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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

CHRISTOPHER HAWKINS and  
DARYL DUNSMORE,  
  
Plaintiffs,

vs.

SAN DIEGO COUNTY, SAN DIEGO  
COUNTY JAIL, OFFICE OF ASSIGNED  
COUNSEL, MICHAEL GARCIA,  
WILLIAM TRAINOR, JACKIE  
BRADEN, and DOES 1-10,  
  
Defendants.

Case No.: 3:20-cv-2200-WQH-KSC

**ORDER**

**1) DENYING IN PART MOTION TO  
PROCEED IN FORMA PAUPERIS  
[ECF No. 2] AND DISMISSING  
COMPLAINT AS TO PLAINTIFF  
DUNSMORE PURSUANT TO 28  
U.S.C. § 1915(g)**

**2) GRANTING IN PART MOTION  
TO PROCEED IN FORMA  
PAUPERIS [ECF No. 2] AND  
DISMISSING COMPLAINT AS TO  
PLAINTIFF HAWKINS FOR  
FAILURE TO STATE A CLAIM  
PURSUANT TO 28 U.S.C.  
§ 1915(e)(2)(B) AND 28 U.S.C.  
§ 1915A(b)**

**3) DENYING MOTION FOR ADA  
ACCESS [ECF No. 3]**

**4) DENYING MOTION FOR CLASS  
CERTIFICATION [ECF No. 4]**

**5) DENYING MOTION  
APPOINTMENT OF COUNSEL  
[ECF No. 5]**

**6) DENYING MOTION FOR A  
TEMPORARY RESTRAINING  
ORDER [ECF No. 6]**

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7 Plaintiffs Christopher Hawkins and Daryl Dunsmore, currently incarcerated at the  
8 San Diego County Jail (“SDCJ”), have filed a pro se civil rights action pursuant 42 U.S.C.  
9 Section 1983. (See ECF No. 1.) Plaintiffs did not prepay the \$400 civil filing fee required  
10 by 28 U.S.C. Section 1914(a) at the time of filing. They have instead filed a Motion to  
11 Proceed In Forma Pauperis (“IFP”) pursuant to 28 U.S.C. Section 1915(a). (See ECF No.  
12 2.) Plaintiffs have also filed a Motion for ADA Access (ECF No. 3), a Motion for Class  
13 Certification (ECF No. 4), a Motion for Appointment of Counsel (ECF No. 5), and a  
14 Motion for a Temporary Restraining Order (ECF No. 6).

15 **I. Motion to Proceed In Forma Pauperis – Plaintiff Daryl Dunsmore**

16 A. Standard of Review

17 “All persons, not just prisoners, may seek IFP status.” *Moore v. Maricopa County*  
18 *Sheriff’s Office*, 657 F.3d 890, 892 (9th Cir. 2011). Prisoners like Dunsmore, however,  
19 “face an additional hurdle.” *Id.*

20 In addition to requiring prisoners to “pay the full amount of a filing fee,” in “monthly  
21 installments” or “increments” as provided by 28 U.S.C. § 1915(a)(3)(b), the Prison  
22 Litigation Reform Act (“PLRA”) amended section 1915 to preclude the privilege to  
23 proceed IFP in cases where the prisoner:

24 . . . has, on 3 or more prior occasions, while incarcerated or detained in  
25 any facility, brought an action or appeal in a court of the United States that  
26 was dismissed on the grounds that it is frivolous, malicious, or fails to state a  
27 claim upon which relief can be granted, unless the prisoner is under imminent  
danger of serious physical injury.

28 28 U.S.C. § 1915(g).

1            “This subdivision is commonly known as the ‘three strikes’ provision.” *Andrews v.*  
2 *King*, 398 F.3d 1113, 1116 n.1 (9th Cir. 2005). “Pursuant to § 1915(g), a prisoner with  
3 three strikes or more cannot proceed IFP.” *Id.*; *see also Andrews v. Cervantes*, 493 F.3d  
4 1047, 1052 (9th Cir. 2007) (hereafter “*Cervantes*”) (stating that under the PLRA,  
5 “[p]risoners who have repeatedly brought unsuccessful suits may entirely be barred from  
6 IFP status under the three strikes rule[.]”). The objective of the PLRA is to further “the  
7 congressional goal of reducing frivolous prisoner litigation in federal court.” *Tierney v.*  
8 *Kupers*, 128 F.3d 1310, 1312 (9th Cir. 1997).

