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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

TODD ALAN DUELL,  
Booking #19727431,  
CDCR # BI-8918,

Plaintiff,

vs.

ABRAM GENSER;  
WILLIAM GORE,

Defendants.

Case No.: 3:20-cv-01145-JAH-AGS

**ORDER:**

**(1) GRANTING RENEWED  
MOTION TO PROCEED  
IN FORMA PAUPERIS  
[ECF No. 22]**

**AND**

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

Plaintiff Todd Alan Duell, a California state prisoner currently detained at the San Diego County Jail (“SDCJ”), and either awaiting trial or sentence in San Diego Superior Court Criminal Case No. SCD279745, is proceeding *pro se* in this civil rights action filed pursuant to 42 U.S.C. § 1983.<sup>1</sup> See Compl., ECF No. 1 at 1. While far from clear,

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<sup>1</sup> According to the San Diego County Sheriff’s Department website, Plaintiff is also identified as California Department of Corrections and Rehabilitation (“CDCR”) Inmate No. BI-8918, but is currently

1 Plaintiff's Complaint appears to challenge the effectiveness of his public defender,  
2 Defendant Abram Genser, to assert his right to self-representation in the ongoing state  
3 criminal proceedings, *see* Compl. at 2, 3 & "Attachment 1," ECF No. 1 at 8-16, and to  
4 seek his immediate release based on various conditions of his confinement at the San  
5 Diego County Sheriff Department's George Bailey Detention Facility ("GBDF"). *Id.* at  
6 1-4 & "Attachment 2" at 17-30. Plaintiff seeks both general, punitive and Biblical  
7 damages<sup>2</sup> pursuant to the Book of Revelations and Galatians against Genser and William  
8 Gore, the San Diego County Sheriff, *id.*, "Attachment 4" at 36-37, as well as injunctive  
9 relief requiring the dismissal of San Diego County Superior Court Case No. SCD279745,  
10 and his immediate release "from all facilities." *Id.* at 4, 30.<sup>3</sup>

### 11 **I. Procedural History**

12 On September 11, 2020, the Court denied Plaintiff's initial Motion to Proceed In  
13 Forma Pauperis ("IFP") because he failed to attach a certified copy of his inmate trust  
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16 facing multiple counts of felony forgery in violation of Cal. Penal Code § 115(a) in San Diego Superior  
17 Court Criminal Case No. SCD279745. *See* [https://apps.sdsheriff.net/wij/wijDetail.aspx?Book\\_Num=p16EMZPf7dl9kIqp%2fbibGANOHXSUFOWd%2frgxfoFWBo%3d](https://apps.sdsheriff.net/wij/wijDetail.aspx?Book_Num=p16EMZPf7dl9kIqp%2fbibGANOHXSUFOWd%2frgxfoFWBo%3d) (last accessed March 4, 2021);  
18 *United States v. Basher*, 629 F.3d 1161, 1165 (9th Cir. 2011) (taking judicial notice of Bureau of Prisons'  
19 inmate locator); *Graham v. Los Angeles Cty.*, No. 2:18-CV-01126-PA(GJS), 2018 WL 6137155, at \*2  
20 (C.D. Cal. May 4, 2018) (taking judicial notice pursuant to Fed. R. Civ. P. 201 of County Sheriff  
21 Department's website and its inmate locator function, "which provides some information regarding the  
22 status of inmates housed in ... County jail[]" for purposes of initial screening pursuant to 28 U.S.C.  
23 § 1915A). Plaintiff also filed a habeas corpus petition in this Court pursuant to 28 U.S.C. § 2254 on  
24 September 24, 2020, but it was transferred to the Central District of California to the extent it sought to  
challenge the validity of a February 4, 2019 criminal conviction in Ventura County Superior Court Case  
No. 2016004124. *See Duell v. Gore, et al.*, S.D. Cal. Civil Case No. 3:20-cv-01914-WQH-AGS (ECF No.  
1, "Pet." at 1-2; ECF No. 3-1 "Order of Transfer" at 1-3.); *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th  
Cir. 2007) ("[W]e 'may take notice of proceedings in other courts, both within and without the federal  
judicial system, if those proceedings have a direct relation to matters at issue.'" (citations omitted).

25 <sup>2</sup> "Like modern tort law, the Bible usually deters tortious activity by imposing upon the wrongdoer a cost  
26 that is at least equal to the inflicted harm." Moshe Bar Niv (Burnovski), *Regulating Theft - Lessons from  
Biblical Law*, 16 RUTGERS J. L. & RELIGION 71, 74 (2014).

