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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TOMMIE LEE BAKER,
Inmate #T-30691,

Plaintiff,

v.
ROGER ITO, Judge; S. HARDEN,
Account Officer Specialist; B.
SULLIVAN, Appeal Examiner;
SECRETARY OF CDCR,

Defendants.

Case No.: 19-cv-1156-GPC-RBM

**ORDER: (1) GRANTING MOTION
TO PROCEED IN FORMA
PAUPERIS; AND (2) DISMISSING
COMPLAINT FOR FAILING TO
STATE A CLAIM AND FOR
SEEKING MONETARY RELIEF
AGAINST IMMUNE DEFENDANT**

Tommie Lee Baker III. (“Plaintiff”), a California state prisoner incarcerated at the Richard J. Donovan Correctional Facility (“RJD”), and proceeding pro se, has filed a civil rights complaint (“Compl.”) pursuant to 42 U.S.C. § 1983. (ECF No. 1.) Plaintiff did not prepay the civil filing fee required by 28 U.S.C. § 1914(a), but has filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a). (ECF No. 2.)

1 **I. Plaintiff’s Motion to Proceed IFP**

2 All parties instituting any civil action, suit or proceeding in a district court of the
3 United States must pay a filing fee. *See* 28 U.S.C. § 1914(a).¹ An action may proceed
4 despite a plaintiff’s failure to prepay the entire fee only if he is granted leave to proceed
5 IFP pursuant to 28 U.S.C. § 1915(a). *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir.
6 1999). However, if the plaintiff is a prisoner, even if he is granted leave to proceed IFP,
7 he remains obligated to pay the full entire fee in “increments,” *see Williams v. Paramo*,
8 775 F.3d 1182, 1185 (9th Cir. 2015), regardless of whether his action is ultimately
9 dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2).

10 Under 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act
11 (“PLRA”), prisoners seeking leave to proceed IFP must submit a “certified copy of the
12 trust fund account statement (or institutional equivalent) for the . . . six-month period
13 immediately preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2); *Andrews v.*
14 *King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified trust account statement,
15 the Court assesses an initial payment of 20 percent of (a) the average monthly deposits in
16 the account for the past six months, or (b) the average monthly balance in the account for
17 the past six months, whichever is greater, unless the prisoner has no assets. *See* 28
18 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having custody of the
19 prisoner then collects subsequent payments, assessed at 20 percent of the preceding
20 month’s income, in any month in which the prisoner’s account exceeds \$10, and forwards
21 those payments to the Court until the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2).

22 In support of his IFP Motion, Plaintiff has submitted a prison certificate attesting to
23 his trust account balance and activity for the six-month period prior to the filing of his
24 Complaint as required by 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2. This
25 certificate shows that Plaintiff had only \$0.15 in funds to his credit at the time of filing.

26
27 ¹ In addition to the \$350 statutory fee for this action, civil litigants must pay an additional administrative
28 fee of \$50. *See* 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee
Schedule, § 14 (eff. Dec. 1, 2014)). The additional \$50 administrative fee does not apply to persons
granted leave to proceed IFP. *Id.*

1 [ECF No. 3 at 1.] Therefore, the Court **GRANTS** Plaintiff’s Motion to Proceed IFP and
2 assesses no initial partial filing fee per 28 U.S.C. § 1915(b)(1). *See* 28 U.S.C.
3 § 1915(b)(4) (providing that “[i]n no event shall a prisoner be prohibited from bringing a
4 civil action or appealing a civil action or criminal judgment for the reason that the
5 prisoner has no assets and no means by which to pay the initial partial filing fee.”);
6 *Taylor v. Delatoore*, 281 F.3d 844, 850 (9th Cir. 2002) (finding that 28 U.S.C.
7 § 1915(b)(4) acts as a “safety-valve” preventing dismissal of a prisoner’s IFP case based
8 solely on a “failure to pay . . . due to the lack of funds available to him when payment is
9 ordered.”) However, the entire \$350 balance of the filing fee due for this case must be
10 forwarded to the Clerk of the Court pursuant to the installment payment provisions set
11 forth in 28 U.S.C. § 1915(b)(1).