9            “Strikes are prior cases or appeals, brought while the plaintiff was a prisoner, which  
10 were dismissed on the ground that they were frivolous, malicious, or failed to state a claim,”  
11 *Andrews*, 398 F.3d at 1116 n.1 (internal quotations omitted), “even if the district court  
12 styles such dismissal as a denial of the prisoner’s application to file the action without  
13 prepayment of the full filing fee.” *O’Neal v. Price*, 531 F.3d 1146, 1153 (9th Cir. 2008).  
14 When courts “review a dismissal to determine whether it counts as a strike, the style of the  
15 dismissal or the procedural posture is immaterial. Instead, the central question is whether  
16 the dismissal ‘rang the PLRA bells of frivolous, malicious, or failure to state a claim.’” *El-*  
17 *Shaddai v. Zamora*, 833 F.3d 1036, 1042 (9th Cir. 2016) (quoting *Blakely v. Wards*, 738  
18 F.3d 607, 615 (4th Cir. 2013)). “When . . . presented with multiple claims within a single  
19 action,” however, courts may “assess a PLRA strike only when the case as a whole is  
20 dismissed for a qualifying reason under the Act.” *Hoffman v. Pulido*, 928 F.3d 1147, 1152  
21 (9th Cir. 2019) (citing *Washington v. L.A. Cty. Sheriff’s Dep’t*, 833 F.3d 1048, 1057 (9th  
22 Cir. 2016)).

23            Once a prisoner has accumulated three strikes, section 1915(g) prohibits his pursuit  
24 of any subsequent IFP civil action or appeal in federal court unless he faces “imminent  
25 danger of serious physical injury.” *See* 28 U.S.C. § 1915(g); *Cervantes*, 493 F.3d at 1051-  
26 52 (noting § 1915(g)’s exception for IFP complaints which “make[] a plausible allegation  
27 that the prisoner faced ‘imminent danger of serious physical injury’ at the time of filing.”).

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1           B.    Discussion

2           The Court has reviewed the Complaint and finds it contains no “plausible  
3 allegations” to suggest Dunsmore “faced ‘imminent danger of serious physical injury’ at  
4 the time of filing.” *Cervantes*, 493 F.3d at 1055 (quoting 28 U.S.C. § 1915(g)). In count  
5 one, Dunsmore alleges “[t]he Defendants have established law policy and procedures . . .  
6 [which] obstruct[] Plaintiff’s access to the courts . . . [by allowing] them to make judicial  
7 decisions although not judicial officers . . . to refuse to file legal documents, block writs,  
8 legal mail, legal tools, [etc.]” Compl. at 4. In counts two and three, Dunsmore also alleges  
9 that Defendants have “refused to establish and maintain access to services for individuals  
10 with disabilities both physical and mental as qualified under the ADA . . . ,” and that  
11 “Defendants are depriving Plaintiffs of the right to practice their religion. . . .” *Id.* at 5-6.  
12 These allegations do not rise to the level of “imminent danger of serious physical injury.”  
13 *See Cervantes*, 493 F.3d at 1055.

14           While Defendants typically carry the initial burden to produce evidence  
15 demonstrating a prisoner is not entitled to proceed IFP, *Andrews*, 398 F.3d at 1119, “in  
16 some instances, the district court docket may be sufficient to show that a prior dismissal  
17 satisfies at least one on the criteria under § 1915(g) and therefore counts as a strike.” *Id.* at  
18 1120. That is the case here.

19           Based on a review of its own docket and other court proceedings available on  
20 PACER, the Court finds that Daryl Lee Dunsmore, identified as CDCR Inmate #AD-6237,  
21 while incarcerated, has had three prior civil actions dismissed on the grounds that they were  
22 frivolous, malicious, or failed to state a claim upon which relief may be granted.

