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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 JOHN LAZARO MAINEZ,
12 Booking #14704837,

13 Plaintiff,

14 vs.

15 SHERIFF WILLIAM GORE;
16 JUDGE PATRICIA SHAMOON,

17 Defendants.
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Case No.: 3:17-cv-01359-JAH-JLB

ORDER:

**1) GRANTING MOTION TO
PROCEED IN FORMA PAUPERIS
[ECF No. 2]**

AND

**2) DISMISSING CIVIL ACTION
FOR FAILING TO STATE A CLAIM
AND FOR SEEKING DAMAGES
FROM DEFENDANT WHO IS
ABSOLUTELY IMMUNE
PURSUANT TO
28 U.S.C. § 1915(e)(2)(B)
AND § 1915A(b)**

24 JOHN LAZARO MAINEZ (“Plaintiff”), a detainee at the San Diego Sheriff’s
25 Department Vista Detention Facility (“VDF”) in Vista, California, and proceeding pro se,
26 has filed a civil rights Complaint pursuant to 42 U.S.C. § 1983 (ECF No. 1). Plaintiff claims
27 William Gore, the San Diego County Sheriff, and the Honorable Patricia Shamoan, the San
28 Diego Superior Court Judge who sentenced him in People v. Mainez, San Diego Superior

1 Court Criminal Case Nos. SCE298454, SCD240472, SCE316127, and SCD228286 on
2 May 20, 2014, falsely imprisoned him in violation of the Sixth Amendment, due process,
3 and equal protection of the law. See *id.* at 12-14, 93-103. He seeks declaratory and
4 injunctive relief “enjoining defendants from continuing to falsely imprison” him, as well
5 as “damages pursuant to [Cal.] Pen. Code [§] 4904.”¹ *Id.* at 14.

6 Plaintiff did not prepay the civil filing fee required by 28 U.S.C. § 1914(a) when he
7 filed his Complaint; instead, he has filed a Motion to Proceed In Forma Pauperis (“IFP”)
8 pursuant to 28 U.S.C. § 1915(a) (ECF No. 2).

9 **I. Plaintiff’s IFP Motion**

10 All parties instituting any civil action, suit or proceeding in a district court of the
11 United States, except an application for writ of habeas corpus, must pay a filing fee of
12 \$400.² See 28 U.S.C. § 1914(a). The action may proceed despite a plaintiff’s failure to
13 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.
14 § 1915(a). See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*
15 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, a prisoner who is granted leave to
16 proceed IFP remains obligated to pay the entire fee in “increments” or “installments,”
17 *Bruce v. Samuels*, ___ S. Ct. ___, 136 S. Ct. 627, 629 (2016); *Williams v. Paramo*, 775 F.3d
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20 ¹ California law “allows a person erroneously convicted of a crime to file a claim for indemnity with the
21 [California’s Victim Compensation and Government Claims Board] for pecuniary injury sustained
22 through the erroneous conviction and imprisonment or incarceration[.]” *Holmes v. Cal. Victim Comp. &*
23 *Gov’t Claims Bd.*, 239 Cal. App. 4th 1400, 1403 (2015) (citing CAL. PENAL CODE §§ 4900, et seq.); *People*
24 *v. Etheridge*, 241 Cal. App. 4th 800, 806 (2015), provided such a claim is brought “within a period of two
25 years after judgment of acquittal or after pardon granted, or after release from custody[.]” P.C. § 4901(a).
26 To prevail on a claim for compensation, the claimant must show “that the crime with which the claimant
27 was charged was either not committed at all, or, if committed, was not committed by the claimant.” CAL.
28 PENAL CODE § 4904; *Larsen v. Soto*, No. CV 08-4610 CAS (SS), 2016 WL 3792817, at *2 (C.D. Cal.
June 15, 2016), report and recommendation adopted, No. CV 08-4610 CAS (SS), 2016 WL 3792822
(C.D. Cal. July 12, 2016).