12 **II. Initial Screening per 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)**

13 **A. Standard of Review**

14 “The Court shall review, before docketing, if feasible or, in any event, as soon as
15 practicable after docketing,” complaints filed by all persons proceeding IFP, and by
16 those, like Plaintiff, who are “incarcerated or detained in any facility [and] accused of,
17 sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or
18 conditions of parole, probation, pretrial release, or diversionary program.” *See* 28 U.S.C.
19 §§ 1915(e)(2) and 1915A(b). The Court must sua sponte dismiss complaints, or any
20 portions thereof, which are frivolous, malicious, fail to state a claim, or which seek
21 damages from defendants who are immune. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A;
22 *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc).

23 All complaints must contain “a short and plain statement of the claim showing that
24 the pleader is entitled to relief.” FED.R.CIV.P. 8(a)(2). Detailed factual allegations are
25 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by
26 mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009),
27 citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “Determining whether
28 a complaint states a plausible claim for relief [is] . . . a context-specific task that requires

1 the reviewing court to draw on its judicial experience and common sense.” *Id.* at 679.
2 The “mere possibility of misconduct” falls short of meeting the *Iqbal* plausibility
3 standard. *Id.*; *see also Moss v. U. S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).

4 “When there are well-pleaded factual allegations, a court should assume their
5 veracity, and then determine whether they plausibly give rise to an entitlement to relief.”
6 *Iqbal*, 556 U.S. at 679; *see also Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000)
7 (“Under § 1983, when determining whether a complaint states a claim, a court must
8 accept as true all allegations of material fact and must construe those facts in the light
9 most favorable to the plaintiff.”); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir.
10 1998) (noting that § 1915(e)(2) “parallels the language of Federal Rule of Civil
11 Procedure 12(b)(6)”). However, while the court has an “obligation . . . where the
12 petitioner is pro se, particularly in civil rights cases, to construe the pleadings liberally
13 and to afford the petitioner the benefit of any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342
14 (9th Cir. 2010), citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985) (en
15 banc), it may not, in so doing, “supply essential elements of the claim that were not
16 initially pled.” *Ivey v. Board of Regents of the University of Alaska*, 673 F.2d 266, 268
17 (9th Cir. 1982).

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

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1 **B. Plaintiff's Allegations**

2 Plaintiff alleges that he is a “hearing impaired inmate that was at the EOP level of
3 care.” (Compl. at 3.) In 2001, Plaintiff claims he was “forced to contract and sign a
4 CDC 345 form.” (*Id.*) However, in June of 2018 he was “going over the 345 form” and
5 “noticed it was [his] choice to withdraw [his] power of attorney” and “close [his] trust
6 account at any time.” (*Id.*) Plaintiff alleges that he filed a grievance to “revoke the
7 Director of Corrections and Rehabilitation as [his] power of attorney and to close [his]
8 trust account.” (*Id.*) However, Plaintiff’s request was denied by B. Sullivan at the “third
9 level appeal decision.” (*Id.*)

10 On January 15, 2019, Plaintiff claims he was “denied an interpreter service during
11 the open/public court proceeding” by “Judge Roger Ito.” (*Id.* at 4.) Plaintiff alleges he
12 “could not hear the court or participate in the program because of [his] hearing
13 disability.” (*Id.*) Plaintiff further claims Defendant Ito was “well aware” of his disability
14 but he “refused to accommodate” his disability during Plaintiff’s “resentence hearing.”
15 (*Id.*) Plaintiff “talked to [his] appeal counsel” who informed him that they would “not
16 file [his] ADA issue on appeal because it would get Ito into trouble.” (*Id.*)

17 On October 16, 2007, Plaintiff was ordered “to pay a direct order of \$29,238.60
18 plus 10 percent interest” in one of his criminal proceedings. (*Id.* at 5.) In July of 2018,
19 Plaintiff “was awarded \$1000.00 for a settlement” in a civil matter. (*Id.*) Plaintiff alleges
20 that the CDCR “took all the settlement money for the direct order and administrative
21 fees.” (*Id.*) Plaintiff spoke with “S. Harden, the account officer specialist” and informed
22 her that he had “appropriate documentation from the court” proving that the “direct order
23 has been voided by the presiding court and she refused to honor it.” (*Id.*)

24 Plaintiff claims he then spoke with “CCI Masterson” who contacted the
25 “Correctional Case Records Analyst (“CCRA”) who confirmed that they (CDCR records)
26 in fact have a certified copy of the minute order” but they would “not honor it.” (*Id.*)
27 Plaintiff claims Harding has “violated the Fifth Amendment ban on taking of property
28 (\$1000.00) for public use without just compensation and due process.” (*Id.*)

