(1)
14 for lack of subject matter jurisdiction. “Federal courts are courts of limited jurisdiction
15 [and] possess only that power authorized by Constitution and statute.” *Kokkonen v.*
16 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Pursuant to Rule 12(b)(1), a
17 party may seek dismissal of an action for lack of subject matter jurisdiction by asserting a
18 facial challenge or a factual challenge. Fed. R. Civ. P. 12(b)(1); *Warren v. Fox Family*
19 *Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003). In a facial challenge, the court limits
20 its inquiry to the allegations set forth in the complaint and considers the complaint’s
21 allegations to be true and draws all reasonable inferences in the plaintiff’s favor. *Safe Air*
22 *for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004); *Doe v. Holy*, 557 F.3d 1066,
23 1073 (9th Cir. 2009). Where the moving party asserts a factual challenge, based on the
24 legal sufficiency of the jurisdictional facts, the court may review any evidence necessary,
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27 ¹ The case was originally filed on October 8, 2014 and assigned to District Court Judge Janis L.
28 Sammartino and transferred to District Court Judge Gonzalo P. Curiel on February 3, 2020 and
subsequently transferred to the undersigned on January 5, 2022.

1 such as affidavits and testimony, in order to determine whether subject matter jurisdiction
2 exists. *McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir. 1988). The plaintiff has the
3 burden of showing that the court has subject matter jurisdiction over the action. *Ass'n of*
4 *Am. Med. Colleges v. United States*, 217 F.3d 770, 778–79 (9th Cir. 2000).

5 Also, because Plaintiff was granted leave to proceed IFP, his second amended
6 complaint must undergo a *sua sponte* screening for dismissal. Pursuant to 28 U.S.C. §
7 1915(e)(2)(B), the Court must screen a prisoner’s IFP complaint and *sua sponte* dismiss it
8 to the extent it is frivolous, malicious, fails to state a claim upon which relief may be
9 granted, or seeks damages from defendants who are immune. *See Lopez v. Smith*, 203 F.3d
10 1122, 1126–27 (9th Cir. 2000) (*en banc*); *see also Rhodes v. Robinson*, 621 F.3d 1002,
11 1004 (9th Cir. 2010) (same with respect to 28 U.S.C. § 1915A(a) & (b)(1)). “The standard
12 for determining whether a plaintiff has failed to state a claim upon which relief can be
13 granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure
14 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668 F.3d 1108, 1112 (9th
15 Cir. 2012); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir. 2012) (“Failure to
16 state a claim under § 1915A incorporates the familiar standard applied in the context of
17 failure to state a claim under Federal Rule of Civil Procedure 12(b)(6)”). Rule 12(b)(6)
18 requires that a complaint “contain sufficient factual matter . . . to state a claim to relief that
19 is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation
20 marks omitted). “A claim has facial plausibility when the plaintiff pleads factual content
21 that allows the court to draw the reasonable inference that the defendant is liable for the
22 misconduct alleged.” *Id.* While detailed factual allegations are not required, “[t]hreadbare
23 recitals of the elements of a cause of action, supported by mere conclusory statements, do
24 not suffice” to state a claim. *Id.* at 678.

25 III. DISCUSSION

26 The Court first examines Defendant United States’ motion to dismiss on grounds
27 that Plaintiff failed to exhaust his tort claims against the government. Next, the Court will
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1 screen Plaintiff's remaining *Bivens*, §§ 1983, 1985(3), and 1986 claims against Defendants
2 Beal and Guerreo to determine whether they state a legally valid claim for relief.

3 **A. Exhaustion of Tort Claims Against the United States**

4 Defendant United States argues that Plaintiff's tort claims against it are barred
5 because he failed to properly exhaust them prior to filing suit. The Federal Tort Claims
6 Act ("FTCA") is the exclusive remedy for tortious conduct by the United States and its
7 employees. *F.D.I.C. v. Craft*, 157 F.3d 697, 706 (9th Cir. 1998); *see also Kennedy v. U.S.*
8 *Postal Serv.*, 145 F.3d 1077, 1078 (9th Cir. 1998). The FTCA waives the United States'
9 traditional sovereign immunity to allow suit for torts committed by its employees. 28
10 U.S.C. §§ 1346(b), 2674. Before a plaintiff can file a claim against the United States under
11 the FTCA in federal court, the plaintiff must first present the claim to the appropriate
12 federal agency and be denied by the agency. 28 U.S.C. § 2675(a). A tort claim against the
13 United States is barred unless it is presented in writing to the appropriate federal agency
14 within two years after the claim accrues. 28 U.S.C. § 2401(b). The FTCA's exhaustion
15 requirement is "jurisdictional in nature"; thus, a federal district court cannot adjudicate
16 FTCA claims until the final denial of plaintiff's administrative remedies by the appropriate
17 federal agency. *Vacek v. U.S. Postal Serv.*, 447 F.3d 1248, 1250 (9th Cir. 2006); *McNeil*
18 *v. United States*, 508 U.S. 106, 111 (1993).

