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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL RICHARD KEAVNEY,
Booking #17104761,

Plaintiff,

v.

DR. O'BRIEN, et al.,

Defendants.

Case No. 3:20cv1443-MMA-MSB

**ORDER GRANTING MOTION TO
PROCEED IN FORMA PAUPERIS
PURSUANT TO 28 U.S.C. SECTION
1915(a);**

[Doc. No. 2]

**DENYING AS MOOT MOTIONS TO
PROCEED IN FORMA PAUPERIS;**

[Doc. Nos. 5, 7]

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

**DENYING MOTION FOR
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION**

[Doc. No. 3]

Plaintiff Michael Richard Keavney, currently incarcerated at San Diego County Sheriff's Department's Vista Detention Facility, is proceeding pro se in this civil rights

1 action pursuant to 42 U.S.C. Section 1983. *See* Compl., Doc. No. 1.

2 Plaintiff has not prepaid the \$402 civil and administrative filing fee required by 28
3 U.S.C. Section 1914(a), and has instead submitted several motions for leave to proceed in
4 forma pauperis (“IFP”) pursuant to 28 U.S.C. Section 1915(a)(1). *See* Doc. Nos. 2, 5, 7.
5 In addition, Plaintiff has filed a Motion for a Temporary Restraining Order (“TRO”) and
6 a Preliminary Injunction (“PI”). *See* Doc. No. 3.

7 **I. Motion to Proceed In Forma Pauperis**

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

19 Section 1915(a)(2) requires prisoners seeking leave to proceed IFP to submit a
20 “certified copy of the trust fund account statement (or institutional equivalent) for . . . the
21 6-month period immediately preceding the filing of the complaint.” 28 U.S.C.
22 § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified
23 trust account statement, the Court assesses an initial payment of 20% of (a) the average
24 monthly deposits in the account for the past six months, or (b) the average monthly

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27 ¹ In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$52. *See*
28 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14 (eff.
Dec. 1, 2020)). The additional \$52 administrative fee does not apply to persons granted leave to proceed
IFP. *Id.*

1 balance in the account for the past six months, whichever is greater, unless the prisoner
2 has no assets. *See* 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution
3 having custody of the prisoner then collects subsequent payments, assessed at 20% of the
4 preceding month's income, in any month in which his account exceeds \$10, and forwards
5 those payments to the Court until the entire filing fee is paid. *See* 28 U.S.C. §
6 1915(b)(2); *Bruce*, 136 S. Ct. at 629.

7 As mentioned, Plaintiff has submitted several IFP motions. Two such motions
8 contain the prison certificate verifying his available balances for the relevant six-month
9 period preceding the filing of his Complaint. *See* Doc. No. 2 at 4; Doc. No. 5 at 4. Two
10 of Plaintiff's IFP motions attach certified copies of his trust account statements, (*see* ECF
11 No. 5, at 6-10; ECF No. 7, at 5), but only by combining the two statements can the Court
12 determine Plaintiff's balances for the six-month period preceding the filing of his
13 Complaint as required by 28 U.S.C. Section 1915(a)(2) and S.D. Cal. Civ. L.R. 3.2.
14 *Andrews*, 398 F.3d at 1119. Plaintiff's trust account statements show that although he
15 carried an average monthly balance of \$12.99 and had \$49.83 in average monthly
16 deposits to his trust account for the six months preceding the filing of this action, Plaintiff
17 had an available balance of just \$0.03 at the time of filing. *See* Doc. No. 7 at 7.

18 Accordingly, the Court **GRANTS** Plaintiff's Motion to Proceed IFP (Doc. No. 2)
19 and declines to impose the initial partial filing fee pursuant to 28 U.S.C. Section
20 1915(b)(1) because his trust account statements indicate that he may currently have "no
21 means to pay it." *See* 28 U.S.C. § 1915(b)(4) (providing that "[i]n no event shall a
22 prisoner be prohibited from bringing a civil action or appealing a civil action or criminal
23 judgment for the reason that the prisoner has no assets and no means by which to pay the
24 initial partial filing fee."); *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C. Section
25 1915(b)(4) acts as a "safety-valve" preventing dismissal of a prisoner's IFP case based
26 solely on a "failure to pay . . . due to the lack of funds available to him when payment is
27 ordered."). Instead, the Court **DIRECTS** the Watch Commander of Vista Detention
28 Facility, or his designee, to collect the entire \$350 balance of the filing fees required by

1 28 U.S.C. Section 1914 and to forward them to the Clerk of the Court pursuant to the
2 installment payment provisions set forth in 28 U.S.C. Section 1915(b)(1). Because IFP
3 status has been granted, the Court **DENIES** as moot Plaintiff’s two additional Motions to
4 Proceed IFP (Doc. Nos. 5, 7).