² In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$50. See
28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court 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 1182, 1185 (9th Cir. 2015), and regardless of whether his action is ultimately dismissed.
2 See 28 U.S.C. § 1915(b)(1) & (2); Taylor v. Delatoore, 281 F.3d 844, 847 (9th Cir. 2002).

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

14 In support of his IFP Motion, Plaintiff has submitted a Prison Certificate issued by
15 the Facility Commander at VDF attesting as to his account balances as required by 28
16 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2. See ECF No. 2 at 5; Andrews, 398 F.3d at
17 1119. This Certificate shows Plaintiff had \$122.50 in average monthly deposits, carried an
18 average monthly balance of \$0.23 in his account during the 6-month period preceding the
19 filing of this action, and had \$1.34 in available funds to his credit at the time of filing.
20 Based on this financial information, the Court GRANTS Plaintiff’s Motion to Proceed IFP
21 (ECF No. 2), and assesses Plaintiff’s initial partial filing fee to be \$24.50 pursuant to 28
22 U.S.C. § 1915(b)(1).

23 However, the Court will direct the Facility Commander at VDF, or his designee, to
24 collect this initial fee only if sufficient funds are available in Plaintiff’s account at the time
25 this Order is executed. See 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event shall a
26 prisoner be prohibited from bringing a civil action or appealing a civil action or criminal
27 judgment for the reason that the prisoner has no assets and no means by which to pay the
28 initial partial filing fee.”); Taylor, 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4) acts

1 as a “safety-valve” preventing dismissal of a prisoner’s IFP case based solely on a “failure
2 to pay ... due to the lack of funds available to him when payment is ordered.”). The
3 remaining balance of the \$350 total fee owed in this case must be collected and forwarded
4 to the Clerk of the Court pursuant to the installment payment provisions set out in 28 U.S.C.
5 § 1915(b)(1).

6 **II. Screening Pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)**

7 **A. Standard of Review**

8 Because Plaintiff is a prisoner and is proceeding IFP, his Complaint requires a pre-
9 answer screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b). Under these statutes,
10 the Court must sua sponte dismiss a prisoner’s IFP complaint, or any portion of it, which
11 is frivolous, malicious, fails to state a claim, or seeks damages from defendants who are
12 immune. See *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (discussing
13 28 U.S.C. § 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010)
14 (discussing 28 U.S.C. § 1915A(b)). “The purpose of [screening] is ‘to ensure that the
15 targets of frivolous or malicious suits need not bear the expense of responding.’”
16 *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir. 2014) (quoting *Wheeler v. Wexford*
17 *Health Sources, Inc.*, 689 F.3d 680, 681 (7th Cir. 2012)).

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); see also *Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir.
22 2012) (screening pursuant to § 1915A “incorporates the familiar standard applied in the
23 context of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6)”).

24 Rule 12(b)(6) requires a complaint to “contain sufficient factual matter, accepted as
25 true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662,
26 678 (2009) (internal quotation marks omitted); *Wilhelm*, 680 F.3d at 1121. Detailed factual
27 allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action,
28 supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678.

1 “Determining whether a complaint states a plausible claim for relief [is] ... a context-
2 specific task that requires the reviewing court to draw on its judicial experience and
3 common sense.” Id. The “mere possibility of misconduct” or “unadorned, the defendant-
4 unlawfully-harmed me accusation[s]” fall short of meeting this plausibility standard. Id.;
5 see also *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).

6 B. Plaintiff’s Complaint

7 Plaintiff contends Judge Shamon imposed an unlawful sentence in San Diego
8 Superior Court Criminal Case Nos. SCD240472, SCE316127, SCE298454, and
9 SCD228286, and as a result, she and Sheriff Gore falsely imprisoned him in the County
10 Jail in violation of a plea agreement, due process, and equal protection. See ECF No. 1 at
11 7-14. Plaintiff further claims “Judge Shamon and the State Court failed to find that [his]
12 counsel was ineffective at sentencing,” in violation of the Sixth Amendment. Id. at 13.
13 Plaintiff seeks a declaratory judgment, a “permanent injunction enjoining defendants from
14 continuing to falsely imprison [him] in the County Jail,” and monetary damages “pursuant
15 to Pen[al] Code 4904.” Id. at 14.