1 Plaintiff seeks an injunction preventing Defendant Ito “from committing treason
2 against the United States and its Constitution.” (*Id.* at 7.) Plaintiff also seeks \$401,000 in
3 general damages, \$210,000 in punitive damages, and \$240,000 in compensatory
4 damages.” (*Id.*)

5 C. Analysis

6 1. Due Process claims

7 A state inmate has a property interest protected by federal due process in the funds
8 in his prison trust account. *Quick v. Jones*, 754 F.2d 1521, 1523 (9th Cir. 1985).
9 However, a deduction from an inmate trust account to satisfy a restitution order does not
10 state a substantive or procedural due process claim if the deduction is authorized by state
11 law. *See Turner v. Safley*, 482 U.S. 78, 89 (1987) (“[W]hen a prison regulation impinges
12 on inmates’ constitutional rights, the regulation is valid if it is reasonably related to
13 legitimate penological interests.”) The Ninth Circuit has held that “California Penal
14 Code § 2085.5, requiring the California Director of Corrections to make deductions from
15 the wages and trust account deposits of prisoners for payment of restitution obligations, is
16 rationally related to legitimate state interests in compensating crime victims.” *Craft v.*
17 *Ahuja*, 475 Fed.Appx. 649, 650 (9th Cir. 2012), citing *Turner*, 482 U.S. at 89; *see also*
18 *Abney v. Alameida*, 334 F.Supp.2d 1221, 1231-32 (S.D. Cal. 2004) (allegations of
19 deductions from a prisoner’s trust account to satisfy a restitution order, whether
20 authorized or unauthorized by state law, fail to state a claim for a violation of substantive
21 or procedural due process). Accordingly, to the extent the removal of funds from his
22 prison trust account to satisfy a restitution order was authorized by California law,
23 Plaintiff has not stated a substantive or procedural due process claim upon which relief
24 can be granted.

25 To the extent Plaintiff contends the deductions were not authorized by state law
26 because the restitution order had been voided or the deductions were inaccurate, he has
27 also failed to state a due process claim. He alleges that he informed Defendants that the
28 restitution order to which his settlement funds were being applied was “vacated and

1 nullified.” (Compl. at 5.) Where a prisoner alleges he was deprived of a property interest
2 caused by the unauthorized acts of state officials, either negligent or intentional, he
3 cannot state a constitutional claim where the state provides an adequate post-deprivation
4 remedy. *See Zinermon v. Burch*, 494 U.S. 113, 129-32 (1990); *Hudson v. Palmer*, 468
5 U.S. 517, 533 (1984) (holding that the unauthorized negligent or intentional deprivation
6 of property does not violate due process if a meaningful post-deprivation remedy is
7 available). The California Tort Claims Act (“CTCA”) provides an adequate post-
8 deprivation state remedy for the random and unauthorized taking of property. *Barnett v.*
9 *Centoni*, 31 F.3d 813, 816-17 (9th Cir. 1994) (“California law provides an adequate post-
10 deprivation remedy for any property deprivations.”) Thus, to the extent Plaintiff
11 challenges the unauthorized or negligent taking of his money in contravention of a statute
12 or regulation authorizing it, the CTCA provides him with an adequate state post-
13 deprivation remedy, and his substantive and procedural due process claims challenging
14 the confiscation of and failure to return money taken from his inmate trust account are
15 not cognizable in a § 1983 action.

16 In addition, it appears that Plaintiff is seeking to hold Defendant Sullivan liable for
17 alleged due process violations based on how he responded to Plaintiff’s administrative
18 grievances. (*See* Compl. at 3.) A prison official’s allegedly improper processing of an
19 inmate’s grievances or appeals, without more, cannot serve as a basis for section 1983
20 liability. *See generally Ramirez*, 334 F.3d at 860 (prisoners do not have a “separate
21 constitutional entitlement to a specific prison grievance procedure.”) (citation omitted);
22 *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988) (due process not violated simply
23 because defendant fails properly to process grievances submitted for consideration); *see*
24 *also Todd v. California Department of Corrections and Rehabilitation*, 615 Fed. Appx.
25 415, 415 (9th Cir. 2015) (district court properly dismissed claim based on improper
26 “processing and handling of [...] prison grievances,” since prisoners have no
27 “constitutional entitlement to a specific prison grievance procedure”) (citing *Ramirez*,
28 334 F.3d at 860) (quotation marks omitted); *Shallowhorn v. Molina*, 572 Fed. Appx. 545,