19 Here, the Court finds that Plaintiff has not met his exhaustion requirements under
20 the FTCA because he failed to present his tort claims to the appropriate agency prior to
21 filing suit. In his second amended complaint, Plaintiff appears to assert that he exhausted
22 his claims with respect to marshals Beal and Guerrero: in response to the question "Have
23 you previously sought and exhausted all forms of available relief from the proper
24 administrative officials?" on the form complaint, he responds, "I don't need to file; except
25 for the one for U.S. marshals which I have." SAC at 3. He does not, however, identify the
26 agency to which he submitted his claims. *Id.* Nor does he inform the Court when he filed
27 these claims with a federal agency and when the agency denied these claims. *See also*
28 *Harris v. United States*, 2019 WL 7834813, at *7-8 (C.D. Cal. Nov. 1, 2019), *report and*

1 *recommendation adopted*, 2020 WL 402126 (C.D. Cal. Jan. 24, 2020) (explaining that
2 vague and unsubstantiated claims of exhaustion are insufficient). He also fails to provide
3 any documentation showing that he filed an administrative complaint pertaining to his state
4 law claims. *Ahlin v. Soc. Sec. Off.*, 2007 WL 1302427, at *3 (E.D. Cal. May 3, 2007)
5 (dismissing complaint when plaintiff fails to show that she filed an administrative
6 complaint pursuant to the FTCA). Countering Plaintiff’s unsubstantiated claim of
7 exhaustion, Defendant United States submitted a declaration from the U.S. Marshals
8 Service stating that the agency conducted a search of its database and did not find any
9 administrative claims filed by Plaintiff. Kim Decl. at ¶¶ 3–6; *see, e.g., Plante v. United*
10 *States*, 2009 WL 2045692, at *2 (S.D. Cal. July 8, 2009) (considering declaration from
11 Department of Health and Human Services on a 12(b)(1) motion to dismiss to determine if
12 plaintiff complied with the FTCA exhaustion requirement); *Alvarez v. United States*, 2017
13 WL 3723926, at *2 (S.D. Cal. Jan. 17, 2017) (same). Based on the above, the Court finds
14 that Plaintiff has not met his burden of establishing that he has exhausted his tort claims
15 prior to filing suit. *Gillespie v. Civiletti*, 629 F.2d 637, 640 (9th Cir. 1980). The Court,
16 therefore, GRANTS the United States’ motion to dismiss Plaintiff’s tort claims against it—
17 his claims for negligence, assault, battery, false imprisonment, and intentional infliction of
18 emotional distress—for lack of jurisdiction.

19 The Court dismisses these claims with prejudice because further amendment would
20 be futile. The Court finds that Plaintiff has failed to exhaust his claims to date, and Plaintiff
21 could not now seek to exhaust his claims because the deadline for presenting these claims
22 to the appropriate agency—two years after their occurrence—has passed. *See, e.g., Tsu v.*
23 *Tracy Fed. Bank*, 1998 WL 118190, at *1 (N.D. Cal. Feb. 27, 1998), *aff’d*, 172 F.3d 59
24 (9th Cir. 1999) (dismissing with prejudice FTCA claims when plaintiff failed to file an
25 administrative claim within the two-year limitations period); *Greene v. Segal*, 2008 WL
26 11336820, at *3 (C.D. Cal. June 12, 2008) (same).

27 **B. § 1983 Claim**
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1 The Court now turns to screening the remainder of Plaintiff’s complaint pursuant to
2 28 U.S.C. § 1915, starting with his § 1983 claim against federal officer Beal. To state a
3 claim for relief under § 1983, a plaintiff must plead that the defendant (1) acted under color
4 of state law and (2) deprived him of a right secured by the Constitution. *Johnson v.*
5 *Knowles*, 113 F.3d 1114, 1117 (9th Cir. 1997). A person acts under color of state law if
6 the person “exercise[s] power possessed by virtue of state law and made possible only
7 because the wrongdoer is clothed with the authority of state law.” *West v. Atkins*, 487 U.S.
8 42, 49 (1988) (quotations omitted). Because federal agents act pursuant to federal law, not
9 state law, § 1983 precludes liability for federal agents. *Morse v. N. Coast Opportunities,*
10 *Inc.*, 118 F.3d 1338, 1343 (9th Cir. 1997). Here, Plaintiff fails to state a § 1983 claim
11 against Beal because the statute does not authorize a cause of action against federal agents.
12 *See id.* (“[Plaintiff’s] complaint is invalid on its face in its reliance upon § 1983 as a cause
13 of action against alleged federal government actors.”). Accordingly, the Court dismisses
14 Plaintiff’s § 1983 claim with prejudice. *Id.* Further amendment would be futile because §
15 1983 precludes liability for federal government actors; any such claims against these
16 federal actors are invalid on their face. *Id.*

