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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JUSTIN SALMEN,  
CDCR # BK-5881,

Plaintiff,

v.

CALIFORNIA DEP'T OF  
CORRECTIONS AND  
REHABILITATION; S. ROBERTS;  
M. GLYNN; DR. J. HODGES; A.  
KENDALL; DR. CHAU; H. FRANKLIN;  
S. ANDERSON; A. SHITTU;  
S. GATES,

Defendants.

Case No.: 3:20-cv-2088-GPC-KSC

**ORDER:**

- 1) GRANTING PLAINTIFF’S MOTION TO PROCEED IN FORMA PAUPERIS PURSUANT TO 28 U.S.C. § 1915(a) (ECF No. 2);**
- 2) DENYING MOTION TO APPOINT COUNSEL (ECF No. 3); AND**
- 3) DISMISSING COMPLAINT PURSUANT TO 28 U.S.C. § 1915(e)(2) AND 28 U.S.C. § 1915A(b)**

Justin Salmen (“Plaintiff”), incarcerated at the Richard J. Donovan Correctional Facility (“RJD”) in San Diego, California filed a pro se civil rights Complaint pursuant to 42 U.S.C. Section 1983. (See ECF No. 1, Compl.) Plaintiff claims that Defendants violated his Eighth Amendment rights by failing to provide adequate medical care and

1 denying his grievance and subsequent appeals. (See *id.* at 5-6.)

2 Plaintiff did not pay the fee required by 28 U.S.C. § 1914(a) when he filed his  
3 Complaint, instead filing a Motion to Proceed In Forma Pauperis (“IFP”) pursuant to 28  
4 U.S.C. § 1915(a). (See ECF No. 2.) In addition, Plaintiff has filed a Motion to Appoint  
5 Counsel. (See ECF No. 3.)

#### 6 **I. Plaintiff’s 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.<sup>1</sup> See 28 U.S.C. § 1914(a). The 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 Section 1915(a). See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007);  
12 *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, a prisoner who is  
13 granted leave to proceed IFP remains obligated to pay the entire fee in “increments” or  
14 “installments,” *Bruce v. Samuels*, 136 S. Ct. 627, 629 (2016); *Williams v. Paramo*, 775  
15 F.3d 1182, 1185 (9th Cir. 2015), and regardless of whether his action is ultimately  
16 dismissed. See 28 U.S.C. § 1915(b)(1), (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th  
17 Cir. 2002).

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

25 <sup>1</sup> In addition to the \$350 statutory fee, civil litigants must pay an additional administrative  
26 fee of \$50. See 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court  
27 Misc. Fee Schedule, § 14 (eff. Oct. 1, 2019)). The additional \$50 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 In support of his IFP Motion, Plaintiff has submitted a certified copy of his trust  
8 account statement pursuant to 28 U.S.C. Section 1915(a)(2) and S.D. Cal. Civ. L.R. 3.2.  
9 Andrews, 398 F.3d at 1119. The Court has reviewed Plaintiff's trust account activity, as  
10 well as the attached prison certificate verifying his available balances. (See ECF No. 5, at  
11 1-3.) These documents show that he carried an average monthly balance of \$1.49 and  
12 had \$1.45 in average monthly deposits to his trust account for the six months preceding  
13 the filing of this action, and that Plaintiff had an available balance of just \$0.30 at the  
14 time of filing. (See *id.*)