1 547 (9th Cir. 2014) (district court properly dismissed section 1983 claims against
2 defendants who “were only involved in the appeals process”) (citing *Ramirez*, 334 F.3d at
3 860); *Daniels v. Aguilera*, No. 2:16-CV-00996-JAM-CKD P, 2018 WL 558658, at *1
4 (E.D. Cal. Jan. 24, 2018), *report and recommendation adopted sub nom. Daniels v.*
5 *Aguillera*, No. 2:16-CV-00996-JAM-CKD P, 2018 WL 1763311 (E.D. Cal. Apr. 12,
6 2018) (“Because there is no right to any particular grievance process, it is impossible for
7 due process to have been violated by ignoring or failing to properly process prison
8 grievances.”).

9 For these reasons, Plaintiff’s conclusory allegations are simply insufficient to state
10 a plausible due process claim upon which § 1983 relief may be granted. *See Iqbal*, 556
11 U.S. at 680-84 (citations omitted).

12 2. Judicial Immunity

13 Plaintiff also seeks damages against Los Angeles Superior Court Judge Roger Ito
14 for denying him “an interpretive service” during his criminal proceedings. (Compl. at 4.)
15 Regardless of the constitutional or statutory basis upon which Plaintiff may intend to
16 challenge Judge Ito’s rulings, his Complaint must be dismissed insofar as he seeks
17 monetary damages from the Judge, who is absolutely immune. *See* 28 U.S.C.
18 § 1915(e)(2)(B)(iii); *Chavez v. Robinson*, 817 F.3d 1162, 1167-68 (9th Cir. 2016) (noting
19 § 1915(e)(2)(B)(iii) requires the court to dismiss an action “at any time” if it “seeks
20 monetary relief from a defendant who is immune from such relief.”).

21 Judges are absolutely immune from damage liability for acts which are judicial in
22 nature. *Forrester v. White*, 484 U.S. 219, 227-229 (1988); *see also Stump v. Sparkman*,
23 435 U.S. 349, 355-57 (1978); *Pierson v. Ray*, 386 U.S. 547, 553-55 (1967). Judicial
24 immunity applies to actions brought under 42 U.S.C. § 1983 for acts committed within
25 the scope of judicial duties, “even when such acts are in excess of their jurisdiction, and
26 are alleged to have been done maliciously or corruptly.” *Stump*, 435 U.S. at 356. “[A]
27 judge will not be deprived of immunity because the action [s]he took was in error, was
28 done maliciously, or was in excess of his authority; rather, [s]he will be subject to

1 liability only when [s]he has acted in the clear absence of all jurisdiction.” *Id.* at 356-37;
2 *see also Forrester*, 484 U.S. at 227 (a judicial act “does not become less judicial by virtue
3 of an allegation of malice or corruption of motive”); *Mireless v. Waco*, 502 U.S. 9, 12
4 (1991).

5 Here, Plaintiff claims Judge Ito violated his rights during his resentencing hearing
6 by failing to accommodate his hearing disability. (*See* Compl. at 4.) Criminal
7 proceedings are clearly matters over which a trial judge has subject matter jurisdiction.
8 *See Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986) (en banc) (judges are
9 immune from damage actions for judicial acts taken within the jurisdiction of their
10 courts). Therefore, Plaintiff’s claims for money damages against Judge Ito must be
11 dismissed sua sponte pursuant to 28 U.S.C. § 1915(e)(2)(B)(iii) and § 1915A(b)(2) based
12 on his absolute immunity. *See Pattillo v. White*, 890 F.2d 420 at *1 (9th Cir. 1989)
13 (unpub.) (affirming dismissal of § 1983 claims against judge for decisions made during
14 bail proceedings on grounds of absolute judicial immunity); *Chavez*, 817 F.3d at 1167-68
15 (“Once a court has sufficient information to make a determination on immunity,
16 [§ 1915(e)(2)(B)(iii)] mandates dismissal.”).

17 3. Respondeat Superior

18 Plaintiff names the “Secretary of CDCR” as a Defendant. (Compl. at 1, 2.)
19 However, Plaintiff fails to state a plausible claim for relief under § 1983 because he fails
20 to include “further factual enhancement” which describes how or when this Defendant
21 was actually aware of a serious risk of harm to Plaintiff. *Iqbal*, 556 U.S. at 678 (citing
22 *Twombly*, 550 U.S. at 557).