5 **II. Sua Sponte Screening pursuant to 28 U.S.C. Section 1915(e)(2) and Section**
6 **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. Section 1915(e)(2) and Section 1915A(b). Under
10 these statutes, the Court must sua sponte dismiss a prisoner’s IFP complaint, or any
11 portion of it, which is frivolous, malicious, fails to state a claim, or seeks damages from
12 defendants who are immune. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000)
13 (en banc) (discussing 28 U.S.C. Section 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002,
14 1004 (9th Cir. 2010) (discussing 28 U.S.C. Section 1915A(b)). “The purpose of
15 [screening] is ‘to ensure that the targets of frivolous or malicious suits need not bear the
16 expense of responding.’” *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir. 2014)
17 (quoting *Wheeler v. Wexford 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 Section 1915(e)(2)(B)(ii) is the same as the Federal
20 Rule of Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*,
21 668 F.3d 1108, 1112 (9th Cir. 2012); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1121
22 (9th Cir. 2012) (noting that screening pursuant to Section 1915A “incorporates the
23 familiar standard applied in the context of failure to state a claim under Federal Rule of
24 Civil Procedure 12(b)(6)”). Rule 12(b)(6) requires a complaint “contain sufficient factual
25 matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v.*
26 *Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted); *Wilhelm*, 680 F.3d at
27 1121.

28 Detailed factual allegations are not required, but “[t]hreadbare recitals of the

1 elements of a cause of action, supported by mere conclusory statements, do not suffice.”
2 *Iqbal*, 556 U.S. at 678. “Determining whether a complaint states a plausible claim for
3 relief [is] . . . a context-specific task that requires the reviewing court to draw on its
4 judicial experience and common sense.” *Id.* The “mere possibility of misconduct” or
5 “unadorned, the defendant-unlawfully-harmed me accusation[s]” fall short of meeting
6 this plausibility standard. *Id.*; *see also Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th
7 Cir. 2009).

8 B. Plaintiff’s Factual Allegations

9 In September 2018, Plaintiff had a telemedicine appointment with a doctor to
10 address pain and limited mobility in his left ankle and left shoulder caused by a fall he
11 had previously suffered. *See Compl.* at 3. The doctor “recommended physical therapy
12 for Plaintiff[’]s left ankle and left shoulder . . .” *Id.* The physical therapy never took
13 place however, and Plaintiff now has “very limited movement in his left ankle and left
14 shoulder and is in constant pain.” *Id.*

15 Plaintiff filed several administrative grievances and a claim with San Diego
16 County based on this failure to provide physical therapy, which was denied as untimely.
17 *See id.*; *see also id.* at 18-39, 41-42. Defendant O’Brien, a medical doctor, was allegedly
18 “the head of medical department when medical care was denied.” *See id.* at 3. Although
19 the timing is unclear, Plaintiff also alleges that he received a physical therapy evaluation,
20 and a physical therapist recommended that he receive physical therapy twice a week. *See*
21 *id.* This treatment also did not take place. *See id.*

22 In addition to Defendant O’Brien, Plaintiff names three other Defendants, Dr.
23 Cynthia Purviance, and two Doe Defendants, one of whom was allegedly “in charge of
24 making medical decisions, and the other who was allegedly “in charge of transportation
25 to and from medical appointments.” *Id.* at 2. Plaintiff alleges that these Defendants
26 violated his rights to medical care and to be free from cruel and unusual punishment. *See*
27 *id.* at 2-3. Plaintiff seeks injunctive relief directing that he receive physical therapy,
28 medical shoes, an additional mat on which to sleep, and pain medication. *See id.* at 7.

1 He also seeks an injunction directing the “records dep[artmen]t to provide” information
2 about the identities of the Doe Defendants. *Id.*; *see also id.* at 3. In addition to injunctive
3 relief, Plaintiff seeks \$1.5 million each in punitive and compensatory damages and
4 additional compensatory relief.

5 C. Analysis

6 To state a claim under 42 U.S.C. Section 1983, a plaintiff must allege two essential
7 elements: (1) that a right secured by the Constitution or laws of the United States was
8 violated, and (2) that the alleged violation was committed by a person acting under the
9 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Naffe v. Frye*, 789 F.3d 1030,
10 1035-36 (9th Cir. 2015).