16 C. 42 U.S.C. § 1983

17 “Section 1983 creates a private right of action against individuals who, acting under
18 color of state law, violate federal constitutional or statutory rights.” *Devereaux v. Abbey*,
19 263 F.3d 1070, 1074 (9th Cir. 2001). Section 1983 “is not itself a source of substantive
20 rights, but merely provides a method for vindicating federal rights elsewhere conferred.”
21 *Graham v. Connor*, 490 U.S. 386, 393-94 (1989) (internal quotation marks and citations
22 omitted). “To establish § 1983 liability, a plaintiff must show both (1) deprivation of a right
23 secured by the Constitution and laws of the United States, and (2) that the deprivation was
24 committed by a person acting under color of state law.” *Tsao v. Desert Palace, Inc.*, 698
25 F.3d 1128, 1138 (9th Cir. 2012).

26 D. Criminal Proceedings – Heck’s “Favorable Termination” Requirement

27 There are two methods for state prisoners to raise complaints related to their
28 imprisonment in federal court. See *Muhammad v. Close*, 540 U.S. 749, 750 (2004)

1 (“Federal law opens two main avenues to relief on complaints related to imprisonment...”)
 2 (citing Preiser v. Rodriguez, 411 U.S. 475, 500 (1973)). In general, claims of constitutional
 3 violations related to the “circumstances” of a prisoner’s confinement must be brought in a
 4 civil rights action under Section 1983, see id., while constitutional challenges to the validity
 5 or duration of a prisoner’s confinement which seek either “immediate release from prison”
 6 or the “shortening of [a state prison] term” must be raised in a petition for federal habeas
 7 corpus under 28 U.S.C. § 2254 or through appropriate state relief. *Wilkinson v. Dotson*,
 8 544 U.S. 74, 78-79 (2005) (citations and internal quotation marks omitted); *Nettles v.*
 9 *Grounds*, 830 F.3d 922, 927 (9th Cir. 2016) (en banc) (“The Court has long held that habeas
 10 is the exclusive vehicle for claims brought by state prisoners that fall within the core of
 11 habeas, and such claims may not be brought in a § 1983 action.”) (citing *Dotson*, 544 U.S.
 12 at 81-82), cert. denied, (Jan. 9, 2017) (No. 16-6556).

13 First, Plaintiff seeks damages and injunctive relief against both Sheriff Gore and
 14 Judge Shamon based on claims that they have falsely imprisoned him—but he may not
 15 pursue those claims in a civil rights action pursuant to 42 U.S.C. § 1983, without first
 16 showing his convictions have already been invalidated. *Heck v. Humphrey*, 512 U.S. 477,
 17 486-87 (1994).

18 In *Heck*, the Supreme Court held:

19 in order to recover damages for allegedly unconstitutional
 20 conviction or imprisonment, or for other harm caused by actions
 21 whose unlawfulness would render a conviction or sentence
 22 invalid, a § 1983 plaintiff must prove that the conviction or
 23 sentence has been reversed on direct appeal, expunged by
 24 executive order, declared invalid by a state tribunal authorized to
 25 make such determination, or called into question by a federal
 26 court’s issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A
 claim for damages bearing that relationship to a conviction or
 sentence that has not been so invalidated is not cognizable under
 § 1983.

27 *Id.* at 486-87; *Washington v. Los Angeles County Sheriff’s Dep’t*, 833 F.3d 1048, 1054-55
 28 (9th Cir. 2016).