27 <sup>3</sup> Plaintiff also filed a "Supplemental Complaint" (ECF No. 4), "demand[ing] [a] commercial remedy," to  
28 "force probate" of his "estate legacy account" based on Defendants' "intentional fraud and failure of the  
duty of good faith," and an order setting him "at liberty immediately." *See* Suppl. Compl. at 3-4.

1 account statements as required by 28 U.S.C. § 1915(a)(2), but granted him leave to fix  
2 that deficiency. *See* ECF No. 12. In that same Order, however, the Court cautioned that  
3 should Plaintiff elect to successfully file a renewed IFP Motion, he would remain  
4 obligated to pay the full \$350 civil filing fee in installments, and face potential immediate  
5 sua sponte dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B). *See* ECF No. 12 at 4–5 n.3.

6 Specifically, the Court noted that as pleaded, Plaintiff’s Complaint appeared  
7 subject to dismissal with respect to Defendant Genser because public defenders “[do] not  
8 act under color of state law [under § 1983] when performing a lawyers’ traditional  
9 functions as counsel to a defendant in a criminal proceeding,” *id.* (quoting *Polk County v.*  
10 *Dodson*, 454 U.S. 312, 325 (1981)), and with respect to Defendant Gore because as  
11 Sheriff, he could not be held vicariously liable for the actions of his deputies. *Id.* (citing  
12 *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009)). Finally, the Court advised Plaintiff that to  
13 the extent he sought injunctive relief with respect to still-pending criminal charges in San  
14 Diego Criminal Case No. SCD279745, *Younger v. Harris*, 401 U.S. 37 (1971), abstention  
15 would be required. *Id.*

16 Despite these warnings, Plaintiff filed a renewed IFP, together with the trust  
17 account statements he was previously lacking.<sup>4</sup> *See* ECF No. 22. He has not, however,  
18 filed an Amended Complaint addressing the deficiencies of pleading identified in the  
19 Court’s September 11, 2020 Order. Instead, he has submitted a “Notice to the Court”  
20 seeking leniency in light of his pro se status, together with a proposed summons for  
21 purposes of serving Defendants Genser and Gore. *See* ECF No. 24 at 1, 8–9.

## 22 **II. Renewed Motion to Proceed IFP**

23 As Plaintiff now knows, all parties instituting any civil action, suit or proceeding in  
24 a district court of the United States, except an application for writ of habeas corpus, must  
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27 <sup>4</sup> Plaintiff did so, however, only after filing a premature Notice of Appeal (ECF No. 13), which has since  
28 been dismissed. *See* ECF No. 25. While that appeal was pending, Plaintiff also requested and was granted  
an extension of time in which to submit his renewed IFP Motion. *See* ECF Nos. 20, 21.

1 pay a filing fee of \$400.<sup>5</sup> See 28 U.S.C. § 1914(a). The action may proceed despite failure  
2 to prepay the entire fee only if the plaintiff is granted leave to proceed IFP pursuant to 28  
3 U.S.C. § 1915(a). See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007);  
4 *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). Prisoners granted leave to  
5 proceed IFP remain obligated to pay the entire fee in “increments” or “installments,”  
6 *Bruce v. Samuels*, 577 U.S. 82, 84 (2016); *Williams v. Paramo*, 775 F.3d 1182, 1185 (9th  
7 Cir. 2015), and regardless of outcome. See 28 U.S.C. § 1915(b)(1) & (2); *Taylor v.*  
8 *Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

9 Section 1915(a)(2) requires all persons seeking to proceed without full prepayment  
10 of fees to submit an affidavit that includes a statement of all assets possessed and  
11 demonstrates an inability to pay. See *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th  
12 Cir. 2015). In support of this affidavit, § 1915(a)(2) requires that all prisoners as defined  
13 by 28 U.S.C. § 1915(h) who “seek[] to bring a civil action ... without prepayment of fees  
14 ... shall submit a certified copy of the trust fund account statement (or institutional  
15 equivalent) ... for the 6-month period immediately preceding the filing of the complaint.”  
16 28 U.S.C. § 1915(a)(2) (emphasis added); *Andrews v. King*, 398 F.3d 1113, 1119 (9th  
17 Cir. 2005).

