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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

EZRA JOHN ADAMS, Jr.,  
CDCR #H-27409,  
  
Plaintiff,  
  
vs.  
  
MARY STABLES, Detective,  
  
Defendant.

Case No.: 3:16-cv-03051-DMS-NLS

**ORDER:**

**1) GRANTING MOTION TO  
PROCEED IN FORMA PAUPERIS  
[ECF No. 13]**

**2) DENYING MOTIONS FOR  
APPOINTMENT OF COUNSEL AND  
U.S. MARSHAL SERVICE  
[ECF Nos. 24, 26]**

**AND**

**3) DISMISSING CIVIL ACTION  
FOR FAILING TO STATE A CLAIM  
PURSUANT TO 28 U.S.C. § 1915(e)(2)  
AND § 1915A(b)**

EZRA JOHN ADAMS, Jr. (“Plaintiff”), a state prisoner proceeding pro se, initially filed this civil action pursuant to 42 U.S.C. § 1983 in the Northern District of California in November 2016 (ECF No. 1).

1 Plaintiff's Complaint raises claims related to a 1988 arrest and subsequent criminal  
2 prosecution in San Diego Superior Court. The sole Defendant is alleged to be a Detective  
3 employed by the San Diego County Sheriff's Department. United States Magistrate Judge  
4 Nandor J. Vadas found the case was filed in an improper venue and transferred it to the  
5 Southern District of California pursuant to 28 U.S.C. §§ 1391(b) and 1406(a) (ECF No.  
6 16). Judge Vadas did not rule on Plaintiff's pending Motion to Proceed In Forma Pauperis  
7 (ECF No. 13) prior to transfer. Nor did he conduct a preliminary screening of Plaintiff's  
8 Complaint pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A.

9 Plaintiff has since filed a Motion for Appointment of Counsel (ECF No. 26) and a  
10 Motion requesting service by U.S. Marshal and discovery (ECF No. 24). He has also  
11 submitted various documents in support of these pending motions (ECF Nos. 20, 22, 28,  
12 30, 32, 36, 38, 40).

### 13 **I. Motion to Proceed In Forma Pauperis ("IFP")**

14 All parties instituting any civil action, suit, or proceeding in a district court of the  
15 United States, except an application for writ of habeas corpus, must pay a filing fee of  
16 \$400.<sup>1</sup> See 28 U.S.C. § 1914(a). The action may proceed despite a plaintiff's failure to  
17 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.  
18 § 1915(a). See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*  
19 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, a prisoner granted leave to proceed  
20 IFP remains obligated to pay the entire fee in "increments" or "installments," *Bruce v.*  
21 *Samuels*, 136 S. Ct. 627, 629 (2016); *Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir.  
22 2015), and regardless of whether his action is ultimately dismissed. See 28 U.S.C.  
23 § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

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26 <sup>1</sup> In addition to the \$350 statutory fee, civil litigants must pay an additional administrative  
27 fee of \$50. See 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court  
28 Misc. Fee Schedule, § 14 (eff. June 1, 2016). The additional \$50 administrative fee does  
not apply to persons granted leave to proceed IFP. *Id.*

1 Section 1915(a)(2) requires prisoners seeking leave to proceed IFP to submit a  
2 “certified copy of the trust fund account statement (or institutional equivalent) for ... the 6-  
3 month period immediately preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2);  
4 *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified trust account  
5 statement, the Court assesses an initial payment of 20% of (a) the average monthly deposits  
6 in the account for the past six months, or (b) the average monthly balance in the account  
7 for the past six months, whichever is greater, unless the prisoner has no assets. *See* 28  
8 U.S.C. § 1915(b)(1) & (4). The institution having custody of the prisoner then collects  
9 subsequent payments, assessed at 20% of the preceding month’s income, in any month in  
10 which his account exceeds \$10, and forwards those payments to the Court until the entire  
11 filing fee is paid. *See* 28 U.S.C. § 1915(b)(2); *Bruce*, 136 S. Ct. at 629.