1 “Suits challenging the validity of the prisoner’s continued incarceration lie within
2 ‘the heart of habeas corpus,’ whereas ‘a § 1983 action is a proper remedy for a state prisoner
3 who is making a constitutional challenge to the conditions of his prison life, but not to the
4 fact or length of his custody.’” *Ramirez v. Galaza*, 334 F.3d 850, 856 (9th Cir. 2003),
5 quoting *Preiser*, 411 U.S. at 489-99 (1973) (holding that a writ of habeas corpus is
6 “explicitly and historically designed” to provide a state prisoner with the “exclusive”
7 means to “attack the validity of his confinement” in federal court).

8 Because Plaintiff seeks damages based on an allegedly unlawful sentence imposed
9 as the result of his underlying criminal convictions, he may not proceed pursuant to § 1983,
10 unless his convictions have already been invalidated. *Heck*, 512 U.S. at 486-87; *Ramirez*,
11 334 F.3d at 855-56 (“Absent such a showing, ‘[e]ven a prisoner who has fully exhausted
12 available state remedies has no cause of action under § 1983.’”), quoting *Heck*, 512 U.S.
13 at 489. While Plaintiff identifies no specific acts of misconduct taken by the Sheriff Gore
14 individually during the course of his criminal proceedings, and instead appears to hold the
15 Sheriff accountable merely because Plaintiff has been committed to his custody, see *Iqbal*,
16 556 U.S. at 677 (noting that “[a]bsent vicarious liability, each Government official, his or
17 her title notwithstanding, is only liable for his or her own misconduct”), the Court will
18 presume Plaintiff also intends to sue the Sheriff for enforcing Judge Shamoon’s “unlawful”
19 sentence. See ECF No. 1 at 3, 8, 12.

20 However, despite Plaintiff’s claims to the contrary, *id.* at 4, such claims do
21 “necessarily imply the invalidity” of his conviction and continued incarceration. *Heck*, 512
22 U.S. at 487. In other words, were Plaintiff to succeed in showing Defendants “falsely
23 imprisoned” him in violation of due process and equal protection, and that they did so as
24 the result of a sentencing hearing during which he was not rendered the effective assistance
25 of counsel guaranteed him by the Sixth Amendment, see ECF No. 1 at 12-13, an award of
26 damages in his favor would “necessarily imply the invalidity” of his conviction and/or the
27 sentence Judge Shamoon imposed. *Id.*, 512 U.S. at 487; see also *Pattillo v. Lombardo*, No.
28 2:17-CV-01849-JAD-VCF, 2017 WL 3622778, at *4 (D. Nev. Aug. 23, 2017) (“When a

1 prisoner challenges the legality or duration of his custody, raises a constitutional challenge
2 which could entitle him to an earlier release (such as ineffective assistance of counsel), or
3 seeks damages for purported deficiencies in his state court criminal case, which effected a
4 conviction or lengthier sentence, his sole federal remedy is the writ of habeas corpus.”).

5 E. Judicial Immunity

6 Second, to the extent Plaintiff seeks damages against Judge Shamoon for sentencing
7 him and/or presiding over his criminal proceedings, his claims are legally frivolous, for
8 “[j]udges are absolutely immune from damage liability for acts performed in their official
9 capacities.” *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986) (en banc) (“A judge
10 lacks immunity where [s]he acts in the clear absence of all jurisdiction, or performs an act
11 that is not judicial in nature.”) (internal quotation marks and citations omitted); *Pierson v.*
12 *Ray*, 386 U.S. 547, 553-55 (1967); *Duvall v. County of Kitsap*, 260 F.3d 1124, 1133 (9th
13 Cir. 2001). The imposition of a criminal sentence is unquestionably an act performed in a
14 judge’s official capacity. See, e.g., *Hawes v. Brown*, No. 17-CV-02400-WHO (PR), 2017
15 WL 2500905, at *2 (N.D. Cal. June 9, 2017); *Pattillo*, 2017 WL 3622778, at *3 (“[A]
16 sentencing decision is at its core a judicial act for which [a] [j]udge ... is entitled to absolute
17 judicial immunity.”).