18 From the certified trust account statement, the Court must assess an initial payment  
19 of 20% of (a) the average monthly deposits in the account for the past six months, or (b)  
20 the average monthly balance in the account for the past six months, whichever is greater,  
21 unless the prisoner has no assets. See 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4).  
22 The institution having custody of the prisoner then must collect subsequent payments,  
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25 <sup>5</sup> For civil cases like this one, filed before December 1, 2020, the civil litigant bringing suit must pay the  
26 \$350 statutory fee in addition to a \$50 administrative fee. See 28 U.S.C. § 1914(a) (Judicial Conference  
27 Schedule of Fees, District Court Misc. Fee Schedule, § 14 (eff. June. 1, 2016). The \$50 administrative fee  
28 does not apply to persons granted leave to proceed IFP, however. *Id.* This administrative fee increased to  
\$52 for civil cases filed on or after December 1, 2020, but that portion still does not apply to persons  
granted leave to proceed IFP. See 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District  
Court Misc. Fee Schedule, § 14 (eff. Dec. 1, 2020).

1 assessed at 20% of the preceding month's income, in any month in which his account  
2 exceeds \$10, and forwards those payments to the Court until the entire filing fee is paid.  
3 *See* 28 U.S.C. § 1915(b)(2); *Bruce*, 577 U.S. at 85–86.

4 In support of his renewed IFP Motion, Plaintiff has now submitted a prison  
5 certificate certified by a San Diego County Sheriff's Department Detentions Captain,  
6 together with a copy of his Inmate Trust Account Activity dated January 17, 2020  
7 through September 30, 2020. *See* ECF No. 22 at 4–6; 28 U.S.C. § 1915(a)(2); S.D. Cal.  
8 CivLR 3.2; *Andrews*, 398 F.3d at 1119. These statements show Plaintiff had \$88.22 to his  
9 credit at SDCJ at the time of filing, average monthly deposits of \$191.67, and carried an  
10 average balance of \$14.70 in his account over the preceding six-months. *See* ECF No. 22  
11 at 4.

12 Therefore, the Court GRANTS Plaintiff's Renewed Motion to Proceed IFP (ECF  
13 No. 22) and assesses his initial partial filing fee to be \$38.33 pursuant to 28 U.S.C.  
14 § 1915(b)(1). However, the Court will direct the Watch Commander at SDCJ, or the  
15 Secretary of the California Department of Corrections and Rehabilitation ("CDCR"), or  
16 their designees, to collect this initial filing fee only if sufficient funds are available in  
17 Plaintiff's account at the time this Order is executed. *See* 28 U.S.C. § 1915(b)(4)  
18 (providing that "[i]n no event shall a prisoner be prohibited from bringing a civil action  
19 or appealing a civil action or criminal judgment for the reason that the prisoner has no  
20 assets and no means by which to pay the initial partial filing fee."); *Bruce*, 577 U.S. at 86;  
21 *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4) acts as a "safety-valve"  
22 preventing dismissal of a prisoner's IFP case based solely on a "failure to pay ... due to  
23 the lack of funds available to him when payment is ordered."). The remaining balance of  
24 the \$350 total fee owed in this case must be collected by whichever agency has custody  
25 of the prisoner and forwarded to the Clerk of the Court pursuant to 28 U.S.C.  
26 § 1915(b)(2).

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1 **III. Screening pursuant to 28 U.S.C. § 1915(e)(2) & 1915A**

2 A. Standard of Review

3 As the Court has previously cautioned, because Plaintiff is a prisoner and is  
4 proceeding IFP, his Complaint requires a preliminary review pursuant to 28 U.S.C.  
5 § 1915(e)(2) and § 1915A(b). Under these statutes, the Court must sua sponte dismiss a  
6 prisoner’s IFP complaint, or any portion thereof, if it is frivolous, malicious, fails to state  
7 a claim, or seeks damages from defendants who are immune. *See Lopez v. Smith*, 203  
8 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc) (discussing 28 U.S.C. § 1915(e)(2));  
9 *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing 28 U.S.C.  
10 § 1915A(b)). “The purpose of [screening] is ‘to ensure that the targets of frivolous or  
11 malicious suits need not bear the expense of responding.’” *Nordstrom v. Ryan*, 762 F.3d  
12 903, 920 n.1 (9th Cir. 2014) (citation omitted).

13 “The standard for determining whether a plaintiff has failed to state a claim upon  
14 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of  
15 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668  
16 F.3d 1108, 1112 (9th Cir. 2012); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th  
17 Cir. 2012) (noting that screening pursuant to § 1915A “incorporates the familiar standard  
18 applied in the context of failure to state a claim under Federal Rule of Civil Procedure  
19 12(b)(6)”).

