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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JOHNAE HOYT,  
  
Plaintiff,  
  
v.  
  
CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION SECRETARY  
SCOTT KERNAN, in his official  
capacity,  
  
Defendant.

Case No.: 3:18-cv-0716-H-BLM

**ORDER:**

**(1) DENYING MOTION TO  
PROCEED IN FORMA PAUPERIS;**

**[Doc. No. 2]**

**(2) DENYING MOTION FOR  
TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY  
INJUNCTION; AND**

**[Doc. No. 4]**

**(3) DISMISSING ACTION FOR  
FAILURE TO STATE A CLAIM  
PURSUANT TO 28 U.S.C. § 1915A**

Johnae Hoyt (“Plaintiff”), a state inmate currently housed at Salinas Valley State Prison (“SVSP”)<sup>1</sup> located in Soledad, California, and represented by counsel, has filed an

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<sup>1</sup> See <https://inmatelocator.cdcr.ca.gov/Results.aspx> (website last visited Apr. 16, 2018)

1 action entitled “Complaint for Temporary Restraining Order and Preliminary Injunction.”  
2 (Doc. No. 1.) Plaintiff has not prepaid the civil filing fee required by 28 U.S.C. § 1914(a);  
3 instead, he has filed a motion to proceed in forma pauperis (“IFP”) pursuant to 28 U.S.C.  
4 § 1915(a), along with “Motion for a Temporary Restraining Order and Preliminary  
5 Injunction.” (Doc. Nos. 2, 4.)

6 **I. Motion to Proceed IFP**

7 All parties instituting any civil action, suit or proceeding in a district court of the  
8 United States, except an application for writ of habeas corpus, must pay a filing fee of  
9 \$400. See 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff’s failure to  
10 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.  
11 § 1915(a). However, if the plaintiff is a prisoner at the time of filing, he may be granted  
12 leave to proceed IFP, but he nevertheless remains obligated to pay the entire fee in  
13 “increments,” see Williams v. Paramo, 775 F.3d 1182, 1185 (9th Cir. 2015), regardless of  
14 whether his action is ultimately dismissed, see 28 U.S.C. § 1915(b)(1) & (2); Taylor v.  
15 Delatoore, 281 F.3d 844, 847 (9th Cir. 2002). A “prisoner” is defined as “any person” who  
16 at the time of filing is “incarcerated or detained in any facility who is accused of, convicted  
17 of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or  
18 conditions of parole, probation, pretrial release, or diversionary program.” 28 U.S.C.  
19 § 1915(h).

20 In order to comply with the Prison Litigation Reform Act (“PLRA”), prisoners  
21 seeking leave to proceed IFP must also submit a “certified copy of the[ir] trust fund account  
22 statement (or institutional equivalent) . . . for the 6-month period immediately preceding  
23 the filing of the complaint . . . .” 28 U.S.C. § 1915(a)(2). From the certified trust account  
24 statement, the Court assesses an initial payment of 20% of (a) the average monthly deposits  
25 in the account for the past six months, or (b) the average monthly balance in the account  
26 for the past six months, whichever is greater, unless the prisoner has no assets. 28 U.S.C.  
27 § 1915(b)(1), (4); see Taylor, 281 F.3d at 850. Thereafter, the institution having custody of  
28 the prisoner collects subsequent payments, assessed at 20% of the preceding month’s

1 income, in any month in which the prisoner's account exceeds \$10, and forwards them to  
2 the Court until the entire filing fee is paid. See 28 U.S.C. § 1915(b)(2).

3 Although Plaintiff has filed a motion to proceed IFP pursuant to 28 U.S.C. § 1915(a),  
4 he has not attached a certified copy of his trust account statements, or an institutional  
5 equivalent, for the 6-month period immediately preceding the filing of his Complaint. See  
6 28 U.S.C. § 1915(a)(2); CivLR 3.2(b). Section 1915(a)(2) clearly requires that prisoners  
7 “seeking to bring a civil action . . . without prepayment of fees . . . *shall* submit a certified  
8 copy of the trust fund account statement (or institutional equivalent) . . . for the 6-month  
9 period immediately preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2)  
10 (emphasis added).

11 Without Plaintiff's trust account statement, the Court is unable to assess the  
12 appropriate amount of the initial filing fee which is statutorily required to initiate the  
13 prosecution of this action. See 28 U.S.C. § 1915(b)(1). Accordingly, the Court denies  
14 Plaintiff's motion to proceed IFP at this time.