17 **C. *Bivens* Claim**

18 In screening Plaintiff’s complaint, the Court next turns to examining whether
19 Plaintiff alleged a legally cognizable *Bivens* claim. A plaintiff may bring constitutional
20 violation claims against federal actors pursuant to *Bivens v. Six Unknown Named Agents*
21 *of the Fed. Bur. of Narcotics*, 403 U.S. 388 (1971). Such claims are considered the “federal
22 analogue” to § 1983 claims against state actors. *Hartman v. Moore*, 547 U.S. 250, 254,
23 255 n.2 (2006). In *Bivens*, the Supreme Court inferred a cause of action for damages
24 against agents from the Federal Bureau of Narcotics for an unreasonable search and seizure
25 in violation of the Fourth Amendment even though no federal statute authorized such a
26 claim. *Bivens*, 403 U.S. at 395–97. Since then, the Supreme Court has recognized an
27 implied cause of action under the Constitution (“*Bivens* claim”) in two other contexts: (1)
28 a Fifth Amendment due process claim by a former congressional staffer for sex

1 discrimination; and (2) an Eighth Amendment claim for cruel and unusual punishment
2 against federal jailers for failing to treat a prisoner's severe asthma. *Davis v. Passman*, 442
3 U.S. 228 (1979); *Carlson v. Green*, 446 U.S. 14 (1980). These three cases—*Bivens*, *Davis*,
4 and *Carlson*—are the only cases in which the Supreme Court has approved of an implied
5 damages remedy under the Constitution. *Ziglar v. Abbasi*, 582 U.S. 120, 131 (2017).

6 Outside of these three Supreme Court-approved contexts, courts must go through the
7 following two steps before allowing a plaintiff to proceed with a cause of action under
8 *Bivens*: (1) determine whether the case presents a “new *Bivens* context” different from the
9 three cases in which the Supreme Court implied a damages action; and (2) if the case
10 presents a new *Bivens* context, ask if there are “special factors” indicating that the judiciary
11 may be less equipped than Congress to “weigh the costs and benefits of allowing a damages
12 action to proceed.” *Pettibone v. Russell*, 59 F.4th 449, 454–55 (9th Cir. 2023) (*citing*
13 *Egbert v. Boule*, 142 S. Ct. 1793, 1803 (2022)). If the case presents a new *Bivens* context
14 and the court finds at least one “special factor,” the court cannot infer a private right of
15 action. *Pettibone*, 59 F.4th at 455. The Court addresses each step below.

16 ***I. A New Bivens Context***

17 The Court first examines whether Plaintiff’s claims that federal officers used
18 excessive force against him present a “new *Bivens* context.” A context is “new” when it is
19 meaningfully different from the three cases—*Bivens*, *Davis*, and *Carlson*—in which the
20 Supreme Court has implied a damages action. *Egbert*, 142 S. Ct. at 1803. The Supreme
21 Court has provided a non-exhaustive list of differences that are “meaningful enough” to
22 make a new *Bivens* context:

23 The rank of the officers involved; the constitutional right at issue; the generality or
24 specificity of the official action; the extent of judicial guidance as to how an officer
25 should respond to the problem or emergency to be confronted; the statutory or other
26 legal mandate under which the officer was operating; the risk of disruptive intrusion
27 by the Judiciary into the functioning of other branches.

1 *Ziglar*, 582 U.S. at 140. For example, in *Hernandez v. Mesa*, a border patrol agent shot
2 and killed a 15-year-old Mexican national because the agent believed the youth was
3 attempting an illegal border crossing into the United States. 140 S. Ct. 735, 740 (2020).
4 The parents subsequently sued the border patrol agent alleging excessive use of force in
5 violation of the Fourth Amendment. *Id.* In this case, the Supreme Court analyzed the
6 differences in the specific constitutional rights at issue, excessive use of force compared to
7 an unreasonable search and seizure in *Bivens*, and the nature of the misconduct by the
8 federal agents, a shooting compared to a warrantless search in *Bivens*. *Id.* at 743–44.
9 Ultimately, the Supreme Court concluded that an excessive-force shooting by a border
10 patrol officer presented a meaningfully different context than the *Bivens* scenario of a
11 warrantless search into an apartment. *Id.*