11 To the extent that Plaintiff challenges the adequacy of his medical care while he
12 was in pretrial custody, his claims are appropriately analyzed under the due process
13 clause of the Fourteenth Amendment.² *See Castro v. Cnty. of Los Angeles*, 833 F.3d
14 1060, 1067-68 (9th Cir. 2016) (“Inmates who sue prison officials for injuries suffered
15 while in custody may do so under the Eighth Amendment’s Cruel and Unusual
16 Punishments Clause, or if not yet convicted, under the Fourteenth Amendment’s Due
17 Process Clause.” (citing *Bell v. Wolfish*, 441 U.S. 520, 535 (1979))). Like claims under
18 the Eighth Amendment, Plaintiff must allege “that the . . . officials acted with ‘deliberate
19 indifference.’” *Id.* at 1068. “[T]he elements of a pretrial detainee’s medical care claim
20 against an individual defendant under the due process clause of the Fourteenth
21 Amendment are: (i) the defendant made an intentional decision with respect to the
22 conditions under which plaintiff was confined; (ii) those conditions put the plaintiff at
23 substantial risk of suffering serious harm; (iii) the defendant did not take reasonable
24 available measures to abate that risk, even though a reasonable official in the
25 circumstances would have appreciated the high degree of risk involved—making the
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28 ² Although Plaintiff does not allege whether he was a pretrial detainee at the time of the incidents in question, the Court presumes that he was for purposes of this Order.

1 consequences of the defendant’s conduct obvious; and (iv) by not taking such measures,
2 the defendant cause the plaintiff’s injuries.” *Gordon v. Cnty. of Orange*, 888 F.3d 1118,
3 1124-25 (9th Cir. 2018). “With respect to the third element, the defendant’s conduct
4 must be objectively unreasonable, a test that will necessarily ‘turn[] on the facts and
5 circumstances of each particular case.’” *Id.* at 1125 (quoting *Kingsley v. Hendrickson*,
6 576 U.S. 389, 397 (2015)).

7 Plaintiff’s claims must be dismissed for a simple reason: Plaintiff has not alleged
8 that any of the Defendants caused his injuries. “Causation is, of course, a required
9 element of a § 1983 claim.” *Estate of Brooks v. United States*, 197 F.3d 1245, 1248 (9th
10 Cir. 1999). Plaintiff has not connected the actions of any Defendant to the delays in his
11 medical treatment. *See Harper v. City of Los Angeles*, 533 F.3d 1010, 1026 (9th Cir.
12 2008) (“In a § 1983 action, the plaintiff must . . . demonstrate that the defendant’s
13 conduct was the actionable cause of the claimed injury. To meet this causation
14 requirement, the plaintiff must establish both causation-in-fact and proximate
15 causation.”). Aside from identifying them as Defendants, Plaintiff makes no factual
16 allegations whatsoever regarding the involvement of either Doe Defendant or Defendant
17 Purviance in the alleged denials of medical treatment. *See Compl.* at 2-3. This is
18 insufficient. *See Iqbal*, 556 U.S. at 678 (noting that although a pleading “does not require
19 ‘detailed factual allegations,’” Rule 8 nevertheless “demands more than an unadorned,
20 the defendant-unlawfully-harmed-me accusation.” (quoting *Twombly*, 550 U.S. at 555)).

21 Similarly, Plaintiff does not describe Defendant O’Brien’s involvement in the
22 alleged constitutional violations aside from the conclusory statement that O’Brien was
23 “the head of medical department [sic] when medical care was denied.” *Id.* at 3. This
24 allegation is also insufficient to state a cognizable claim. In order to hold a supervisor
25 liable under Section 1983, Plaintiff must demonstrate either the supervisor’s personal
26 involvement in the alleged violation of the constitution or a causal connection between
27 the supervisor’s conduct and the violation. *See Starr v. Baca*, 652 F.3d 1202, 1207 (9th
28 Cir. 2011). To the extent Plaintiff seeks to hold Defendant O’Brien liable for denying

1 administrative grievances, prison officials are not generally liable for due process
2 violations simply for denying or failing to process inmate appeals. *See, e.g., Ramirez v.*
3 *Galaza*, 334 F.3d 850, 860 (9th Cir. 2003). Additionally, although intentionally delaying
4 medical treatment may be actionable as deliberate indifference, *see McGuckin v. Smith*,
5 974 F.2d 1050, 1062 (9th Cir. 1992), *overruled on other grounds by WMX Techs., Inc. v.*
6 *Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc), the delay must cause substantial
7 harm in order to state a claim. *See Wood v. Housewright*, 900 F.2d 1332, 1335 (9th Cir.
8 1990); *see also Shipp v. Petras*, No. 2:20-cv-0938-JAM-EFB P, 2020 WL 5797893, at
9 *1-2 (E.D. Cal. Sept. 29, 2020) (dismissing as insufficiently detailed allegations
10 regarding delayed physical therapy resulting in increased pain and other physical harms
11 in the absence of “some indication as to why . . . defendant[s] denied physical therapy . . .
12 .”).