## 15 **II. Screening of Complaint Pursuant to § 1915A**

16 Although the Court denies Plaintiff leave to commence this civil action without  
17 prepayment of the \$400 civil filing fee required by 28 U.S.C. § 1914(a), and Plaintiff's  
18 case requires dismissal for that reason alone, the Court also elects to conduct a sua sponte  
19 review of Plaintiff's pleading because he was “incarcerated or detained in any facility [and]  
20 is accused of, sentenced for, or adjudicated delinquent for, violations of criminal law or the  
21 terms or conditions of parole, probation, pretrial release, or diversionary program” at the  
22 time he filed this action. See 28 U.S.C. § 1915A(a), (c).

23 Section 1915A, also enacted as part of the PLRA, requires sua sponte dismissal of  
24 prisoner complaints, or any portions thereof, which are frivolous, malicious, or fail to state  
25 a claim upon which relief may be granted. 28 U.S.C. § 1915A(b); Coleman v. Tollefson,  
26 135 S. Ct. 1759, 1764 (2015); Resnick v. Hayes, 213 F.3d 443, 446-47 (9th Cir. 2000).  
27 “The purpose of § 1915A is to ‘ensure that the targets of frivolous or malicious suits need  
28 not bear the expense of responding.’” Nordstrom v. Ryan, 762 F.3d 903, 920 n.1 (9th Cir.

1 2014) (quoting Wheeler v. Wexford Health Sources, Inc., 689 F.3d 680, 681 (7th Cir.  
2 2012)).

3 **A. Plaintiff’s Factual Allegations**

4 On February 14, 2017, Plaintiff was housed at the Richard J. Donovan Correctional  
5 Facility (“RJD”). (See Doc. No. 1 at ¶ 5.) On July 27, 2017, Plaintiff was issued a “Rule  
6 Violation Report” for “allegedly possessing a weapon.” (Id. ¶ 6.) During his disciplinary  
7 hearing, Plaintiff “requested to call six (6) available witnesses who had personal knowledge  
8 of his innocence.” (Id. ¶ 7.) However, this request was denied by Lieutenant Altschuler.<sup>2</sup>  
9 (Id.) On August 9, 2017, Plaintiff was transferred to Mule Creek State Prison (“MCSP”)  
10 “in preparation for a transfer to a maximum-security prison.” (Id. ¶ 8.) Plaintiff’s  
11 disciplinary hearing was conducted on August 24, 2017, and he was found to have  
12 “violated the RVR and the Institution Classification Committee ordered him to be  
13 transferred” to SVSP. (Id. ¶ 9.) On October 16, 2017, Plaintiff was transferred to SVSP.  
14 (Id. ¶ 10.) Plaintiff also alleges that he has symptoms related to post-traumatic stress  
15 disorder, specifically, nightmares and difficulty sleeping. (See id. ¶¶ 11-15.)

16 **B. 42 U.S.C. § 1983**

17 42 U.S.C. § 1983 provides a cause of action for the “deprivation of any rights,  
18 privileges, or immunities secured by the Constitution and laws” of the United States. Wyatt  
19 v. Cole, 504 U.S. 158, 161 (1992). To state a claim under § 1983, a plaintiff must allege  
20 two essential elements: (1) that a right secured by the Constitution or laws of the United  
21 States was violated, and (2) that the alleged violation was committed by a person acting  
22 under color of state law. West v. Atkins, 487 U.S. 42, 48 (1988); Long v. City of Los  
23 Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006).

24 **C. Plaintiff’s Due Process Claim**

25 The only claim brought in this action is titled “Count1 - Denial of Due Process,” and  
26 alleges that “Plaintiff was denied his due process right to call available witnesses with  
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28 <sup>2</sup> Lt. Altschuler is not a named Defendant.

1 personal knowledge of the alleged incident” underlying his RVR violation. (Doc. No. 1 at  
2 4-5; see id. ¶¶ 6-7.) As an initial matter, this claim must be dismissed because the  
3 complaint identifies no personal causation on the part of Scott Kernan, the only named  
4 defendant. Estate of Brooks v. United States, 197 F.3d 1245, 1248 (9th Cir. 1999)  
5 (“Causation is, of course, a required element of a § 1983 claim.”). “The inquiry into  
6 causation must be individualized and focus on the duties and responsibilities of each  
7 individual defendant whose acts or omissions are alleged to have caused a constitutional  
8 deprivation.” Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988).

9 Without some specific “factual content” that might allow the Court to “draw the  
10 reasonable inference” that Defendant Kernan may be held personally liable for any alleged  
11 unconstitutional conduct directed at Plaintiff, the Court concludes that the complaint, as  
12 currently pleaded, fails to “state a claim to relief that is plausible on its face.” See Ashcroft  
13 v. Iqbal, 556 U.S. 662, 678 (2009) (citation omitted).