12 Under this reasoning, Plaintiff’s claims presented here also present a “new” *Bivens*
13 context because, like the *Hernandez* case, they involve a cross-border use of excessive
14 force by federal officers. Although both cases implicate the Fourth Amendment, the
15 specific constitutional right at issue is excessive use of force, not an unreasonable search
16 and seizure. *See id.* at 743 (“A claim may arise in a new context even if it is based on the
17 same constitutional provision as a claim in a case in which a damages remedy was
18 previously recognized.”). The nature of the misconduct involves an excessive use of force
19 when agents arrested Plaintiff in Mexico pursuant to a search warrant as opposed to a
20 warrantless search into an apartment in the United States. *Bivens*, 403 U.S. at 388–89.
21 Accordingly, the Court finds that the case presents a new *Bivens* context.

22 **2. Special Factors**

23 Given that Plaintiff’s claims involve a “new” *Bivens* context, the Court must inquire
24 as to whether there are any “special factors” counseling against extending a *Bivens* claim.
25 In *Egbert v. Boule*, the Supreme Court provided specific instructions to limit further
26 expansion of *Bivens* claims: courts are mandated to examine if there is “any reason to think
27 that Congress might be better equipped to create a damages remedy” than the judiciary.
28 142 S. Ct. at 1803. If the answer is yes, then courts cannot recognize a *Bivens* cause of

1 action. *See id.* at 1805 (holding that if there is “*any* rational reason (even one) to think that
2 Congress is better suited to weigh the costs and benefits of allowing a damages claim,” the
3 court cannot recognize a *Bivens* claim) (emphasis in original) (internal quotations omitted);
4 *see also Mejia v. Miller*, 61 F.4th 663, 667 (9th Cir. 2023) (“The question is no longer
5 whether the Judiciary is well suited, but whether Congress is better suited.”). Under
6 *Egbert*, “rarely if ever is the Judiciary equally suited as Congress to extend *Bivens* even
7 modestly.” *Id.* at 669; *see Harper v. Nedd*, 71 F.4th 1181, 1187 (9th Cir. 2023) (“[After
8 *Egbert*], future extensions of *Bivens* are dead on arrival.”). Some of the special factors that
9 weigh against judicial expansion of *Bivens* claims include the availability of alternate forms
10 of relief, foreign relations, and national security concerns. *Hernandez*, 140 S. Ct. at 744–
11 46; *Egbert*, 142 S. Ct. at 1806.

12 Here, the fact that Plaintiff had alternate forms of relief available to him outside a
13 *Bivens* claim counsels against extending a *Bivens* cause of action. *Egbert*, 142 S. Ct. at
14 1804. In *Egbert*, an inn owner assaulted by a border patrol agent brought suit under *Bivens*
15 in addition to filing an internal grievance complaint with the border patrol agent’s
16 supervisor and an administrative claim under the FTCA. *Id.* at 1802. The Supreme Court
17 held that the availability of alternative remedies through the complaint with the agent’s
18 supervisor and the FTCA foreclosed a *Bivens* cause of action. *Id.* at 1806; *see also Corr.*
19 *Servs. Corp. v. Malesko*, 534 U.S. 61, 74 (2001) (noting that the availability of
20 administrative remedies counsels against affording a *Bivens* cause of action); *Mejia*, 61
21 F.4th at 669 (dismissing *Bivens* action based on use of excessive force by a federal agent
22 when alternative administrative remedies were available); *Yassein v. Henderson*, 2023 WL
23 2669880, at *5 (S.D. Cal. Mar. 13, 2023) (dismissing *Bivens* action based on use of
24 excessive force by federal agents when the FTCA provided an alternate administrative
25 remedy). Like in *Egbert*, Plaintiff could have filed an internal grievance complaint with
26 the U.S. Marshals Service and an FTCA claim. *See Challenger v. Bassolino*, 2023 WL
27 4287204, at *9–10 (D.N.J. June 30, 2023) (dismissing *Bivens* claim because plaintiff could
28 have filed internal grievance complaint with the U.S. Marshals Service and FTCA remedies

1 were available); *Clutts v. Lester*, 2023 WL 3901489, at *6 (N.D. Iowa June 8, 2023)
2 (dismissing *Bivens* claim because plaintiff could file internal grievance complaint with the
3 U.S. Marshals Service). Accordingly, because Plaintiff’s claims present a new *Bivens*
4 context and special factors counsel against the extension of a *Bivens* cause of action, the
5 Court cannot infer a constitutional cause of action and remedy for his claims. The Court
6 therefore dismisses Plaintiff’s *Bivens* claim with prejudice as further amendment would be
7 futile to address the fact that a *Biven* claim cannot lie in this scenario.