15 Therefore, the Court **GRANTS** Plaintiff's Motion to Proceed IFP (ECF No. 2), and  
16 declines to impose the initial partial filing fee pursuant to 28 U.S.C. Section 1915(b)(1),  
17 because his prison certificate indicates he may currently have "no means to pay it." See  
18 28 U.S.C. § 1915(b)(4) (providing that "[i]n no event shall a prisoner be prohibited from  
19 bringing a civil action or appealing a civil action or criminal judgment for the reason that  
20 the prisoner has no assets and no means by which to pay the initial partial filing fee.");  
21 Taylor, 281 F.3d at 850 (finding that 28 U.S.C. Section 1915(b)(4) acts as a "safety-  
22 valve" preventing dismissal of a prisoner's IFP case based solely on a "failure to pay . . .  
23 due to the lack of funds available to him when payment is ordered."). Instead, the Court  
24 directs the Secretary of the California Department of Corrections and Rehabilitation  
25 ("CDCR"), or her designee, to collect the entire \$350 balance of the filing fees required  
26 by 28 U.S.C. Section 1914 and to forward them to the Clerk of the Court pursuant to the  
27 installment payment provisions set forth in 28 U.S.C. Section 1915(b)(1).

## 1 **II. Motion to Appoint Counsel**

2 Plaintiff also seeks the appointment of counsel because he is unable to afford a  
3 lawyer and claims his imprisonment will limit his ability to litigate. (See ECF No. 3, Pl.’s  
4 Mot. at 1.)

5 However, there is no constitutional right to counsel in a civil case. *Lassiter v. Dept.*  
6 *of Social Servs.*, 452 U.S. 18, 25 (1981); *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir.  
7 2009). And while 28 U.S.C. § 1915(e)(1) grants the district court limited discretion to  
8 “request” that an attorney represent an indigent civil litigant, *Agyeman v. Corr. Corp. of*  
9 *America*, 390 F.3d 1101, 1103 (9th Cir. 2004), this discretion may be exercised only  
10 under “exceptional circumstances.” *Id.*; see also *Terrell v. Brewer*, 935 F.2d 1015, 1017  
11 (9th Cir. 1991). A finding of exceptional circumstances requires the Court “to consider  
12 whether there is a ‘likelihood of success on the merits’ and whether ‘the prisoner is  
13 unable to articulate his claims in light of the complexity of the legal issues involved.’”  
14 *Harrington v. Scribner*, 785 F.3d 1299, 1309 (9th Cir. 2015) (quoting *Palmer*, 560 F.3d  
15 at 970).

16 As currently pleaded, Plaintiff’s Complaint demonstrates neither the likelihood of  
17 success nor the legal complexity required to support the appointment of pro bono counsel  
18 pursuant to 28 U.S.C. § 1915(e)(1). See *Terrell*, 935 F.3d at 1017; *Palmer*, 560 F.3d at  
19 970. First, while Plaintiff may not be formally trained in law, his allegations, as liberally  
20 construed, see *Erickson v. Pardus*, 551 U.S. 89, 94 (2007), show he nevertheless is fully  
21 capable of legibly articulating the facts and circumstances relevant to his claims which  
22 are not legally “complex.” *Agyeman*, 390 F.3d at 1103. Second, for the reasons discussed  
23 more fully below, Plaintiff’s Complaint requires sua sponte dismissal pursuant to 28  
24 U.S.C. § 1915(e)(2) and § 1915A, and it is simply too soon to tell whether he will be  
25 likely to succeed on the merits of any potential constitutional claim against any of the  
26 named Defendants. *Id.*

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1 Therefore, the Court finds no “exceptional circumstances” currently exist and  
2 DENIES Plaintiff’s Motion to Appoint Counsel (ECF No. 3) without prejudice on that  
3 basis. See, e.g., *Cano v. Taylor*, 739 F.3d 1214, 1218 (9th Cir. 2014) (affirming denial of  
4 counsel where prisoner could articulate his claims in light of the complexity of the issues  
5 involved, and did not show likelihood of succeed on the merits).