20 Federal Rules of Civil Procedure 8(a) and 12(b)(6) require a complaint to “contain  
21 sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its  
22 face.” *Iqbal*, 556 U.S. at 678 (internal quotation marks omitted); *Wilhelm*, 680 F.3d at  
23 1121. And while the court “ha[s] an obligation where the petitioner is pro se, particularly  
24 in civil rights cases, to construe the pleadings liberally and to afford the petitioner the  
25 benefit of any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (citing  
26 *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)), it may not “supply essential  
27 elements of claims that were not initially pled.” *Ivey v. Bd. of Regents of the Univ. of*  
28 *Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

1           B.     Plaintiff’s Allegations

2           Plaintiff’s Complaint does not include any factual allegations. Instead, when asked  
3 to identify his causes of action, he merely catalogues his rights to “access to the court,  
4 due process, ... to be let alone, self-representation, medical care, private contract, liberty,  
5 [to be free from] cruel and unusual punishment,” and “life.” *See* Compl. at 3, 4. In the  
6 “supporting facts” section, Plaintiff refers globally to the “totality of the conditions” and  
7 the “overall” and “combined affect of multiple violations by multiple state actors.” *Id.* at  
8 3. But he names only his public defender and the San Diego County Sheriff as parties,  
9 and directs the Court to consider more than 50 pages of his “chronological” narrative  
10 enclosed as “Attachments” to his pleading. *Id.* at 4-5, 8–57.<sup>6</sup>

11           In the first of these, which appears to relate only to Defendant Genser, Plaintiff  
12 claims he is both the trustee and beneficiary of a “private, complex, irrevocable trust”  
13 which Genser refused to acknowledge was within in his “jurisdiction” or “scope of  
14 authority” as Plaintiff’s appointed counsel in San Diego Criminal Case No. SCD279745.  
15 *See* Attach. 1, ECF No. 1 at 9. Plaintiff then recounts various ways in which Genser has  
16 failed to adequately defend him, focusing mainly on Genser’s refusals to present financial  
17 documents Plaintiff insists are “certified,” but his counsel contends “are not real.” *Id.* at  
18 9–12, 14. Plaintiff also objects to the Superior Court’s denial of his *Marsden* motion,<sup>7</sup>  
19 and involuntary psychiatric evaluations ordered by the Court at Genser’s behest. *Id.* at  
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22 <sup>6</sup> “The Court will not comb through attached exhibits seeking to determine whether a claim possibly could  
23 have been stated where the pleading itself does not state a claim. In short, [Plaintiff] must state a claim,  
24 not merely attach exhibits.” *Stewart v. Nevada*, No. 2:09-CV-01063, 2011 WL 588485, at \*2 (D. Nev.  
25 Feb. 9, 2011); *accord Jackson v. Covello*, No. 3:19-CV-2444 JAH MDD, 2020 WL 6582659, at \*3 (S.D.  
26 Cal. Nov. 10, 2020).

27 <sup>7</sup> *People v. Marsden*, 2 Cal. 3d 118, 124-25 (1970) provides a criminal defendant in California the  
28 opportunity to explain his reasons for moving to substitute appointed counsel. *Hart v. Broomfield*, 2020  
WL 4505792, at \*55 (C.D. Cal. Aug. 5, 2020). The Sixth and Fourteenth Amendments guarantee a  
criminal defendant’s right to reject court-appointed counsel and to conduct his or her own defense. *Faretta*  
*v. California*, 422 U.S. 806, 834–36 (1975).

1 11–14.<sup>8</sup>

2 Plaintiff’s second attachment comprises a categorical account of the overall  
3 deficient conditions under which he has been detained at GBDF “from January 2019 to  
4 current.” *See* Compl. at 1, 18–25. In it, Plaintiff broadly claims GBDF is “not equipped”  
5 to treat his various medical needs, which include a range of ailments like diabetes,  
6 hypothyroidism, an inflamed liver, swollen ankles, kidney stones, blisters, and heart  
7 palpitations. *Id.* at 18–20. He objects to the lack of homeopathic remedies, vitamins,  
8 testosterone therapy, CBD oil, sterilized drinking water, low-fat dietary options, other  
9 means by which he “could receive immediate care through his insurance company,” and  
10 fears potential exposure to “tuberculosis, hepatitis A/G/C, MERSA, staph, HIV,  
11 pneumonia, cold virus, flu virus, fungus, bacteria, and now the deadly world-wide  
12 pandemic corona virus,” claiming the “systemic breakdown and lack of leadership” in the  
13 County jail system since 2009 “warrant[s] [his] removal” from custody. *Id.* at 20-25.