12 In support of his IFP Motion, Plaintiff has submitted a copy of his Inmate Statement  
13 Report and a prison certificate certified by a trust account official at his prison. (*See* ECF  
14 No. 13 at 5-8.) These statements show Plaintiff had an average monthly balance of \$31.50  
15 and average monthly deposits of \$16.50 in his account over the 6-month period prior to the  
16 filing of his Complaint. (*See* ECF No. 13 at 6.) However, he had an available balance of  
17 zero at the time of filing. *Id.* Thus, the Court assesses Plaintiff’s initial partial filing fee to  
18 be \$6.30 pursuant to § 1915(b)(1), but acknowledges he may be unable to pay that minimal  
19 initial fee at this time. *See* 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event shall a  
20 prisoner be prohibited from bringing a civil action or appealing a civil action or criminal  
21 judgment for the reason that the prisoner has no assets and no means by which to pay the  
22 initial partial filing fee.”); *Taylor*, 281 F.3d at 850 (finding § 1915(b)(4) acts as a “safety-  
23 valve” preventing dismissal of a prisoner’s IFP case based solely on a “failure to pay ...  
24 due to the lack of funds available to him when payment is ordered.”).

25 Therefore, the Court GRANTS Plaintiff’s Motion to Proceed IFP (ECF No. 13), but  
26 declines to exact any initial filing fee because his prison certificate indicates he may have  
27 “no means to pay it.” *Bruce*, 136 S. Ct. at 629. The Court directs the Secretary of the  
28 California Department of Corrections and Rehabilitation (“CDCR”), or his designee, to

1 collect the entire \$350 balance of the filing fees required by § 1914. *See id.* The Secretary  
2 shall then forward them to the Clerk of the Court pursuant to the installment payment  
3 provisions set forth in § 1915(b)(1). *See id.*

## 4 **II. Motion for Appointment of Counsel**

5 Plaintiff has filed a motion requesting an appointment of “learned counsel  
6 knowledgeable in multiple civil matters/lawsuits, seven or more depending on discovery.”  
7 (ECF No. 26.) Plaintiff requests counsel be appointed to assist him because he is a “novice”  
8 and layman at law, has limited time in the law library, and “lack[s] ... skill to operate a  
9 computer[.]” (ECF No. 26 at 1, ECF No. 32 at 10, ECF No. 36 at 1).

10 Plaintiff’s pleadings are “liberally construed.” *Erickson v. Pardus*, 551 U.S. 89, 94  
11 (2007) (internal citations and quotation marks omitted). “[A] pro se complaint, however  
12 inartfully pleaded,” is held to less stringent standards than formal pleadings drafted by  
13 lawyers.” *Id.*

14 However, there is no constitutional right to counsel in a civil case. *Lassiter v. Dep’t.*  
15 *of Social Services*, 452 U.S. 18, 25 (1981). While district courts have discretion to appoint  
16 counsel to represent an indigent civil litigant, *Agyeman v. Corr. Corp. of America*, 390 F.3d  
17 1101, 1103 (9th Cir. 2004), this discretion is rarely exercised and only under “exceptional  
18 circumstances.” *Id.* A finding of exceptional circumstances requires “an evaluation of the  
19 likelihood of the plaintiff’s success on the merits and an evaluation of the plaintiff’s ability  
20 to articulate his claims ‘in light of the complexity of the legal issues involved.’” *Agyeman*,  
21 390 F.3d at 1103 (quoting *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)).

22 Based on these standards, the Court DENIES Plaintiff’s Motion for Appointment of  
23 Counsel (ECF No. 26) without prejudice. Plaintiff appears capable of articulating the  
24 factual basis for his unlawful search, false arrest, and perjured testimony claims.  
25 Nevertheless, there is no likelihood he can succeed on the merits of these claims because  
26 they are clearly untimely and fall within the “core of habeas corpus,” not § 1983. *See*  
27 *Agyeman*, 390 F.3d at 1103; *Kimber v. Grant*, No. 316CV01472BENAGS, 2017 WL  
28 902139, at \*3 (S.D. Cal. Mar. 6, 2017) (finding no likelihood of success requiring

1 appointment of counsel pursuant to § 1915(e)(1) where face of complaint showed  
2 plaintiff's claims barred by statute of limitations); *Preiser v. Rodriguez*, 411 U.S. 475, 486  
3 (1973) (history of the writ of habeas corpus makes clear that it "has been accepted as the  
4 specific instrument to obtain release from [unlawful] confinement."). Therefore, neither  
5 the interests of justice nor any exceptional circumstances warrant appointment of counsel  
6 in this case. *See LaMere v. Risley*, 827 F.2d 622, 626 (9th Cir. 1987).