23 There is no respondeat superior liability under 42 U.S.C. § 1983. *Palmer v.*
24 *Sanderson*, 9 F.3d 1433, 1437-38 (9th Cir. 1993). “Because vicarious liability is
25 inapplicable to ... § 1983 suits, [Plaintiff] must plead that each government-official
26 defendant, through the official’s own individual actions, has violated the Constitution.”
27 *Iqbal*, 556 at 676; *see also Jones v. Community Redevelopment Agency of City of Los*
28 *Angeles*, 733 F.2d 646, 649 (9th Cir. 1984) (even pro se plaintiff must “allege with at

1 least me degree of particularity overt acts which defendants engaged in” in order to state
2 a claim).

3 As currently pleaded, Plaintiff’s Complaint offers no factual detail from which the
4 Court might reasonably infer a plausible claim for relief based on a violation of any
5 constitutional right on the part of the Secretary of the CDCR. Fed. R. Civ. P. 8 “demands
6 more than an unadorned, the-defendant-unlawfully-harmed-me accusation,” and in order
7 “[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter,
8 accepted as true, to ‘state a claim for relief that is plausible on its face.’” *Iqbal*, 662 U.S.
9 at 678 (quoting *Twombly*, 550 U.S. at 555, 570). And a supervisory official may only be
10 held liable under § 1983 if Plaintiff alleges his “personal involvement in the
11 constitutional deprivation, or ... a sufficient causal connection between the supervisor’s
12 wrongful conduct and the constitutional violation.” *Keates v. Koile*, 883 F.3d 1228, 1242-
13 43 (9th Cir. 2018); *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011).

14 Plaintiff makes no such allegations in his Complaint. Therefore, the Court sua
15 sponte dismisses Defendant Secretary of the CDCR based on Plaintiff’s failure to state a
16 plausible individual liability claim against him. *See* 28 U.S.C. § 1915(e)(2)(B)(ii) and
17 § 1915A(b)(1); *Lopez*, 203 F.3d at 1126-27; *Rhodes*, 621 F.3d at 1004.

18 **D. Leave to Amend**

19 Because he is proceeding pro se, however, the Court having now provided him
20 with “notice of the deficiencies in his complaint,” will also grant Plaintiff an opportunity
21 to amend. *See Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) (citing *Ferdik v.*
22 *Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992)). However, the claims against Defendant
23 Ito are DISMISSED without leave to amend.

24 **III. Conclusion and Order**

25 Good cause appearing, the Court:

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

1 2. **ORDERS** the Secretary of the CDCR, or his designee, to collect from
2 Plaintiff's prison trust account the \$350 filing fee owed in this case by collecting monthly
3 payments from the account in an amount equal to twenty percent (20%) of the preceding
4 month's income and forwarding them to the Clerk of the Court each time the amount in
5 his account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2). ALL PAYMENTS
6 MUST BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER ASSIGNED TO
7 THIS ACTION.

8 3. **DIRECTS** the Clerk of the Court to serve a copy of this Order on Ralph
9 Diaz, Secretary, California Department of Corrections and Rehabilitation, P.O. Box
10 942883, Sacramento, California, 94283-0001.


11 4. **DISMISSES** Plaintiff's Complaint (ECF No. 1) for failing to state a claim
12 upon which § 1983 relief can be granted and for seeking monetary relief against an
13 immune defendant pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b).

14 5. **GRANTS** Plaintiff thirty (30) days leave from the date of this Order in
15 which to file an Amended Complaint that cures the deficiencies of pleading described
16 above. Plaintiff's Amended Complaint must be complete by itself without reference to
17 his original complaint. *See* S.D. Cal. CivLR 15.1; *Hal Roach Studios, Inc. v. Richard*
18 *Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (“[A]n amended pleading
19 supersedes the original.”); *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012)
20 (noting that claims dismissed with leave to amend which are not re-alleged in an
21 amended pleading may be “considered waived if not repled.”).

22 6. The Clerk of Court is directed to mail Plaintiff a civil rights form complaint
23 for his use in amending.

24 **IT IS SO ORDERED.**

25 Dated: July 15, 2019

26 
27 Hon. Gonzalo P. Curiel
28 United States District Judge