14 C. 42 U.S.C. § 1983

15 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential  
16 elements: (1) that a right secured by the Constitution or laws of the United States was  
17 violated, and (2) that the alleged violation was committed by a person acting under the  
18 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Naffe v. Frye*, 789 F.3d 1030,  
19 1035-36 (9th Cir. 2015); *see also Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir.  
20 1985) (en banc) (noting the Court reaches the issue of defendants’ § 1983 liability only if  
21 defendants acted under color of state law, and the conduct deprived plaintiff of a  
22 constitutional right).

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26 <sup>8</sup> Plaintiff’s Supplemental Complaint includes many of the same rambling and incoherent allegations  
27 against Genser. For example, Plaintiff claims Genser is “in default” and has committed an “intentional  
28 fraud” by failing to “execute all motions” and perform his duty to “turn over all legacy estate accounting  
records and securities” and to “produce evidence of ‘supersedeas motion’ trust number CD279745 for  
inspection by this court” within 72 hours. *See* Suppl. Compl., ECF No. 4 at 2–5.

1           D.     Defendant Genser

2           As the Court noted in its September 11, 2020 Order, to the extent Plaintiff seeks to  
3 sue Abram Genser, his appointed public defender, for failing to provide him effective  
4 assistance of counsel, by “block[ing] [his] rights,” and by subjecting him to “wanton and  
5 unethical treatment by abuse of [the] legal process” pursuant to 42 U.S.C. § 1983, *see*  
6 Compl., Attach. 1 at 14–15, 12, he fails to state a claim upon which relief can be granted.  
7 *See* 28 U.S.C. § 1915(e)(2)(B)(ii); *Watison*, 668 F.3d at 1112.

8           “[A] public defender does not act under color of state law when performing a  
9 lawyer’s traditional functions as counsel to a defendant in a criminal proceeding.” *Polk*,  
10 454 U.S. at 325; *Garnier v. Clarke*, 332 Fed. App’x 416 (9th Cir. 2009) (affirming  
11 district court’s sua sponte dismissal of prisoner’s section 1983 claims against appointed  
12 counsel); *Schmidt v. Mize*, 2018 WL 2411750, at \*3 (S.D. Cal. May 29, 2018) (sua sponte  
13 dismissing prisoner’s § 1983 claims against public defender pursuant to 28 U.S.C.  
14 § 1915(e)(2)).

15           E.     Sheriff Gore

16           As the Court also previously cautioned, and notwithstanding his various objections  
17 to the general conditions of his confinement at GBDF, Plaintiff’s Complaint fails to state  
18 a claim against Sheriff Gore. *See* ECF No. 12 at 4-5 n.2.

19           “[L]iability under § 1983 must be based on the personal involvement of the  
20 defendant.” *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998). Accordingly,  
21 “[l]iability under section 1983 arises only upon a showing of personal participation by the  
22 defendant” in the deprivation alleged. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989)  
23 (citing *Fayle v. Stapley*, 607 F.2d 858, 862 (9th Cir. 1979)); *see also King v. Atiyeh*, 814  
24 F.2d 565, 568 (9th Cir. 1987) (noting that “state officials are not subject to suit under  
25 § 1983 unless they play an affirmative part in the alleged deprivation of constitutional  
26 rights”). “A plaintiff must allege facts, not simply conclusions, that show an individual  
27 was personally involved in the deprivation of his civil rights.” *Barren*, 152 F.3d at 1194.  
28 A person deprives another “of a constitutional right, within the meaning of section 1983,

1 if he does an affirmative act, participates in another's affirmative acts, or omits to  
2 perform an act which he is legally required to do that causes the deprivation of which [the  
3 plaintiff] complains]." *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