23           They are:

24                 (1) *Dunsmore v. San Diego County Sheriff’s Dep’t, et al.*, Civil Case  
25 No. 3:11-cv-00083-IEG-WVG (S.D. Cal. Nov. 8, 2011) (Order Dismissing  
26 Second Amended Complaint for failing to state a claim) (strike one);

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1 (2) *Dunsmore v. State of California, et al.*, Civil Case No. 2:11-cv-  
 2 07141-DOC-JCG (C.D. Cal. Sept. 4, 2012) (Order Dismissing Second  
 3 Amended Complaint for failing to state a claim) (strike two);

4 (3) *Dunsmore v. State of California, et al.*, Civil Case No. 3:12-cv-  
 5 01936-JAH-DHB (S.D. Cal. March 20, 2013) (Order granting IFP and  
 6 Dismissing First Amended Complaint for failing to state a claim and as  
 7 frivolous) (strike three); and

8 (4) *Dunsmore v. State of California, et al.*, Civil Case No. 3:20-cv-  
 9 00406-AJB-WVG (S.D. Cal. Aug. 4, 2020) (Order Dismissing First Amended  
 10 Complaint for failing to state a claim) (strike four).

11 Accordingly, because Dunsmore has, while incarcerated, accumulated at least three  
 12 “strikes” as defined by § 1915(g), and he fails to make a “plausible allegation” that he faced  
 13 imminent danger of serious physical injury at the time he filed his Complaint, he is not  
 14 entitled to the privilege of proceeding IFP in this action. *See Cervantes*, 493 F.3d at 1055;  
 15 *Rodriguez*, 169 F.3d at 1180 (finding that 28 U.S.C. § 1915(g) “does not prevent all  
 16 prisoners from accessing the courts; it only precludes prisoners with a history of abusing  
 17 the legal system from continuing to abuse it while enjoying IFP status”); *see also Franklin*  
 18 *v. Murphy*, 745 F.2d 1221, 1231 (9th Cir. 1984) (stating that “court permission to proceed  
 19 IFP is itself a matter of privilege and not right”). The case is thus **DISMISSED** as to  
 20 Plaintiff Dunsmore.

## 21 **II. Motion to Proceed in Forma Pauperis – Plaintiff Christopher Hawkins**

22 All parties instituting any civil action, suit or proceeding in a district court of the  
 23 United States, except an application for writ of habeas corpus, must pay a filing fee of  
 24 \$400.<sup>1</sup> *See* 28 U.S.C. § 1914(a). The action may proceed despite a plaintiff’s failure to  
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26  
 27 <sup>1</sup> For civil cases like this one, filed before December 1, 2020, the civil litigant bringing suit  
 28 must pay the \$350 statutory fee in addition to a \$50 administrative fee. *See* 28 U.S.C.  
 § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14

1 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.  
2 § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*  
3 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, a prisoner who is granted leave to  
4 proceed IFP remains obligated to pay the entire fee in “increments” or “installments,”  
5 *Bruce v. Samuels*, 136 S. Ct. 627, 629 (2016); *Williams v. Paramo*, 775 F.3d 1182, 1185  
6 (9th Cir. 2015), and regardless of whether his action is ultimately dismissed. *See* 28 U.S.C.  
7 § 1915(b)(1), (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

8 Section 1915(a)(2) requires prisoners seeking leave to proceed IFP to submit a  
9 “certified copy of the trust fund account statement (or institutional equivalent) for . . . the  
10 6-month period immediately preceding the filing of the complaint.” 28 U.S.C.  
11 § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified  
12 trust account statement, the Court assesses an initial payment of 20% of (a) the average  
13 monthly deposits in the account for the past six months, or (b) the average monthly balance  
14 in the account for the past six months, whichever is greater, unless the prisoner has no  
15 assets. *See* 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having custody  
16 of the prisoner then collects subsequent payments, assessed at 20% of the preceding  
17 month’s income, in any month in which his account exceeds \$10, and forwards those  
18 payments to the Court until the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2); *Bruce*,  
19 136 S. Ct. at 629.

20 In support of his IFP Motion, Plaintiff Hawkins has submitted a certified copy of his  
21 trust account statement pursuant to 28 U.S.C. Section 1915(a)(2) and S.D. Cal. Civ. L.R.  
22 3.2. *Andrews*, 398 F.3d at 1119. The Court has reviewed Hawkins’s trust account activity,  
23 as well as the attached prison certificate verifying his available balances. *See* ECF No. 2,  
24

25  
26 (eff. June. 1, 2016). The \$50 administrative fee does not apply to persons granted leave to  
27 proceed IFP, however. *Id.* This administrative fee increased to \$52 for civil cases filed on  
28 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 at 4-6. These documents show that Hawkins carried an average monthly balance of \$0.37,  
2 average monthly deposits to his trust account for the six months preceding the filing of this  
3 action of \$0.00, and an available balance of \$0.37 at the time of filing. *See id.* at 4.