13 To the extent that Plaintiff alleges that Defendants denied him medical care
14 because of a Sheriff’s Department or County policy, he must allege that he was injured
15 pursuant to an official policy or a discriminatory practice “so permanent and well settled
16 as to constitute a ‘custom or usage’ with the force of law.” *Monell v. N.Y. Dep’t of Soc.*
17 *Servs.*, 436 U.S. 658, 691 (1978); *see also Crowley v. Bannister*, 734 F.3d 967, 977 (9th
18 Cir. 2013) (explaining that Defendants may be held liable “even without overt personal
19 participation in the offensive act if [they] implement[ed] a policy so deficient that the
20 policy itself is a repudiation of constitutional rights and is the moving force of a
21 constitutional violation.” (citing *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989)
22 (internal quotation marks omitted))). In the absence of any such allegations, however,
23 Plaintiff’s Complaint must be dismissed sua sponte and in its entirety for failing to state a
24 claim upon which Section 1983 relief can be granted pursuant to 28 U.S.C. Section
25 1915(e)(2)(B)(ii) and Section 1915A(b).

26 D. Leave to Amend

27 In light of Plaintiff’s pro se status, the Court grants him leave to amend his
28 pleading to attempt to sufficiently allege his medical care claims. *See Rosati v. Igbinoso*,

1 791 F.3d 1037, 1039 (9th Cir. 2015) (“A district court should not dismiss a pro se
2 complaint without leave to amend [pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii)] unless ‘it is
3 absolutely clear that the deficiencies in the complaint could not be cured by
4 amendment.’” (quoting *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012))).

5 **III. Motion for Temporary Restraining Order and Preliminary Injunction**

6 As noted above, Plaintiff has also filed a Motion for a TRO and PI. *See* Doc. No.
7 3. Plaintiff seeks a TRO and PI requiring Defendants to arrange “an examination and a
8 plan of treatment . . . even if that treatment requires medication that might be against San
9 Diego County Sheriff[’]s pol[i]cy to provide as long as its prescribed by the [d]octor and
10 or specialist provided . . .” *Id.* at 5.

11 Procedurally, a federal district court may issue emergency injunctive relief only if
12 it has personal jurisdiction over the parties and subject matter jurisdiction over the
13 lawsuit. *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350
14 (1999) (noting that one “becomes a party officially, and is required to take action in that
15 capacity, only upon service of summons or other authority-asserting measure stating the
16 time within which the party served must appear to defend.”). The Court may not attempt
17 to determine the rights of persons not before it. *See, e.g., Zepeda v. INS*, 753 F.2d 719,
18 727-28 (9th Cir. 1983). Under Federal Rule of Civil Procedure 65(d)(2) an injunction
19 binds only “the parties to the action,” their “officers, agents, servants, employees, and
20 attorneys,” and “other persons who are in active concert or participation.” Fed. R. Civ. P.
21 65(d)(2)(A)-(C).

22 Substantively, “[a] plaintiff seeking a preliminary injunction must establish that he
23 is likely to succeed on the merits, that he is likely to suffer irreparable harm in the
24 absence of preliminary relief, that the balance of the equities tips in his favor, and that an
25 injunction is in the public interest.” *Glossip v. Gross*, 576 U.S. 863, 876 (2015) (quoting
26 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). “The first factor under
27 *Winter* is the most important—likely success on the merits.” *Garcia v. Google, Inc.*, 786
28 F.3d 733, 740 (9th Cir. 2015). Additionally, “[u]nder *Winter*, plaintiffs must establish

1 that irreparable harm is likely, not just possible, in order to obtain a preliminary
2 injunction.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir.
3 2011). “A preliminary injunction is an extraordinary remedy never awarded as of right,
4 and the grant of a preliminary injunction is a matter committed to the discretion of the
5 trial judge[.]” *Epona v. Cnty. of Ventura*, 876 F.3d 1214, 1227 (9th Cir. 2017) (internal
6 quotation marks and citations omitted).