### 7 **III. Sua Sponte Screening pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A**

#### 8 **A. Standard of Review**

9 Because Plaintiff is a prisoner proceeding IFP, his Complaint requires pre-answer  
10 screening pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under these statutes, the  
11 Court must sua sponte dismiss a prisoner's IFP complaint, or any portion of it, which is  
12 frivolous, malicious, fails to state a claim, or seeks damages from defendants who are  
13 immune. *See Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc) (discussing  
14 § 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing 28  
15 § 1915A(b)). "The purpose of [screening] is 'to ensure that the targets of frivolous or  
16 malicious suits need not bear the expense of responding.'" *Nordstrom v. Ryan*, 762 F.3d  
17 903, 920 n.1 (9th Cir. 2014) (citations omitted.)

18 "The standard for determining whether a plaintiff has failed to state a claim upon  
19 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of  
20 Civil Procedure 12(b)(6) standard for failure to state a claim." *Watison v. Carter*, 668 F.3d  
21 1108, 1112 (9th Cir. 2012). Rule 12(b)(6) requires a complaint "contain sufficient factual  
22 matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v.*  
23 *Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). Detailed factual  
24 allegations are not required, but "[t]hreadbare recitals of the elements of a cause of action,  
25 supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678.  
26 "Determining whether a complaint states a plausible claim for relief [is] ... a context-  
27 specific task that requires the reviewing court to draw on its judicial experience and  
28 common sense." *Id.* The "mere possibility of misconduct" or "unadorned, the defendant-

1 unlawfully-harmed me accusation[s]” fall short of meeting this plausibility standard. *Id.*

2 B. Plaintiff’s Allegations

3 Plaintiff contends Defendant Staples, a Detective at the San Diego County Sheriff’s  
4 Department, conducted an “illegal” search and seizure of his personal property without a  
5 warrant, committed a “false arrest,” fabricated and/or “orchestrated” false, defamatory, and  
6 misleading evidence against him, and “perjured herself” while acting “under color of  
7 authority” “in order to obtain [his] conviction” and “enhance[] [his] illegal sentence.” (ECF  
8 No. 1 at 3.) Plaintiff requests no monetary damages. Instead, he seeks to “reverse the  
9 conviction” and to be “immediately discharged ... from custody.” (*Id.* at 3-4.)

10 C. Statute of Limitations

11 Plaintiff’s claims first arose “on or about November 15, 1988.” (ECF No. 1 at 3.) “A  
12 claim may be dismissed [for failing to state a claim] on the ground that it is barred by the  
13 applicable statute of limitations only when ‘the running of the statute is apparent on the  
14 face of the complaint.’” *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d  
15 954, 969 (9th Cir. 2010) (quoting *Huynh v. Chase Manhattan Bank*, 465 F.3d 992, 997 (9th  
16 Cir. 2006)). “A complaint cannot be dismissed unless it appears beyond doubt that the  
17 plaintiff can prove no set of facts that would establish the timeliness of the claim.” *Id.*  
18 (quoting *Supermail Cargo, Inc. v. U.S.*, 68 F.3d 1204, 1206 (9th Cir. 1995)).

19 Because § 1983 contains no specific statute of limitation, federal courts apply the  
20 forum state’s statute of limitations for personal injury actions. *Jones v. Blanas*, 393 F.3d  
21 918, 927 (9th Cir. 2004). Before 2003, California’s statute of limitations was one year. *Id.*  
22 Effective January 1, 2003, the limitations period was extended to two years. *Id.* (citing Cal.  
23 Civ. Proc. Code § 335.1).

24 The law of the forum state also governs tolling. *Wallace v. Kato*, 549 U.S. 384, 394  
25 (2007) (citing *Hardin v. Straub*, 490 U.S. 536, 538-39 (1989)). Under California law, the  
26 statute of limitations for prisoners serving less than a life sentence is tolled for two years.  
27 Cal. Civ. Proc. Code § 352.1(a). Accordingly, the effective statute of limitations for most  
28 California prisoners is three years for claims accruing before January 1, 2003 (one year

1 limitations period plus two year statutory tolling), and four years for claims accruing  
2 thereafter (two year limitations period plus two years statutory tolling).

3 Unlike the length of the limitations period, however, “the accrual date of a § 1983  
4 cause of action is a question of federal law that is not resolved by reference to state law.”  
5 *Wallace*, 549 U.S. at 388; *Hardin*, 490 U.S. at 543–44 (federal law governs when a § 1983  
6 cause of action accrues). “Under the traditional rule of accrual ... the tort cause of action  
7 accrues, and the statute of limitation begins to run, when the wrongful act or omission  
8 results in damages.” *Wallace*, 549 U.S. at 391. In other words, “[u]nder federal law, a claim  
9 accrues when the plaintiff knows or has reason to know of the injury which is the basis of  
10 the action.” *Maldonado*, 370 F.3d at 955.