4 Therefore, the Court **GRANTS** Hawkins' Motion to Proceed IFP (ECF No. 2) and  
5 does not assesses an initial partial filing fee pursuant to 28 U.S.C. Section 1915(b)(1)  
6 because Hawkins does not have sufficient funds. The Court directs the Watch Commander,  
7 or their designee, to collect the \$350.00 balance of the filing fees required by 28 U.S.C.  
8 Section 1914 and to forward it to the Clerk of the Court pursuant to the installment payment  
9 provisions set forth in 28 U.S.C. Section 1915(b)(1).

### 10 **III. Sua Sponte Screening pursuant to 28 U.S.C. Section 1915(e)(2) and Section** 11 **1915A(b)**

#### 12 A. Standard of Review

13 Because Hawkins is a prisoner and is proceeding IFP, his Complaint requires a pre-  
14 answer screening pursuant to 28 U.S.C. Section 1915(e)(2) and Section 1915A(b). Under  
15 these statutes, the Court must sua sponte dismiss a prisoner's IFP complaint, or any portion  
16 of it, which is frivolous, malicious, fails to state a claim, or seeks damages from defendants  
17 who are immune. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)  
18 (discussing 28 U.S.C. Section 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th  
19 Cir. 2010) (discussing 28 U.S.C. Section 1915A(b)). "The purpose of [screening] is 'to  
20 ensure that the targets of frivolous or malicious suits need not bear the expense of  
21 responding.'" *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir. 2014) (quoting *Wheeler*  
22 *v. Wexford Health Sources, Inc.*, 689 F.3d 680, 681 (7th Cir. 2012)).

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

1 Procedure 12(b)(6)”). Rule 12(b)(6) requires a complaint “contain sufficient factual matter,  
2 accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*,  
3 556 U.S. 662, 678 (2009) (internal quotation marks omitted); *Wilhelm*, 680 F.3d at 1121.

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

#### 11 B. Hawkins’ Factual Allegations

12 In count one, Hawkins alleges that “Defendants are obstructing Plaintiff’s access to  
13 the courts with erroneous policy written or unwritten which allows them to make judicial  
14 decisions although not judicial officers.” Compl. at 4. Specifically, Hawkins contends that  
15 Defendants “refuse to file legal documents, block writs, legal mail legal tools, legal access  
16 to collateral attack, computer instruction or research access, computer assistance or  
17 training . . . .” *Id.* In count two, Hawkins claims Defendants have “failed and refused to  
18 establish and maintain access to services for individuals with disabilities both physical and  
19 mental as qualified under the ADA [Americans with Disabilities Act].” *Id.* At 5. He alleges  
20 Defendants have done this by “depriving them of all programming, library services,  
21 religious services, recreational services, entertainment services, educational service[s],  
22 mental health programs, trusty work services and all manner of service[s] that may  
23 otherwise be available . . . .” *Id.* He further contends that Defendants “refuse[] to respond  
24 to 100s of administrative grievances or take any corrective action holding plaintiffs under  
25 conditions of punishment for being disabled and depriving them of their constitutional  
26 protections against such cruel and unusual punishment and equal protection of the  
27 law . . . .” *Id.* Lastly, in count three, Hawkins claims that “Defendants are depriving  
28 Plaintiffs of the right to practice their religion including denial of religious services, books,

1 symbolism, participation in social religious services, [and] denial of religious diets . . . .”  
2 *Id.* at 6.

3 C. 42 U.S.C. § 1983

4 “Section 1983 creates a private right of action against individuals who, acting under  
5 color of state law, violate federal constitutional or statutory rights.” *Devereaux v. Abbey*,  
6 263 F.3d 1070, 1074 (9th Cir. 2001). Section 1983 “is not itself a source of substantive  
7 rights, but merely provides a method for vindicating federal rights elsewhere conferred.”  
8 *Graham v. Connor*, 490 U.S. 386, 393-94 (1989) (internal quotation marks and citations  
9 omitted). “To establish § 1983 liability, a Plaintiff must show both (1) deprivation of a right  
10 secured by the Constitution and laws of the United States, and (2) that the deprivation was  
11 committed by a person acting under color of state law.” *Tsao v. Desert Palace, Inc.*, 698  
12 F.3d 1128, 1138 (9th Cir. 2012).