## 6 **II. Initial Screening pursuant to 28 U.S.C. Sections 1915(e)(2) and 1915A**

### 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. Sections 1915(e)(2) and 1915A(b). Under these  
10 statutes, the Court must sua sponte dismiss a prisoner’s IFP complaint, or any portion of  
11 it, which is frivolous, malicious, fails to state a claim, or seeks damages from defendants  
12 who are immune. See *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)  
13 (discussing 28 U.S.C. Section 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th  
14 Cir. 2010) (discussing 28 U.S.C. Section 1915A(b)). “The purpose of [screening] is ‘to  
15 ensure that the targets of frivolous or malicious suits need not bear the expense of  
16 responding.’” *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir. 2014) (quoting  
17 *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 to “contain sufficient  
25 factual matter, accepted as true, to state a claim to relief that is plausible on its face.”  
26 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted); *Wilhelm*,  
27 680 F.3d at 1121. While the court “ha[s] an obligation where the petitioner is pro se,

1 particularly in civil rights cases, to construe the pleadings liberally and to afford the  
2 petitioner the benefit of any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir.  
3 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)), it may not  
4 “supply essential elements of claims that were not initially pled.” *Ivey v. Bd. of Regents*  
5 of the Univ. of Alaska, 673 F.2d 266, 268 (9th Cir. 1982).

#### 6 B. Factual Allegations

7 Plaintiff claims he “arrived to the California Department of Corrections and  
8 Rehabilitation with pains in [his] neck, spine, and shoulder” on October 15, 2019.  
9 (Compl. at 5.) Plaintiff alleges that his “injuries were partially addressed to  
10 unsatisfactory levels.” (Id.) Plaintiff “began requesting adequate pain medication,  
11 appropriate housing and treatment by specialists” for his medical conditions. (Id.)  
12 Plaintiff claims he submitted “numerous medical requests and health care grievances,  
13 accommodation requests and verbal requests to get [his] basic necessities and medical  
14 care.” (Id.)

15 Plaintiff fell down stairs “crushing [his] injured shoulder and smacking [his] face  
16 against the metal steps.” (Id.) Plaintiff claims he sustained cuts on his face and was  
17 knocked unconscious. (See id.) Plaintiff was “admitted as a trauma patient” to the  
18 UCSD emergency medical services on October 17, 2020 and “luckily suffered no broken  
19 bones or severe life-threatening injuries.” (Id.)

20 Plaintiff alleges that prison officials “blame delays” in obtaining medical treatment  
21 on the coronavirus. (Id. at 5-6.) While at UCSD, Plaintiff was “provided appropriate  
22 pain medication.” (Id. at 6.) However, since his return to RJD he has been forced to  
23 climb stairs, denied adequate pain medication, and claims staff does not bring him his  
24 HIV medication. (Id.)

25 Plaintiff seeks injunctive relief in the form of “appropriate pain medication” and  
26 assignment to “lower tier housing.” (Id. at 9.) Plaintiff also seeks compensatory and  
27 punitive damages against all named Defendants. (See id.)

1 C. Individual Causation

2 As an initial matter, the Court finds that Plaintiff has failed to state a claim against  
3 any of the named Defendants as to his Eighth Amendment inadequate medical care  
4 claims. Specifically, Plaintiff's Complaint fails to contain any factual allegations against  
5 Defendants whom he claims violated his constitutional rights and contains no "further  
6 factual enhancement" which describes how, or to what extent, these individuals became  
7 aware of, or were actually aware of, any alleged constitutional violation. "Because  
8 vicarious liability is inapplicable to . . . §1983 suits, a plaintiff must plead that each  
9 Government-official defendant, through the official's own individual actions, has  
10 violated the Constitution." *Iqbal*, 556 U.S. at 676; see also *Jones v. Community*  
11 *Redevelopment Agency of City of Los Angeles*, 733 F.2d 646, 649 (9th Cir. 1984) (even  
12 pro se plaintiff must "allege with at least some degree of particularity overt acts which  
13 defendants engaged in" in order to state a claim).

14 "Causation is, of course, a required element of a § 1983 claim." *Estate of Brooks*  
15 *v. United States*, 197 F.3d 1245, 1248 (9th Cir. 1999). "The inquiry into causation must  
16 be individualized and focus on the duties and responsibilities of each individual  
17 defendant whose acts or omissions are alleged to have caused a constitutional  
18 deprivation." *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988) (citing *Rizzo v. Goode*,  
19 423 U.S. 362, 370-71 (1976)). There are no factual allegations directly linking  
20 Defendants to any of his claims regarding alleged constitutional violations.<sup>2</sup>

21 Plaintiff's Complaint sets forth no facts which might be liberally construed to  
22 support any individualized constitutional claim against Defendants. Therefore, the Court  
23 finds sua sponte dismissal of his Complaint is required pursuant to 28 U.S.C.