4       Alternatively, liability also may be imposed under section 1983 if the defendant  
5 sets into "motion a series of acts by others which the [defendant] knows or reasonably  
6 should know would cause others to inflict the constitutional injury." *Gini v. Las Vegas*  
7 *Metro. Police Dep't*, 40 F.3d 1041, 1044 (9th Cir. 1994) (quoting *Merritt v. Mackey*, 827  
8 F.2d 1368, 1371 (9th Cir. 1987)). Section 1983, however, does not impose liability upon  
9 supervisory officials for the acts of their subordinates under a respondent superior theory  
10 of liability. *Iqbal*, 556 U.S. at 677 ("Absent vicarious liability, each Government official,  
11 his or her title notwithstanding, is only liable for his or her own misconduct."); *Taylor*,  
12 880 F.2d at 1045. A supervisory official may only be held liable under § 1983 only if  
13 Plaintiff alleges his "personal involvement in the constitutional deprivation, or ... a  
14 sufficient causal connection between the supervisor's wrongful conduct and the  
15 constitutional violation." *Keates v. Koile*, 883 F.3d 1228, 1242-43 (9th Cir. 2018); *Starr*  
16 *v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011); *see also Estate of Brooks ex rel. Brooks v.*  
17 *United States*, 197 F.3d 1245, 1248 (9th Cir. 1999) ("Causation is, of course, a required  
18 element of a § 1983 claim.").

19       With respect to Plaintiff's conditions of confinement claims arising at GBDF from  
20 "January 2019 to current," *see* Compl. at 1, & Attach. 2 at 18-25, he fails to allege any  
21 personal involvement on behalf of the Sheriff himself. *See, e.g., Conley v. Nielsen*, 706  
22 Fed. App'x 890, 892 (9th Cir. 2017)) (affirming sua sponte dismissal of claims raised  
23 against "all medical staff" at the County Jail because the plaintiff failed to identify any of  
24 the individuals involved and describe any "specific conduct attributable to them."); *Iqbal*,  
25 556 U.S. at 678. Instead, Plaintiff's Complaint identifies Defendant Gore by his title as  
26 "Sheriff/Warden," *see* Compl. at 2, and broadly charges him with "a systematic  
27 breakdown and lack of leadership ... since 2009." *See* Compl. at 20. He fails to attribute  
28 any specific act of misconduct on any specific occasion to Gore, however; and does not

1 allege facts sufficient to plausibly show how Gore’s purported “lack of leadership”  
2 caused him any constitutional injury.<sup>9</sup> *See Iqbal*, 556 U.S. at 677; *see also Jones v.*  
3 *Community Redevelopment Agency of City of Los Angeles*, 733 F.2d 646, 649 (9th Cir.  
4 1984) (even pro se plaintiff must “allege with at least some degree of particularity overt  
5 acts which defendants engaged in” in order to state a claim).

6 F. Younger Abstention

7 Finally, Plaintiff may not use the Civil Rights Act, 42 U.S.C. § 1983, as a vehicle  
8 by which to enjoin ongoing state criminal proceedings. Federal courts may not interfere  
9 with ongoing state criminal, quasi-criminal enforcement actions, or in civil “cases  
10 involving a state's interest in enforcing the orders and judgments of its courts,” absent  
11 extraordinary circumstances. *See Younger*, 401 U.S. at 43–54; *Sprint Commc’ns, Inc. v.*  
12 *Jacobs*, 571 U.S. 69, 77 (2013); *Cook v. Harding*, 879 F.3d 1035, 1039 (9th Cir. 2018);  
13 *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 759 (9th Cir. 2014).

14 A court may consider sua sponte whether *Younger* abstention should be invoked at  
15 any point in the litigation. *H.C. ex rel. Gordon v. Koppel*, 203 F.3d 610, 613 (9th Cir.  
16 2000); *Augustin v. Cty. of Alameda*, 234 Fed. Appx. 521 (9th Cir. 2007); *Salmons v.*  
17 *Oregon*, No. 1:17-CV-01104-MC, 2017 WL 3401270, at \*5 (D. Or. Aug. 8, 2017); *see*  
18 *also Washington v. Los Angeles County Sheriff’s Dept.*, 833 F.3d 1048, 1058 (9th Cir.  
19 2016) (holding that “a dismissal due to *Younger* abstention [is] similar to a dismissal  
20 under Rule 12(b)(6) for lack of subject-matter jurisdiction.”).

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24 <sup>9</sup> Plaintiff does not allege to have actually contracted any disease while in custody—only to fear exposure  
25 to them. And while his concerns about contracting COVID-19 in particular are understandable, he fails to  
26 offer any specific facts supporting a viable Eighth or Fourteenth Amendment claim or a causal link  
27 between Sheriff Gore’s acts or omissions and any compensable injury. Alleging “the mere possibility of  
28 misconduct” is not enough. *Iqbal*, 556 U.S. at 679; *Harmon v. City of Twin Falls*, No. 1:20-CV-00525-  
BLW, 2021 WL 51756, at \*4 (D. Idaho Jan. 6, 2021) (finding convicted prisoner’s unsupported claims of  
“increased risk from COVID-19” while in county custody insufficient to state a claim for relief pursuant  
to 28 U.S.C. § 1915(e) and § 1915A).