13 D. Discussion

14 1. Individual Causation – Defendants Garcia, Trainor and Braden

15 Hawkins names Michael Garcia, William Trainor, and Jackie Braden, employees of  
16 the Office of Assigned Counsel (OAC), as Defendants and alleges they “established law  
17 policy and procedures that abridge[] the rights of Plaintiffs,” have “failed and refused to  
18 establish and maintain access to services for individuals with disabilities,” and are  
19 “depriving Plaintiffs of the right to practice their religion.” Compl. at 4-6. OAC is a San  
20 Diego County entity which “conducts business with Defendant San Diego County  
21 concerning Plaintiff’s due process legal access.” *Id.* at 2.

22 A person deprives another “of a constitutional right, within the meaning of section  
23 1983, if he does an affirmative act, participates in another’s affirmative acts, or omits to  
24 perform an act which he is legally required to do that causes the deprivation of which [the  
25 plaintiff complains].” *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). Broad and  
26 conclusory allegations, however, such as the ones put forth in Hawkins’ Complaint, fail to  
27 plausibly show how, or to what extent, each Defendant may be held individually liable for  
28 any constitutional injury. *See Iqbal*, 556 U.S. at 676-77; *Jones v. Comm’ty Redev. Agency*

1 of *City of Los Angeles*, 733 F.2d 646, 649 (9th Cir. 1984) (even pro se plaintiff must “allege  
2 with at least some degree of particularity overt acts which defendants engaged in” in order  
3 to state a claim). Instead, “Plaintiff must plead that each Government-official defendant,  
4 through [his] own individual actions, has violated the Constitution” in order to plead a  
5 plausible claim for relief. *Iqbal*, 556 U.S. at 676-77. “The inquiry into causation must be  
6 individualized and focus on the duties and responsibilities of each individual defendant  
7 whose acts or omissions are alleged to have caused a constitutional deprivation.” *Leer v.*  
8 *Murphy*, 844 F.2d 628, 633 (9th Cir. 1988) (citing *Rizzo v. Goode*, 423 U.S. 362, 370-71  
9 (1976)); *Berg v. Kincheloe*, 794 F.2d 457, 460 (9th Cir. 1986); *Estate of Brooks v. United*  
10 *States*, 197 F.3d 1245, 1248 (9th Cir. 1999) (stating that “[c]ausation is, of course, a  
11 required element of a § 1983 claim.”) Here, Hawkins offers no specific factual allegations  
12 to support a claim that any of these named Defendants were responsible for any specific  
13 claims Hawkins raises in his Complaint.

14 As to the “Does 1-10” Hawkins has named as Defendants, the Federal Rules of Civil  
15 Procedure do not authorize or prohibit the use of fictitious parties, but Rule 10 does require  
16 a plaintiff to include the names of all parties in his complaint. *See* Fed. R. Civ. P. 10(a).  
17 Courts especially disfavor Doe pleading in an IFP case because in the event the plaintiff’s  
18 complaint alleges a plausible claim for relief, it is effectively impossible for the United  
19 States Marshal or deputy marshal to fulfill his or her duty to serve an unnamed defendant.  
20 *See* Fed. R. Civ. P. 4(c)(3); 28 U.S.C. § 1915(d); *Walker v. Sumner*, 14 F.3d 1415, 1422  
21 (9th Cir. 1994) (stating that in order to properly effect service under Rule 4 in an IFP case,  
22 the plaintiff is required to “furnish the information necessary to identify the defendant.”);  
23 *Finefeuiaki v. Maui Cmty. Corr. Ctr. Staff & Affiliates*, 2018 WL 3580764, at \*6 (D. Haw.  
24 July 25, 2018) (noting that “[a]s a practical matter, the United States Marshal cannot serve  
25 a summons and complaint on an anonymous defendant.”).

26 “A plaintiff may refer to unknown defendants as Defendant John Doe 1, John Doe  
27 2, John Doe 3, and so on, but he must allege specific facts showing how each particular  
28 doe defendant violated his rights.” *Cuda v. Employees/Contractors/Agents at or OCCC*,

1 2019 WL 2062945, at \*4 (D. Haw. May 9, 2019). A plaintiff may also seek discovery to  
2 obtain the names of the Does and later amend his pleading in order to substitute the true  
3 names of those defendants, unless it is clear that discovery will not uncover their identities,  
4 or that his complaint is subject to dismissal on other grounds. *See Wakefield v. Thompson*,  
5 177 F.3d 1160, 1163 (9th Cir. 1999) (emphasis added) (citing *Gillespie v. Civiletti*, 629  
6 F.2d 637, 642 (9th Cir. 1980)).