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26 <sup>2</sup> The only allegation attributed to a specific Defendant is Plaintiff's claim that Hodges intercepted his  
27 request for interview to speak with the Health Care Captain Supervisor. (Compl. at 8). However, even if  
this were considered a sufficiently detailed factual allegation linking Hodges to Plaintiff's due process  
claim, as explained below, this allegation fails to state a claim against Hodges.

1 § 1915(e)(2) and § 1915A(b). See Lopez, 203 F.3d at 1126–27; Wilhelm, 680 F.3d at  
2 1121.

3 D. California Department of Corrections and Rehabilitation

4 Second, to the extent Plaintiff wishes to impose liability on state departments or  
5 agencies like the CDCR, it is immune from suit under the Eleventh Amendment. See 28  
6 U.S.C. § 1915(e)(2)(B)(iii); § 1915A(b)(2); *Will v. Michigan Dep’t of State Police*, 491  
7 U.S. 58, 66 (1989); *Lucas v. Dep’t of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995) (per  
8 curiam) (holding that prisoner’s Eighth Amendment claims against CDCR for damages  
9 and injunctive relief were barred by Eleventh Amendment immunity); *Pennhurst State*  
10 *Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984) (Eleventh Amendment immunity  
11 extends to state agencies); see also *Cooksey v. California Corr. Health Care Servs.*, No.  
12 2:16-CV-1282-JAM-EFB P, 2017 WL 1495164, at \*3 (E.D. Cal. Apr. 26, 2017)  
13 (dismissing claims alleged against Defendant CDCR sua sponte pursuant to 28 U.S.C.  
14 § 1915A as barred by the Eleventh Amendment).

15 For these reasons, the Court dismisses Defendant CDCR as a party to this action  
16 sua sponte pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b); Lopez, 203  
17 F.3d at 1126-27; Wilhelm, 680 F.3d at 1121.

18 E. Eighth Amendment inadequate health care claims

19 In addition, Plaintiff has also failed to state a claim based on a denial of medical  
20 care. In order to allege a violation of the Eighth Amendment for inadequate medical  
21 care, Plaintiff must satisfy both an objective and a subjective standard. *Colwell v.*  
22 *Bannister*, 763 F.3d 1060, 1066 (9th Cir. 2014). Only “deliberate indifference to serious  
23 medical needs of prisoners constitutes the unnecessary and wanton infliction of pain  
24 proscribed by the Eighth Amendment.” *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)  
25 (citation and internal quotation marks omitted). “A determination of ‘deliberate  
26 indifference’ involves an examination of two elements: the seriousness of the prisoner’s  
27 medical need and the nature of the defendant’s response to that need.” *McGuckin v.*



1 Smith, 974 F.2d 1050, 1059 (9th Cir. 1991), overruled on other grounds by WMX Techs.,  
2 Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc).

3 Plaintiff must plead the existence of an objectively serious medical need.  
4 McGuckin, 974 F.2d at 1059-60 (“The existence of an injury that a reasonable doctor or  
5 patient would find important and worthy of comment or treatment; the presence of a  
6 medical condition that significantly affects an individual’s daily activities; or the  
7 existence of chronic and substantial pain are examples of indications that a prisoner has a  
8 ‘serious’ need for medical treatment.”) Here, Plaintiff refers to unspecified medical  
9 needs and makes general allegations regarding the lack of adequate medication or  
10 appropriate treatment for existing injuries, and fails to offer any specific allegations that  
11 identify a serious medical need.<sup>3</sup> It is clear, for the following reasons, the Complaint fails  
12 to include any further “factual content” to show that any Defendant acted with “deliberate  
13 indifference to [his] serious medical needs.” Jett v. Penner, 439 F.3d 1091, 1096 (9th  
14 Cir. 2006), quoting Gamble, 429 U.S. at 104. Plaintiff must provide more specific factual  
15 allegations regarding the nature of his medical needs.