11 In this case, the alleged “wrongful acts” that caused harm to Plaintiff occurred more  
12 than 28 years before Plaintiff filed his Complaint in this action. Therefore, Plaintiff’s  
13 claims are far outside California’s statute of limitations—even including all presumed  
14 periods of tolling provided by statute or pending exhaustion of any administrative  
15 remedies. *Wallace*, 591 U.S. at 391; *see also Brown v. Valoff*, 422 F.3d 926, 943 (9th Cir.  
16 2005) (stating “the applicable statute of limitations must be tolled while a prisoner  
17 completes the mandatory exhaustion process” required by 42 U.S.C. § 1997e(a)).

18 Specifically, Plaintiff claims Detective Stables falsely arrested him, fabricated  
19 evidence against him, and lied under oath during the criminal trial and conviction following  
20 his arrest in November 1988. (ECF No. 1 at 3.) Therefore, Plaintiff had “reason to know”  
21 of his injury more than two decades ago, yet did not file this case until December 19, 2016.  
22 *See Maldonado*, 370 F.3d at 955.

23 Finally, Plaintiff’s claims could be considered timely if he alleged facts sufficient to  
24 show the limitations period may be equitably tolled. *See Cervantes*, 5 F.3d at 1276–77.  
25 Generally, federal courts also apply the forum state’s law regarding equitable tolling. *Fink*,  
26 192 F.3d at 914. Under California law, however, Plaintiff must meet three conditions to  
27 equitably toll the statute of limitations: (1) he must have diligently pursued his claim; (2)  
28 his situation must be the product of forces beyond his control; and (3) defendants must not

1 be prejudiced by the application of equitable tolling. *See Hull v. Central Pathology Serv.*  
2 *Med. Clinic*, 28 Cal. App. 4th 1328, 1335 (Cal. Ct. App. 1994); *Addison v. State of*  
3 *California*, 21 Cal.3d 313, 316-17 (Cal. 1978).

4 As currently pleaded, Plaintiff has failed to allege facts to support any plausible  
5 claim for equitable tolling. *See Cervantes*, 5 F.3d at 1277. Accordingly, Plaintiff's claims  
6 against Defendant Stables are barred by the statute of limitations. Plaintiff's Complaint is  
7 therefore dismissed for failing to state a claim upon which § 1983 relief may be granted.  
8 *See* 28 U.S.C. §§ 1915(e)(2)(B)(ii) & 1915A(b)(1); *Lopez*, 203 F.3d at 1126–27.

9 D. Validity of Conviction

10 Plaintiff seeks to “reverse his conviction” and to be “released from custody” as a  
11 result of Defendant Stables's actions. (ECF No. 1 at 3-4.) Even if his claims were timely,  
12 Plaintiff cannot proceed pursuant to § 1983, because “[s]uits challenging the validity of [a]  
13 prisoner's continued incarceration lie within ‘the heart of habeas corpus.’” *Ramirez v.*  
14 *Galaza*, 334 F.3d 850, 856 (9th Cir. 2003) (quoting *Preiser*, 411 U.S. at 489–99) (holding  
15 that a writ of habeas corpus is “explicitly and historically designed” to provide a state  
16 prisoner with the “exclusive” means to “attack the validity of his confinement” in federal  
17 court). “[A] § 1983 action is a proper remedy for a state prisoner who is making a  
18 constitutional challenge to the conditions of his prison life, but not to the fact or length of  
19 his custody.” *Id.*; *see also Nettles v. Grounds*, 830 F.3d 922, 928 (9th Cir. 2016) (en banc)  
20 (“[C]laims ... which would ... result[] in immediate release if successful, f[a]ll within the  
21 core of habeas corpus and therefore [must] be brought, if at all, in habeas.”) (citing *Preiser*,  
22 411 U.S. at 487).

23 E. Leave to Amend

24 Finally, while the Court typically grants pro se plaintiffs leave to amend, doing so  
25 under the present circumstances would be futile. *See Lopez*, 203 F.3d at 1127; *Schmier v.*  
26 *U.S. Court of Appeals for the Ninth Circuit*, 279 F.3d 817, 824 (9th Cir. 2002) (recognizing  
27 “[f]utility of amendment” as a proper basis for dismissal without leave to amend).  
28 Amendment is futile because Plaintiff's previous attempts at invalidating his conviction



1 have all proven unavailing. *See Nettles*, 830 F.3d at 928-29 (noting that plaintiff may not  
2 bring a § 1983 action that “necessarily require[s] [him] to prove the unlawfulness of his  
3 conviction” unless he can “first ... prove that the conviction ... was eliminated, including  
4 ‘by a federal court’s issuance of a writ of habeas corpus.’”) (quoting *Heck v. Humphrey*,  
5 512 U.S. 477, 486–87 (1994)).