7 Hawkins has named “Does 1-10” but, as with the other named Defendants, he makes  
8 no specific allegations against any individual Doe in relation to the constitutional violations  
9 which form the basis of his suit. Simply put, Hawkins fails to link any particular  
10 constitutional violation to any specific, individual state actor, and he fails to even  
11 minimally explain how each individual Doe party he seeks to sue personally caused a  
12 violation of his constitutional rights. *See Compl.* at 4-6; *Iqbal*, 556 U.S. at 677. As noted  
13 above, “[a] plaintiff must allege facts, not simply conclusions, t[o] show that [each  
14 defendant] was personally involved in the deprivation of his civil rights.” *Barren v.*  
15 *Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998); *see also Estate of Brooks*, 197 F.3d at  
16 1248.

17 As it stands, Hawkins’ Complaint fails to “plead[] factual content that [would]  
18 allow[] the court to draw the reasonable inference that [any individual] defendant is liable  
19 for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. Accordingly, Defendants Trainor,  
20 Garcia, Braden and Does 1-10 must be dismissed.

## 21 2. Access to Courts

22 Hawkins claims his right to access the courts has been violated because Defendants  
23 are making judicial decisions even though they are not judicial officers and are “refus[ing]  
24 to file legal documents, block[ing] writs, legal mail, legal tools, legal access to collateral  
25 attack, computer instruction or research access . . .” *Compl.* at 4. Prisoners have a  
26 constitutional right of access to the courts. *Lewis v. Casey*, 518 U.S. 343, 346 (1996);  
27 *Bounds v. Smith*, 430 U.S. 817, 821 (1977), *limited in part on other grounds by Lewis*, 518  
28 U.S. at 354. The right of access does not require the State, however, to “enable the prisoner

1 to discover grievances,” or even to “litigate effectively once in court.” *Id.* at 354; *see also*  
2 *Jones v. Blanas*, 393 F.3d 918, 936 (9th Cir. 2004) (defining actual injury as the “inability  
3 to file a complaint or defend against a charge”). Instead, *Lewis* holds:

4 [T]he injury requirement is not satisfied by just any type of frustrated  
5 legal claim . . . . Bounds does not guarantee inmates the wherewithal to  
6 transform themselves into litigating engines capable of filing everything from  
7 shareholder derivative actions to slip-and-fall claims. The tools it requires to  
8 be provided are those that the inmates need in order to attack their sentences,  
9 directly or collaterally, and in order to challenge the conditions of their  
10 confinement. Impairment of any other litigating capacity is simply one of the  
11 incidental (and perfectly constitutional) consequences of conviction and  
12 incarceration.

11 *Id.* at 354-55; *see also Spence v. Beard*, No. 2:16-CV-1828 KJN P, 2017 WL 896293, at  
12 \*2-3 (E.D. Cal. Mar. 6, 2017).

13 In order to state a claim of a denial of the right to access the courts, a prisoner must  
14 establish that he has suffered “actual injury,” a jurisdictional requirement derived from the  
15 standing doctrine. *Lewis*, 518 U.S. at 349. An “actual injury” is “actual prejudice with  
16 respect to contemplated or existing litigation, such as the inability to meet a filing deadline  
17 or to present a claim.” *Id.* at 348 (citation and internal quotations omitted). Indeed, the  
18 failure to allege an actual injury is “fatal.” *Alvarez v. Hill*, 518 F.3d 1152, 1155 n.1 (9th  
19 Cir. 2008) (stating that “[f]ailure to show that a ‘non-frivolous legal claim had been  
20 frustrated’ is fatal.”) (quoting *Lewis*, 518 U.S. at 353 & n.4). In addition to alleging an  
21 “actual injury,” Hawkins must also plead facts sufficient to describe the “non-frivolous” or  
22 “arguable” nature of underlying claim he contends was lost as result of Defendants’  
23 actions. *Christopher v. Harbury*, 536 U.S. 403, 416 (2002). The nature and description of  
24 the underlying claim must be set forth in the pleading “as if it were being independently  
25 pursued.” *Id.* at 417.