16 The Complaint lacks any specific allegations that the Defendants acted with  
17 deliberate indifference to his plight by “knowing of and disregarding an excessive risk to  
18 his health and safety.” Farmer v. Brennan, 511 U.S. 825, 837 (1994); Iqbal, 556 U.S. at  
19 678; Twombly, 550 U.S. at 557.

20 For these reasons, the Court dismisses Plaintiff’s Eighth Amendment claims sua  
21 sponte pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b); Lopez, 203 F.3d  
22 at 1126-27; Wilhelm, 680 F.3d at 1121.

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26 <sup>3</sup> Plaintiff does claim that he has been denied HIV medication, see Compl. at 6, but it is not clear if HIV  
27 is the serious medical need that forms the basis of his Eighth Amendment inadequate medical care  
claims.

1 F. Grievance claims

2 Plaintiff seeks to hold Defendants Roberts, Glynn, Hodges, Kendall, Franklin,  
3 Anderson, Shittu, and Gates liable for reviewing, processing, and denying his grievance  
4 and appeals. (See Compl. at 6-7.) However, a prison official's allegedly improper  
5 processing of an inmate's grievances or appeals, without more, cannot serve as a basis for  
6 Section 1983 liability. See generally *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir.  
7 2003) (prisoners do not have a "separate constitutional entitlement to a specific prison  
8 grievance procedure." (citation omitted)); *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir.  
9 1988) (due process not violated simply because defendant fails properly to process  
10 grievances submitted for consideration); *see also Todd v. Cal. Dep't of Corrs. & Rehab.*,  
11 615 F. App'x 415, 415 (9th Cir. 2015) (district court properly dismissed claim based on  
12 improper "processing and handling of [. . .] prison grievances," since prisoners have no  
13 "constitutional entitlement to a specific prison grievance procedure." (citing *Ramirez*, 334  
14 F.3d at 860) (quotation marks omitted)); *Shallowhorn v. Molina*, 572 F. App'x 545, 547  
15 (9th Cir. 2014) (district court properly dismissed section 1983 claims against defendants  
16 who "were only involved in the appeals process" (citing *Ramirez*, 334 F.3d at 860));  
17 *Wright v. Shapirshteyn*, No. CV 1-06-0927-MHM, 2009 WL 361951, at \*3 (E.D. Cal.  
18 Feb. 12, 2009) ("[W]here a defendant's only involvement in the allegedly  
19 unconstitutional conduct is the denial of administrative grievances, the failure to  
20 intervene on a prisoner's behalf to remedy alleged unconstitutional behavior does not  
21 amount to active unconstitutional behavior for the purposes of [Section] 1983." (citing  
22 *Shehee v. Luttrell*, 199 F.3d 295, 300 (6th Cir. 1999))).

23 For these reasons, Plaintiff's claims against Defendants Roberts, Glynn, Hodges,  
24 Kendall, Franklin, Anderson, Shittu, and Gates are dismissed sua sponte for failure to  
25 state a plausible claim upon which Section 1983 relief may be granted. See *Iqbal*, 556  
26 U.S. at 680-84; *Valdivia v. Tampkins*, No. EDCV 16-1975 JFW (JC), 2016 WL 7378887,  
27 at \*6 (C.D. Cal. Dec. 19, 2016) (dismissing sua sponte claims predicated upon the

1 allegedly improper processing of inmate grievances); see also 28 U.S.C.  
2 §§ 1915(e)(2)(b)(ii), 1915A(b)(1); Lopez, 203 F.3d at 1126-27; Rhodes, 621 F.3d at 1004.