18 Thus, for these reasons, the Court finds Plaintiff’s Complaint both fails to state a
19 claim upon which § 1983 relief may be granted, and seeks monetary damages from a
20 defendant who is immune. Therefore, it must be DISMISSED sua sponte pursuant to 28
21 U.S.C. § 1915(e)(2) and § 1915A(b). See *Lopez*, 203 F.3d at 1126-27; *Wilhelm*, 680 F.3d
22 at 1121; *Chavez v. Robinson*, 817 F.3d 1162, 1167 (9th Cir. 2016) (noting
23 § 1915(e)(2)(b)(iii) requires sua sponte dismissal of complaints seeking “monetary relief
24 against a defendant who is immune from such relief,” and noting its “appli[cation] to
25 absolute immunity.”).

26 F. Leave to Amend

27 Finally, while the Court would typically grant Plaintiff leave to amend in light of his
28 pro se status, it concludes that doing so under the circumstances presented by Plaintiff’s

1 pleadings would be futile. See Lopez, 203 F.3d at 1127; Schmier v. U.S. Court of Appeals
2 for the Ninth Circuit, 279 F.3d 817, 824 (9th Cir. 2002) (recognizing “[f]utility of
3 amendment” as a proper basis for dismissal without leave to amend).

4 Amendment is futile because even if Plaintiff could somehow allege facts to show
5 Defendants Gore and Shamoon violated his constitutional rights as the result of his May
6 14, 2014 sentencing, or that Judge Shamoon were not somehow absolutely immune, his
7 claim for damages under § 1983 could still not yet proceed pursuant to Heck because his
8 several past, and still ongoing attempts at invalidating his conviction and/or sentence
9 through writs of habeas corpus, have to date been unavailing.

10 A court may take judicial notice of its own records, see *Molus v. Swan*, Civil Case
11 No. 3:05-cv-00452–MMA-WMc, 2009 WL 160937, *2 (S.D. Cal. Jan. 22, 2009) (citing
12 *United States v. Author Services*, 804 F.2d 1520, 1523 (9th Cir. 1986)); *Gerritsen v.*
13 *Warner Bros. Entm’t Inc.*, 112 F. Supp. 3d 1011, 1034 (C.D. Cal. 2015), and “may take
14 notice of proceedings in other courts, both within and without the federal judicial system,
15 if those proceedings have a direct relation to matters at issue.” *Bias v. Moynihan*, 508 F.3d
16 1212, 1225 (9th Cir. 2007) (quoting *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th
17 Cir. 2002)); see also *United States ex rel. Robinson Rancheria Citizens Council v. Borneo,*
18 *Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

19 Here, the Court takes judicial notice of its own records in *Mainez v. Gore*, S. D. Cal.
20 Civil Case No. 3:17-cv-00397-JLS-KSC, in which Plaintiff filed a writ of habeas corpus
21 seeking to challenge his state court conviction and May 20, 2014, sentence imposed in San
22 Diego Superior Court Case Nos. SCD240472, SCE316127, SCD228286, and SCE298454
23 pursuant to 28 U.S.C. § 2254, and raising due process, equal protection, and ineffective
24 assistance of counsel claims similar to those alleged in his § 1983 Complaint in this case.
25 See *Mainez v. Gore*, S. D. Cal. Civil Case No. 3:17-cv-00397-JLS-KSC (ECF No. 1 at 1;
26 1-2 at 12-13, 17-35). While a Motion to Dismiss has been filed, *id.*, ECF No. 16, Plaintiff’s
27 § 2254 habeas petition remains pending before Judge Sammartino.