1 Abstention is proper regardless of whether the applicant seeks declaratory relief,  
2 injunctive relief, or damages. *See Mann v. Jett*, 781 F.2d 1448, 1449 (9th Cir. 1986)  
3 (“When a state criminal prosecution has begun, the *Younger* rule directly bars a  
4 declaratory judgment action” as well as a section 1983 action for declaratory relief and  
5 damages “where such an action would have a substantially disruptive effect upon  
6 ongoing state criminal proceedings.”); *Gilbertson v. Albright*, 381 F.3d 965, 984 (9th Cir.  
7 2004) (en banc) (*Younger* abstention applies to actions for damages as it does to  
8 declaratory and injunctive relief).

9 Here, Plaintiff alleges his San Diego criminal proceedings commenced in January  
10 2019 and were still ongoing at the time he filed his Complaint.<sup>10</sup> *See* Compl. at 1. State  
11 proceedings are deemed ongoing until appellate review is completed. *See Gilbertson*, 381  
12 F.3d at 969 n.4 (citation omitted); *Huffman v. Pursue*, 420 U.S. 592, 608 (1975) (“[A]  
13 necessary concomitant of *Younger* is that a party ... must exhaust his state appellate  
14 remedies before seeking relief in the District Court.”).

15 There is no question that whatever the specific nature of Plaintiff’s current criminal  
16 charges, they implicate important state interests, and “involve [the] state’s interest in  
17 enforcing orders and judgments of its courts.” *Sprint*, 571 U.S. at 73; *ReadyLink*, 754  
18 F.3d at 759. Specifically, Plaintiff claims his public defender has failed to adequately  
19 represent him, has subjected him to psychiatric evaluation without his consent, and  
20 objects because the trial court has refused to “discharge” him. *See* Compl. at 11-16, 27.  
21 These are the type of claims and relief the state courts afford an adequate opportunity to  
22 raise on direct appeal, or via a writ of mandate in the state’s courts. *See San Jose Silicon*  
23 *Valley Chamber of Commerce Political Action Comm. v. City of San Jose*, 546 F.3d  
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26 <sup>10</sup> According to the San Diego County Sheriff’s Department website, Plaintiff was booked into County  
27 custody in San Diego Criminal Case No. SCD279745 on May 2, 2019, but has yet to be tried or sentenced.  
28 *See* [https://apps.sdsheriff.net/wij/wijDetail.aspx?BookNum=LjrB5gNMagoGDldo3hRD0IY\\_60kQorlG%2fdJizJZGT0RQ%3d](https://apps.sdsheriff.net/wij/wijDetail.aspx?BookNum=LjrB5gNMagoGDldo3hRD0IY_60kQorlG%2fdJizJZGT0RQ%3d) (last accessed March 4, 2021).

1 1087, 1095 (9th Cir. 2008); *Clark v. Lassen Cnty Justice Court*, 967 F.2d 585 at \*1 (9th  
2 Cir. 1992) (sua sponte dismissing federal civil action challenging state court’s bail  
3 determinations as frivolous pursuant to 28 U.S.C. § 1915(d) [currently codified at 28  
4 U.S.C. § 1915(e)(2)(B)(i)] as barred by *Younger*). In fact, Plaintiff alleges to have filed  
5 writs of mandamus with the California Court of Appeal arguing he should be permitted to  
6 “represent himself under the 6th and 14th Amendments,” *see* Compl. at 13, and he  
7 explicitly seeks this Court’s intervention by way of a “dismissal of the case (CD279745)  
8 in its entirety and liberty from all facilities.” *Id.* at 30.<sup>11</sup>

9 Because “only in the most unusual circumstances is a defendant entitled to have  
10 federal interposition by way of injunction ... until after the jury comes in, judgment has  
11 been appealed from and the case concluded in the state courts,” *Drury v. Cox*, 457 F.2d  
12 764, 764-65 (9th Cir. 1972), *Younger* abstention is required here. *ReadyLink*, 754 F.3d at  
13 759; *see also Rivera v. Gore*, No. 3:17-CV-02225-WQH-NLS, 2018 WL 1001252, at \*6  
14 (S.D. Cal. Feb. 21, 2018) (sua sponte dismissing pretrial detainee’s § 1983 claims  
15 requesting the “dismissal” of an ongoing criminal proceeding and the “reduction of the  
16 bail” on *Younger* abstention grounds).