#### 14 **D. Lack of Proper Venue**

15 Venue may be raised by a court sua sponte where the defendant has not yet filed a  
16 responsive pleading and the time for doing so has not run. Costlow v. Weeks, 790 F.2d  
17 1486, 1488 (9th Cir. 1986). 28 U.S.C. Section 1391(b) provides, in pertinent part, that a  
18 “civil action may be brought in—(1) a judicial district in which any defendant resides, if all  
19 defendants are residents of the State in which the district is located; [or] (2) a judicial  
20 district in which a substantial part of the events or omissions giving rise to the claim  
21 occurred, or a substantial part of property that is the subject of the action is situated . . . .”  
22 Id. “The district court of a district in which is filed a case laying venue in the wrong division  
23 or district shall dismiss, or if it be in the interests of justice, transfer such case to any district  
24 or division in which it could have been brought.” Id. § 1406(a).

25 While Plaintiff was initially housed at RJD, it is not clear where the disciplinary  
26 hearing, upon which Plaintiff bases this entire action, took place. Moreover, the only  
27 named defendant is alleged to reside in Sacramento, California. (See Doc. No. 1-1.) And  
28 as stated above, Plaintiff is currently housed at SVSP, which is located in Monterey

1 County. The Court does not dismiss this action for lack of proper venue at this time, but if  
2 Plaintiff files an amended pleading, he must be able to clearly show that the “substantial  
3 part of the events or omissions giving rise to the claim occurred” in either San Diego or  
4 Imperial counties. 28 U.S.C. § 1391(b); *id.* § 84(d) (“The Southern District of California  
5 comprises the counties of Imperial and San Diego.”).

### 6 **III. Motion for Temporary Restraining Order and Preliminary Injunction**

7 Procedurally, a federal district court may issue emergency injunctive relief only if it  
8 has personal jurisdiction over the parties and subject matter jurisdiction over the lawsuit.  
9 See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 350 (1999) (noting  
10 that one “becomes a party officially, and is required to take action in that capacity, only  
11 upon service of summons or other authority-asserting measure stating the time within  
12 which the party served must appear to defend.”). The court may not attempt to determine  
13 the rights of persons not before it. See, e.g., Hitchman Coal & Coke Co. v. Mitchell, 245  
14 U.S. 229, 234-35 (1916); Zepeda v. INS, 753 F.2d 719, 727-28 (9th Cir. 1983). Pursuant  
15 to Federal Rule of Civil Procedure 65(d)(2), an injunction binds only “the parties to the  
16 action,” their “officers, agents, servants, employees, and attorneys,” and “other persons  
17 who are in active concert or participation.” Fed. R. Civ. P. 65(d)(2)(A)-(C).

18 Substantively, “[a] plaintiff seeking a preliminary injunction must establish that he  
19 is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence  
20 of preliminary relief, that the balance of equities tips in his favor, and that an injunction is  
21 in the public interest.” Glossip v. Gross, 135 S. Ct. 2726, 2736-37 (2015) (quoting Winter  
22 v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008)). “Under Winter, plaintiffs must  
23 establish that irreparable harm is *likely*, not just possible, in order to obtain a preliminary  
24 injunction.” All. for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131 (9th Cir. 2011).

25 Here, because Plaintiff’s complaint has not survived the initial sua sponte screening  
26 required by 28 U.S.C. § 1915A, the United States Marshal has not yet been directed to  
27 effect service on his behalf, and the named defendant has no actual notice of Plaintiff’s  
28 complaint or motion for injunctive relief. Therefore, the Court cannot grant Plaintiff

1 injunctive relief because it has no personal jurisdiction over any defendant at this time. See  
2 Fed. R. Civ. P. 65(a)(1), (d)(2); Murphy Bros., 526 U.S. at 350; Zepeda, 753 F.2d at 727-  
3 28. A district court has no authority to grant relief in the form of a temporary restraining  
4 order or permanent injunction where it has no jurisdiction over the parties. Ruhrgas AG v.  
5 Marathon Oil Co., 526 U.S. 574, 584 (1999) (“Personal jurisdiction, too, is an essential  
6 element of the jurisdiction of a district . . . court, without which the court is powerless to  
7 proceed to an adjudication.” (citation and internal quotation omitted)).