26 The factual allegations in Hawkins’ Complaint are insufficient to state an access to  
27 courts claim. He has not alleged he suffered any “actual prejudice with respect to  
28 contemplated or existing litigation.” *Lewis*, 518 U.S. at 351-53; *Silva v. Di Vittorio*, 658

1 F.3d 1090, 1104 (9th Cir. 2011). Further, although Hawkins claims the Defendants are  
2 “obstructing Plaintiffs’ access to the courts with erroneous policy . . . which allows them  
3 to make judicial decision although not judicial officers,” and that this policy enables  
4 Defendants to “refuse to file legal documents, block writs legal mail, legal tools, legal  
5 access to collateral attack,” among other things, he has not provided the Court with the  
6 “nature and description” of the claims he wishes to bring nor the “non-frivolous” or  
7 “arguable” nature of those claims. *Harbury*, 536 U.S. at 413-14. Accordingly, the Court  
8 finds Hawkins’ access to courts claims must be dismissed for failing to state a plausible  
9 claim upon which § 1983 relief can be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(ii),  
10 § 1915A(b)(1); *Iqbal*, 556 U.S. at 678.

### 11 3. Americans with Disabilities Act

12 In count two, Hawkins claims Defendants are denying services to disabled inmates,  
13 in violation of the Americans with Disabilities Act (“ADA”). Compl at 5. The ADA applies  
14 in the prison context. *See* 42 U.S.C. § 12131(1)(B); *U.S. v. Georgia*, 546 U.S. 151, 154  
15 (2006); *see also Pierce v. Cty. of Orange*, 526 F.3d 1190, 1214 (9th Cir. 2008) (stating that  
16 “[i]t is undisputed that Title II applies to the . . . jails’ services, programs, and activities  
17 for detainees.”) In order to state a claim under Title II of the ADA, however, a plaintiff  
18 must allege:

19 (1) he ‘is an individual with a disability;’ (2) he ‘is otherwise qualified to  
20 participate in or receive the benefit of some public entity’s services, programs,  
21 or activities;’ (3) he ‘was either excluded from participation in or denied the  
22 benefits of the public entity’s services, programs, or activities, or was  
23 otherwise discriminated against by the public entity;’ and (4) ‘such exclusion,  
denial of benefits, or discrimination was by reason of [his] disability.’

24 *O’Guinn v. Lovelock Correctional Center*, 502 F.3d 1056, 1060 (9th Cir. 2007) (citing  
25 *McGary v. City of Portland*, 386 F.3d 1259, 1265 (9th Cir. 2004)), (quoting *Thompson v.*  
26 *Davis*, 295 F.3d 890, 895 (9th Cir. 2002) (per curiam)).

27 Hawkins may not pursue an ADA claim against the individual Defendants in their  
28 individual capacities. *See Walsh v. Nevada Dep’t of Human Res.*, 471 F.3d 1033, 1038 (9th

1 Cir. 2006) (holding that the “bar on suits against individual defendants” applies to the  
2 ADA); *Lovell v. Chandler*, 303 F.3d 1039, 1052 (9th Cir. 2002) (holding that the “ADA  
3 applies only to public entities.”); *see also Vinson v. Thomas*, 288 F.3d 1145, 1156 (9th Cir.  
4 2002) (“[A] plaintiff cannot bring an action under 42 U.S.C. § 1983 against a State official  
5 in [his or] her individual capacity to vindicate rights created by Title II of the ADA.”)

6 Further, to the extent Hawkins includes the County of San Diego, which is a public  
7 entity subject to suit under Title II, he nevertheless fails to allege that he suffers from any  
8 qualified disability, or that he has been discriminated against “by reason of [that]  
9 disability.” *O’Guinn*, 502 F.3d at 1060. Instead, as noted above, Hawkins offers only vague  
10 and conclusory allegations, alleging simply that Defendants “failed and refused to establish  
11 and maintain [disabled inmates] access” to various services and have “refus[ed] to respond  
12 to 100s of administrative grievances . . . .” Compl. at 5. But to state an ADA claim based  
13 on disability discrimination, Hawkins must include factual content to show “either (i)  
14 discrimination based on disparate treatment or impact, or (ii) denial of reasonable  
15 modifications or accommodations.” *Atayde v. NAPA State Hosp.*, 255 F. Supp. 3d 978,  
16 1000 (E.D. Cal. 2017) (citing *Fortyune v. Am. Multi-Cinema, Inc.*, 364 F.3d 1075, 1086  
17 (9th Cir. 2004)). To show disparate treatment, he must allege that other non-disabled  
18 individuals without his disability were treated more favorably. *Id.* (citing *McGary v. City*  
19 *of Portland*, 386 F.3d 1259, 1265–66 (9th Cir. 2004)). To show disparate impact, he must  
20 allege that a facially neutral policy has a significantly adverse or disproportionate impact  
21 on disabled persons. *Id.* (citing *Lawman v. City & Cty. of San Francisco*, 159 F. Supp. 3d  
22 1130, 1148 n.11 (N.D. Cal. 2016)). And to show failure to accommodate, he must allege  
23 that public entity knew of his disability but failed to provide reasonable accommodations  
24 for it. *Id.* (citing *Robertson v. Las Animas Cty. Sheriff’s Dep’t*, 500 F.3d 1185, 1196 (9th  
25 Cir. 2007)); *see also Barnett v. Cty. of Los Angeles*, No. 2:20-CV-02530-ODW-ASX, 2020  
26 WL 5350286, at \*5 (C.D. Cal. Sept. 3, 2020). Hawkins makes no such allegations;  
27 therefore, his ADA claims must be dismissed. *See Iqbal*, 556 U.S. at 678.