6 A court may take judicial notice of its own records, *see Molus v. Swan*, No. CIV  
7 05CV452-MMA WMC, 2009 WL 160937, at \*2 (S.D. Cal. Jan. 22, 2009) (citing *United*  
8 *States v. Author Services*, 804 F.2d 1520, 1523 (9th Cir. 1986)), and “may take notice of  
9 proceedings in other courts, both within and without the federal judicial system, if those  
10 proceedings have a direct relation to matters at issue.” *Bias v. Moynihan*, 508 F.3d 1212,  
11 1225 (9th Cir. 2007) (quoting *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir.  
12 2002)). Thus, the Court takes judicial notice of its own records in *Adams v. Evans, et al.*,  
13 Civil Case No. 3:09-cv-01123-BEN-RBB (S.D. Cal. 2009), wherein Plaintiff filed a writ  
14 of habeas corpus pursuant to 28 U.S.C. § 2254, seeking to challenge the validity of the  
15 same state court conviction at issue in this case. This petition, filed approximately 20 years  
16 after he was convicted, was dismissed as untimely. *See id.* ECF Nos. 1, 12, 13. The Court  
17 also takes judicial notice of docket proceedings before the California Court of Appeals,  
18 District 4, Division 1, in *In re Ezra John Adams*, D053086, where Plaintiff filed another  
19 state habeas petition challenging the same conviction at issue. This petition was also  
20 denied. *See* [http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=41&doc](http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=41&doc_id=1369135&doc_no=D053086)  
21 [id=1369135&doc\\_no=D053086](http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=41&doc_id=1369135&doc_no=D053086) (last visited May 4, 2017).

22 Because Plaintiff would be unable to allege facts showing that his claims are timely  
23 or that the underlying conviction has been invalidated, amendment of the complaint would  
24 be futile. *See Lopez*, 203 F.3d at 1127; *Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir.  
25 2015) (noting that leave to amend is not required if it is “absolutely clear that the  
26 deficiencies of the complaint could not be cured by amendment.”) (internal citations  
27 omitted). Consequently, the Court DENIES Plaintiff’s remaining Motion for United States  
28 Marshal Service and Discovery (ECF No. 24) as moot.

1 **IV. Conclusion and Order**


2 For all the reasons discussed, the Court:

- 3 1) **GRANTS** Plaintiff's Motion to Proceed IFP (ECF No. 13);
- 4 2) **DIRECTS** the Secretary of the CDCR, or his designee, to collect from
- 5 Plaintiff's prison trust account the \$350 filing fee owed in this case by garnishing monthly
- 6 payments from his account in an amount equal to twenty percent (20%) of the preceding
- 7 month's income. The Secretary shall forward those payments to the Clerk of the Court each
- 8 time the amount in the account exceeds \$10. **ALL PAYMENTS SHALL BE CLEARLY**
- 9 **IDENTIFIED BY THE NAME AND NUMBER ASSIGNED TO THIS ACTION;**
- 10 3) **DIRECTS** the Clerk of the Court to serve a copy of this Order on Scott
- 11 Kernan, Secretary, CDCR, P.O. Box 942883, Sacramento, California, 94283-0001;
- 12 4) **DENIES** Plaintiff's Motion for Appointment of Counsel (ECF No. 26);
- 13 5) **DISMISSES** this action without leave to amend;
- 14 6) **DENIES** Plaintiff's Motion for United States Marshal Service and Discovery
- 15 (ECF No. 24) as moot; and
- 16 7) **CERTIFIES** that an IFP appeal from this Order would not be taken in good
- 17 faith pursuant to 28 U.S.C. § 1915(a)(3). *See Coppedge v. United States*, 369 U.S. 438, 445
- 18 (1962); *Gardner v. Pogue*, 558 F.2d 548, 550 (9th Cir. 1977) (indigent appellant is
- 19 permitted to proceed IFP on appeal only if appeal would not be frivolous).

20 The Clerk shall close the file.

21 **IT IS SO ORDERED.**

22 Dated: May 11, 2017

23   
24 \_\_\_\_\_  
25 Hon. Dana M. Sabraw  
26 United States District Judge  
27  
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