8         Furthermore, in conducting its initial sua sponte screening of Plaintiff’s complaint,  
9 the Court has determined that the complaint fails to state a claim upon which relief can be  
10 granted and has dismissed it without prejudice pursuant to 28 U.S.C. § 1915A(b).  
11 Therefore, Plaintiff has necessarily failed to show, for purposes of justifying preliminary  
12 injunctive relief, any likelihood of success on the merits of his claims at this time. Id.; see  
13 also Asberry v. Beard, No. 3:13-cv-2573-WQH JLB, 2014 WL 3943459, at \*9 (S.D. Cal.  
14 Aug. 12, 2014) (denying prisoner’s motion for preliminary injunction because his  
15 complaint was subject to dismissal pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A, and  
16 therefore he had not shown he was “likely to succeed on the merits” of any claim, that “the  
17 balance of equities tip[ped] in his favor,” or the issuance of an injunction would serve the  
18 public interest (citing *Winter*, 555 U.S. at 20)).

19         Thus, because Plaintiff has failed to serve the required notice upon the adverse  
20 parties and has not shown a likelihood of success on the merits, the Court concludes he is  
21 not entitled to the extraordinary injunctive relief he seeks and denies his motion for  
22 temporary restraining order and preliminary injunction without prejudice. See Dymo Indus.  
23 v. Tapeprinter, Inc., 326 F.2d 141, 143 (9th Cir. 1964) (“The grant of a preliminary  
24 injunction is the exercise of a very far reaching power never to be indulged in except in a  
25 case clearly warranting it.”). The Court notes that, if Plaintiff is experiencing any ongoing  
26 health problems, he should notify prison medical personnel and enroll in any available  
27 treatment or procedures. The Court expects prison authorities to address prisoners’ health-  
28 related complaints in an appropriate manner.

1 **IV. Conclusion**

2 For the reasons discussed above, **IT IS ORDERED** that:

3 (1) Plaintiff's motion to proceed in forma pauperis, (Doc. No. 2), is **DENIED** and  
4 the action is **DISMISSED WITHOUT PREJUDICE** for failure to prepay the \$400 filing  
5 fee required by 28 U.S.C. § 1914(a).

6 (2) Plaintiff is **GRANTED** thirty (30) days from the date of this Order in which  
7 to re-open his case by either: (1) paying the entire \$400 statutory and administrative filing  
8 fee, **or** (2) filing a new Motion to Proceed IFP, *which includes a certified copy of his trust*  
9 *account statement for the 6-month period preceding the filing of his Complaint* pursuant to  
10 28 U.S.C. § 1915(a)(2) and CivLR 3.2(b).

11 (3) The Clerk of Court is **DIRECTED** to provide Plaintiff with a Court-approved  
12 form "Motion and Declaration in Support of Motion to Proceed IFP" in this matter. If  
13 Plaintiff neither pays the \$400 filing fee in full nor sufficiently completes and files the  
14 attached motion to proceed IFP, *together with a certified copy of his trust account statement*  
15 *within 45 days*, this action will remain dismissed without prejudice pursuant to 28 U.S.C.  
16 § 1914(a), and without further Order of the Court.

17 (4) Plaintiff's complaint is **DISMISSED WITHOUT PREJUDICE** for failure  
18 to state a claim pursuant to 28 U.S.C. § 1915A.

19 (5) Plaintiff is **GRANTED** thirty (30) days leave from the date of this Order in  
20 which to file an amended complaint that cures the deficiencies of pleading described above.  
21 Plaintiff's amended complaint must be complete by itself without reference to his original  
22 complaint. See CivLR 15.1; Hal Roach Studios, Inc. v. Richard Feiner & Co., 896 F.2d  
23 1542, 1546 (9th Cir. 1989) ("[A]n amended pleading supersedes the original.").

24 Should Plaintiff elect not to proceed by filing an amended complaint within 30 days,  
25 the Court will enter a final Order of dismissal of this civil action for failure to state a claim  
26 pursuant to 28 U.S.C. § 1915A(b)(1), and for failure to prosecute in compliance with a  
27 Court Order requiring amendment. See Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th  
28 Cir. 1992) (dismissal for failure to prosecute is permitted if plaintiff fails to respond to a

1 court's order requiring amendment of complaint); Lira v. Herrera, 427 F.3d 1164, 1169  
2 (9th Cir. 2005) ("If a plaintiff does not take advantage of the opportunity to fix his  
3 complaint, a district court may convert the dismissal of the complaint into dismissal of the  
4 entire action.").

5 (6) Plaintiff's motion for a temporary restraining order and preliminary injunction  
6 is **DENIED WITHOUT PREJUDICE**. (Doc. No. 4.)

7 **IT IS SO ORDERED.**

8 DATED: April 17, 2018

9   
10 MARILYN L. HUFF, District Judge  
11 UNITED STATES DISTRICT COURT  
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