3 G. Leave to Amend

4 Because Plaintiff is proceeding pro se, however, the Court having now provided  
5 him with “notice of the deficiencies in his complaint,” will also grant him an opportunity  
6 to fix them. See Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th Cir. 2012) (citing Ferdik v.  
7 Bonzelet, 963 F.2d 1258, 1261 (9th Cir. 1992)). However, the Court cautions Plaintiff  
8 that if he chooses to file an Amended Complaint, he must clearly identify, by name, each  
9 individual person he seeks to hold liable for violating his Eighth Amendment rights. He  
10 must also be careful to allege facts showing the basis for liability for each individual  
11 Defendant. He must also name each Defendant and link them to his claims by explaining  
12 what each person did or failed to do that caused him constitutional injury. See Barren v.  
13 Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998) (“A plaintiff must allege facts, not  
14 simply conclusions, t[o] show that [the Defendant] was personally involved in the  
15 deprivation of his civil rights.”).

16 **III. Conclusion and Order**

17 For the reasons discussed, the Court:

- 18 1) **GRANTS** Plaintiff’s Motion to Proceed IFP (ECF No. 2);
- 19 2) **DIRECTS** the Secretary of the CDCR, or her designee, to collect from  
20 Plaintiff’s prison trust account the \$350 filing fee owed in this case by garnishing  
21 monthly payments from his account in an amount equal to twenty percent (20%) of the  
22 preceding month’s income and forwarding those payments to the Clerk of the Court each  
23 time the amount in the account exceeds \$10 pursuant to 28 U.S.C. Section 1915(b)(2).  
24 **ALL PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME AND**  
25 **NUMBER ASSIGNED TO THIS ACTION;**

1           3)     **DIRECTS** the Clerk of the Court to serve a copy of this Order on Kathleen  
2 Allison, Secretary, California Department of Corrections and Rehabilitation, P.O. Box  
3 942883, Sacramento, California, 94283-0001;

4           4)     **DENIES** Plaintiff’s Motion to Appoint Counsel (ECF No. 3);

5           5)     **DISMISSES** Plaintiff’s Complaint in its entirety for failing to state a claim  
6 upon which relief may be granted and for seeking monetary damages against immune  
7 defendants pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and § 1915A(b)(1);

8           6)     **GRANTS** Plaintiff forty-five (45) days leave from the date of this Order in  
9 which to file an Amended Complaint which cures the deficiencies of pleading noted.  
10 Plaintiff’s Amended Complaint must be complete by itself without reference to his  
11 original pleading. Defendants not named and any claim not re-alleged in his Amended  
12 Complaint will be considered waived. See S.D. Cal. CivLR 15.1; Hal Roach Studios, Inc.  
13 v. Richard Feiner & Co., Inc., 896 F.2d 1542, 1546 (9th Cir. 1989) (“[A]n amended  
14 pleading supersedes the original.”); Lacey v. Maricopa Cnty., 693 F.3d 896, 928 (9th Cir.  
15 2012) (noting that claims dismissed with leave to amend which are not re-alleged in an  
16 amended pleading may be “considered waived if not repled.”).

17           If Plaintiff fails to file an Amended Complaint within 45 days, the Court will enter  
18 a final Order dismissing this civil action based both on his failure to state a claim upon  
19 which relief can be granted pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b), and  
20 his failure to prosecute in compliance with a court order requiring amendment. See Lira  
21 v. Herrera, 427 F.3d 1164, 1169 (9th Cir. 2005) (“If a plaintiff does not take advantage  
22 of the opportunity to fix his complaint, a district court may convert the dismissal of the  
23 complaint into dismissal of the entire action.”).

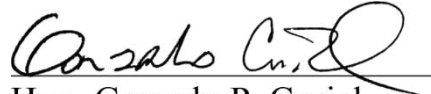
24           7)     The Clerk of Court is directed to mail Plaintiff a court approved civil rights  
25 form complaint for his use in amending.

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**IT IS SO ORDERED.**

Dated: November 2, 2020

  
Hon. Gonzalo P. Curiel  
United States District Judge

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