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1 The Court also notes Plaintiff has attached as an exhibit to his Complaint in this case
2 a copy of an April 13, 2016 decision by the California Court of Appeals, District 4, Div.1,
3 in *In re John Mainez*, D070112, denying a state habeas corpus petition collaterally
4 attacking his convictions in SCD240472, SCD228286, SCE298454, and SCE316127, and
5 alleging “multiple sentencing errors.” See ECF No. 1 at 61-63. Plaintiff also attaches
6 several additional Orders issued by the San Diego Superior Court denying at least three
7 successive state habeas petitions he filed in *In re Mainez*, San Diego Superior Court Case
8 No. HC21682 (challenging SCD240472, SCE298454, and SCE316127), *id.* at 64-66; *In re*
9 *Mainez*, San Diego Superior Court Case No. HC21682 (2d Petition) (challenging
10 SCD240472, SCE298454, and SCE316127), *id.* at 56-60; and *In re Mainez*, San Diego
11 Superior Court Case No. HC21682 (3d Petition) (challenging SCD240472, SCE298454,
12 and SCE316127), *id.* at 77-82. All of those state habeas petitions have also been denied.
13 *Id.* at 59-60, 66, 82.

14 Therefore, because Plaintiff’s state and federal collateral proceedings reveal he
15 cannot amend his pleading in this case to allege the additional facts required to show either
16 that the underlying conviction or sentence which forms the basis of his § 1983 claims in
17 this case has already been invalidated, or that the judicial defendant he seeks to sue for
18 money damages is not absolutely immune, the Court denies leave to amend as futile. See
19 *Lopez*, 203 F.3d at 1127; *Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir. 2015) (noting
20 that leave to amend is not required if it is “absolutely clear that the deficiencies of the
21 complaint could not be cured by amendment.”) (internal citations omitted).

22 **III. Conclusion and Orders**

23 Good cause appearing, the Court:

24 1. **GRANTS** Plaintiff’s Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a)
25 (ECF No. 2).

26 2. **DIRECTS** the Facility Commander of the VDF, or his designee, to collect
27 from Plaintiff’s prison trust account the initial partial filing fee assessed by this Order, if
28 those funds are available, and to forward the balance of the \$350 filing fee owed in this

1 case by garnishing monthly payments from his account in an amount equal to twenty
2 percent (20%) of the preceding month's income and forwarding those payments to the
3 Clerk of the Court each time the amount in the account exceeds \$10 pursuant to 28 U.S.C.
4 § 1915(b)(2). ALL PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME
5 AND NUMBER ASSIGNED TO THIS ACTION.

6 3. **DIRECTS** the Clerk of the Court to serve a copy of this Order on the Facility
7 Commander, San Diego Sheriff's Department, Vista Detention Facility, 325 South Melrose
8 Drive, Vista, California 92081.

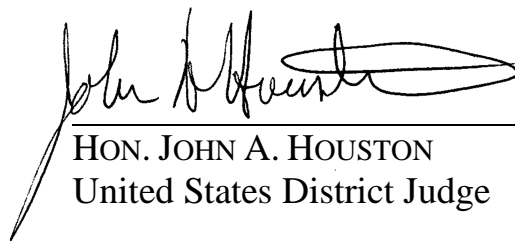
9 4. **DISMISSES** Plaintiff's Complaint for failing to state a claim and for seeking
10 damages from a defendant who is absolutely immune pursuant to 28 U.S.C. § 1915(e)(2)
11 and § 1915A(b), without prejudice, but without leave to amend in this civil action as futile.

12 5. **CERTIFIES** that an IFP appeal from this Order would be frivolous and
13 therefore, would not be taken in good faith pursuant to 28 U.S.C. § 1915(a)(3). See
14 *Coppedge v. United States*, 369 U.S. 438, 445 (1962); *Gardner v. Pogue*, 558 F.2d 548,
15 550 (9th Cir. 1977) (indigent appellant is permitted to proceed IFP on appeal only if appeal
16 would not be frivolous); and

17 7. **DIRECTS** the Clerk of Court to close the file.

18 **IT IS SO ORDERED.**

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21 Dated: September 8, 2017


HON. JOHN A. HOUSTON
United States District Judge