17 Thus, for all the foregoing reasons, Plaintiff’s Complaint must be dismissed sua  
18 sponte based on his failure to state a claim upon which § 1983 relief may be granted. *See*  
19 28 U.S.C. § 1915(e)(2)(B)(ii); § 1915A(b)(1); *Lopez*, 203 F.3d at 1126–27; *Wilhelm*, 680  
20 F.3d at 1121.

21 G. Leave to Amend

22 Because Plaintiff has been previously apprised of his pleading’s deficiencies, but  
23 has failed to fix them, the Court finds granting him further leave to amend would prove  
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26 <sup>11</sup> Moreover, “when a state prisoner is challenging the very fact or duration of his physical imprisonment,  
27 and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from  
28 that imprisonment, his sole federal remedy is a writ of habeas corpus.” *Preiser v. Rodriguez*, 411 U.S.  
475, 500 (1973). A prisoner in state custody “cannot use a § 1983 action to challenge ‘the fact or duration  
of his confinement.’” *Wilkinson v. Dotson*, 544 U.S. 74, 78 (2005) (quoting *Preiser*, 411 U.S. at 489).

1 futile. *See Gonzalez v. Planned Parenthood*, 759, F.3d 1112, 1116 (9th Cir. 2014)  
2 (“Futility of amendment can, by itself, justify the denial of ... leave to amend.”)  
3 (quoting *Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995)); *Zucco Partners, LLC v.*  
4 *Digimarc Corp.*, 552 F.3d 981, 1007 (9th Cir. 2009) (“[W]here the plaintiff has  
5 previously been granted leave to amend and has subsequently failed to add the requisite  
6 particularity to its claims, [t]he district court’s discretion to deny leave to amend is  
7 particularly broad.” (internal quotation marks omitted) (second alteration in original)).  
8 Amendment would also be futile because even if Plaintiff could adequately plead a  
9 plausible claim for relief upon which § 1983 relief can be granted, this Court would  
10 nevertheless be required to abstain. *See Clark v. Superior Court of Cal.*, No. 3:19-cv-  
11 00141-LAB-LL, 2019 WL 1114881, at \*5 (S.D. Cal. Mar. 11, 2019) (denying pro se  
12 inmate leave to amend as futile when complaint was barred by *Younger* abstention);  
13 *Davis v. Mendes*, No. 13-CV-1817 BEN RBB, 2014 WL 1744137, at \*3 (S.D. Cal. Apr.  
14 30, 2014) (denying leave to amend as futile when prisoner’s § 1983 claims were subject  
15 to dismissal under § 1915(e)(2) and § 1915A based on absolute immunity and *Younger*  
16 abstention).

#### 17 **IV. Conclusion and Orders**

18 For the reasons explained, the Court:

19 1. **GRANTS** Plaintiff’s Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a)  
20 (ECF No. 22).

21 2. **DIRECTS** the Watch Commander of GBDF, or the Secretary of the CDCR,  
22 or their designees, and any subsequent “agency having custody” of Plaintiff to collect  
23 from his trust account the \$38.33 initial partial filing fee assessed by the Order, and to  
24 garnish the remainder of the \$350 filing fee owed in this case in monthly payments from  
25 his account in an amount equal to twenty percent (20%) of the preceding month’s income  
26 and forwarding those payments to the Clerk of the Court each time the amount in the  
27 account exceeds \$ 10 pursuant to 28 U.S.C. § 1915(b)(2). ALL PAYMENTS MUST BE  
28 CLEARLY IDENTIFIED BY THE NAME AND NUMBER ASSIGNED TO THIS

1 ACTION.

2 3. **DIRECTS** the Clerk of the Court to serve a copy of this Order on Watch  
3 Commander, San Diego County Jail, 1173 Front Street, San Diego, California 92106, *and*  
4 to forward an electronic copy to [trusthelpdesk@cdcr.ca.gov](mailto:trusthelpdesk@cdcr.ca.gov).

5 4. **DISMISSES** this civil action based on Plaintiff's failure to state a claim  
6 upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)  
7 *and* as barred by *Younger*.

8 5. **CERTIFIES** that an IFP appeal would not be taken in good faith pursuant  
9 to 28 U.S.C. § 1915(a)(3), and

10 6. **DIRECTS** the Clerk of the Court to enter judgment and to close the file.

11 **IT IS SO ORDERED.**

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13 Dated: March 30, 2021

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16 Hon. John A. Houston  
17 United States District Judge  
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