8 **D. §§ 1985(3) and 1986 Claims**

9 The Court next considers whether Plaintiff sufficiently states violations of 42 U.S.C.
10 §§ 1985(3) and 1986 against U.S. Marshal Guerrero. 42 U.S.C. § 1985(3) prohibits
11 conspiracies to deprive persons of their civil rights. To bring a cause of action under §
12 1985(3), a plaintiff must allege and prove the following four elements: (1) a conspiracy;
13 (2) for the purpose of depriving, either directly or indirectly, any person or class of persons
14 of the equal protection of the laws, or of equal privileges and immunities under the laws;
15 and (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his
16 person or property or deprived of any right or privilege of a citizen of the United States.
17 *United Bhd. of Carpenters & Joiners of Am., Loc. 610, AFL-CIO v. Scott*, 463 U.S. 825,
18 828–29 (1983). For the second prong, a plaintiff must allege a deprivation of a legally
19 protected right motivated by “some racial, or perhaps otherwise class-based, invidiously
20 discriminatory animus.” *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971). Thus, plaintiff
21 must allege the existence of a conspiracy motivated by racial bias to state a § 1985(3) claim.
22 *See Gibson v. United States*, 781 F.2d 1334, 1341 (9th Cir. 1986) (“The Supreme Court . .
23 . explicitly restricted the statutory coverage [of § 1985(3)] to conspiracies motivated by
24 racial bias.”). 42 U.S.C. § 1986 similarly imposes liability on persons who knew of an
25 impending § 1985 violation but neglected or refused to prevent the violation. *Karim-*
26 *Panahi v. Los Angeles Police Dep’t*, 839 F.2d 621, 626 (9th Cir. 1988). A plaintiff can
27 maintain a § 1986 action only if the complaint states a valid § 1985 claim. *Trerice v.*
28 *Pedersen*, 769 F.2d 1398, 1403 (9th Cir. 1985).

1 Here, Plaintiff fails to state either a §§ 1985(3) or a 1986 claim because he does not
2 allege that Guerrero conspired to deprive him of his constitutional rights because of his
3 race. *See Nemcik v. Stevens*, 2017 WL 2834120, at *6 (N.D. Cal. June 30, 2017)
4 (dismissing § 1985(3) claim where plaintiff did not allege the existence of racial animus);
5 *Hoxey v. Cnty. of Los Angeles*, 2009 WL 10655206, at *2 (C.D. Cal. June 22, 2009) (same).
6 Because Plaintiff fails to state a § 1985(3) claim, he also fails to state a § 1986 claim. *See*
7 *Trerice*, 769 F.2d at 1403 (finding no cause of action under § 1986 without a valid § 1985
8 claim). Accordingly, the Court dismisses Plaintiff’s §§ 1985(3) and 1986 claims.

9 Because amendment of these claims would not be futile, the Court grants Plaintiff
10 leave to amend. Courts liberally grant leave to amend, especially in cases prosecuted by
11 *pro se* litigants, when amendment would not be futile. *See Lopez v. Smith*, 203 F.3d 1122,
12 1131 (9th Cir. 2000) (noting that the “rule favoring liberality in amendments to pleadings
13 is particularly important for the *pro se* litigant”). Plaintiff may amend only his §§ 1985(3)
14 and 1986 claims. As Plaintiff is proceeding IFP, the Court will screen his third amended
15 complaint before it orders service through the U.S. marshals.

16 **IV. CONCLUSION AND ORDER**

17 For the reasons set forth above, the Court grants the United States’ motion to dismiss,
18 Dkt. 209, and dismisses with prejudice Plaintiff’s negligence, assault, battery, false
19 imprisonment, and intentional infliction of emotional distress claims against the United
20 States. After screening Plaintiff’s complaint pursuant to 28 U.S.C. § 1915, the Court also
21 dismisses with prejudice Plaintiff’s *Bivens* claim against Defendant Guerrero and § 1983
22 claim against Defendant Beal. Plaintiff’s §§ 1985(3) and 1986 claims are dismissed with
23 leave to amend.

24 Plaintiff may file a third amended complaint within thirty days of the date of this
25 order amending only his §§ 1985(3) and 1986 claims against Defendant Guerrero. Failure
26 to timely file a third amended complaint will result in dismissal of the action for failure to
27 prosecute.

IT IS SO ORDERED.

Dated: September 14, 2023



Hon. Jinsook Ohta
United States District Judge

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