7 Because Plaintiff’s Complaint has not survived the initial screening required by 28
8 U.S.C. Section 1915(e)(2) and 28 U.S.C. Section 1915A, the United States Marshal has
9 not been directed to effect service on Plaintiff’s behalf, and the named Defendants have
10 no notice of either Plaintiff’s Complaint or his motion seeking a TRO and PI. As a result,
11 the Court cannot grant Plaintiff injunctive relief because it has no personal jurisdiction
12 over any Defendant at this time. *See* Fed. R. Civ. P. 65(a)(1), (d)(2); *Zepeda*, 753 F.2d at
13 727-28. Additionally, because the Court found that Plaintiff’s Complaint failed to state a
14 claim upon which Section 1983 relief may be granted, he has failed to demonstrate for
15 purposes of preliminary injunctive relief a likelihood of success on the merits. *See*
16 *Thomas v. Chu*, No. 3:20-cv-00245-GPC-BGS, 2020 WL 5408944, at *10 (S.D. Cal.
17 Sept. 9, 2020) (noting that, having dismissed the complaint pursuant to 28 U.S.C. Section
18 1915(e)(2) and Section 1915A(b), the Plaintiff had “necessarily failed to show, for
19 purposes of justifying preliminary injunctive relief, any likelihood of success on the
20 merits of his claims.” (collecting cases)).

21 “Because it is a threshold inquiry, when ‘a plaintiff has failed to show the
22 likelihood of success on the merits, [courts] need not consider the remaining three
23 [Winter elements].” *Garcia*, 786 F.3d at 740 (quoting *Ass’n des Eleveurs de Canards et*
24 *d’Oies du Quebec v. Harris*, 729 F.3d 937, 944 (9th Cir. 2013)) (internal quotation marks
25 omitted). As a result, the Court **DENIES** Plaintiff’s Motion for a TRO and PI (Doc. No.
26 3).

27 //

28 //

1 **IV. Conclusion and Order**

2 For the reasons set forth above, the Court:

3 1. **GRANTS** Plaintiff's Motion to Proceed IFP pursuant to 28 U.S.C. Section
4 1915(a) (Doc. No. 2).

5 2. **DENIES** as moot Plaintiff's additional Motions to Proceed IFP (Doc. Nos.
6 5, 7).

7 3. **ORDERS** the Secretary of the CDCR, or her designee, to collect from
8 Plaintiff's prison trust account the \$350 filing fee owed by collecting monthly payments
9 from Plaintiff's account in an amount equal to twenty percent (20%) of the preceding
10 month's income and forwarding those payments to the Clerk of the Court each time the
11 amount in the account exceeds \$10 pursuant to 28 U.S.C. Section 1915(b)(2). **ALL**
12 **PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER**
13 **ASSIGNED TO THIS ACTION.**

14 4. **DIRECTS** the Clerk of the Court to serve a copy of this Order on Kathleen
15 Allison, Secretary, California Department of Corrections and Rehabilitation, P.O. Box
16 942883, Sacramento, California 94283-0001.

17 5. **DENIES** Plaintiff's Motion for Temporary Restraining Order and
18 Preliminary Injunction (Doc. No. 3).

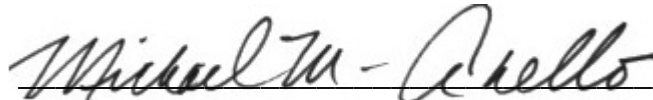
19 6. **DISMISSES** Plaintiff's Complaint for failing to state a claim upon which
20 relief may be granted pursuant to 28 U.S.C. Section 1915(e)(2)(B) and Section 1915A(b),
21 and **GRANTS** him forty-five (45) days leave from the date of this Order in which to file
22 an Amended Complaint which cures all the deficiencies of pleading noted. Plaintiff's
23 Amended Complaint must be complete by itself without reference to his original
24 pleading. Defendants not named and any claim not re-alleged in his Amended Complaint
25 will be considered waived. *See* S.D. Cal. Civ. L.R. 15.1; *Hal Roach Studios, Inc. v.*
26 *Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (“[A]n amended
27 pleading supersedes the original.”); *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir.
28 2012) (noting that claims dismissed with leave to amend which are not re-alleged in an

1 amended pleading may be “considered waived if not replied.”).

2 If Plaintiff fails to file an Amended Complaint within the time provided, the Court
3 will enter a final Order dismissing this civil action based both on Plaintiff’s failure to
4 state a claim upon which relief can be granted pursuant to 28 U.S.C. Section
5 1915(e)(2)(B) and Section 1915A(b), and his failure to prosecute in compliance with a
6 court order requiring amendment. *See Lira v. Herrera*, 427 F.3d 1164, 1169 (9th Cir.
7 2005) (“If a plaintiff does not take advantage of the opportunity to fix his complaint, a
8 district court may convert the dismissal of the complaint into dismissal of the entire
9 action.”).

10 **IT IS SO ORDERED.**

11 DATE: December 11, 2020


HON. MICHAEL M. ANELLO
United States District Judge