28 ///

1                   4. Eighth Amendment

2           Hawkins also claims his Eighth Amendment rights have been violated by  
3 Defendants’ “failure to establish and maintain access to services for individuals with  
4 disabilities, both physical and mental.” Compl. at 5. “Inmates who sue prison officials for  
5 injuries suffered while in custody may do so under the Eighth Amendment’s Cruel and  
6 Unusual Punishment Clause or, if not yet convicted, under the Fourteenth Amendment’s  
7 Due Process Clause.” *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1067-68 (9th Cir.  
8 2016). “[W]hen determining whether the Eighth or Fourteenth Amendment governs an  
9 inmate’s claim, ‘[t]he critical juncture is conviction, either after trial or . . . by plea, at  
10 which point the state acquires the power to punish and the Eighth Amendment is  
11 implicated.’” *Resnick v. Hayes*, 213 F.3d 443, 448 (9th Cir. 2000) (quoting *Berry v. City*  
12 *of Muskogee*, 900 F.2d 1489, 1493 (10th Cir. 1990)). Thought Hawkins raises his claims  
13 under the Eighth Amendment, he is in custody at the county jail. *See* Compl. at 1, 5.  
14 Because it is unclear whether the Eighth or Fourteenth Amendment applies, the Court will  
15 analyze Hawkins’ claims under both amendments.

16           The Eighth Amendment prohibits the infliction of “cruel and unusual punishments.”  
17 U.S. Const. Amend. VIII. Only “unnecessary and wanton infliction of pain” constitutes  
18 cruel and unusual punishment as prohibited by the United States Constitution. *Whitley v.*  
19 *Albers*, 475 U.S. 312, 319 (1986). In order to state a plausible Eighth Amendment claim  
20 for relief, a Plaintiff must allege facts sufficient to show that Defendants acted with  
21 ‘deliberate indifference.’” *Castro*, 833 F.3d at 1068; *Iqbal*, 556 U.S. at 678. “A prison  
22 official acts with ‘deliberate indifference . . . only if the [prison official] knows of and  
23 disregards an excessive risk to inmate health and safety.’” *Toguchi v. Chung*, 391 F.3d  
24 1051, 1057 (9th Cir. 2004) (quoting *Gibson v. Cnty. of Washoe*, 290 F.3d 1175, 1187 (9th  
25 Cir. 2002), *overruled on other grounds by Castro*, 833 F.3d at 1076. “Under this standard,  
26 the prison official must not only ‘be aware of facts from which the inference could be  
27 drawn that a substantial risk of serious harm exists,’ but that person ‘must also draw the  
28 inference.’” *Id.* (quoting *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)).

1 Hawkins has not sufficiently alleged he was at serious risk of harm. He has not  
2 provided sufficient facts to suggest the Defendants’ refusal to “establish and maintain  
3 access to services for individuals with disabilities” resulted in “significant injury” or caused  
4 “the unnecessary and wanton infliction of pain.” *Colwell v. Bannister*, 763 F.3d 1060, 1066  
5 9th Cir. 2014). Nor has he provided sufficient facts to show the Defendants knew that  
6 failing to provide disabled inmates with religious services, entertainment, library access,  
7 etc., created a substantial risk of serious harm. Thus, Hawkins’ Eighth Amendment claim  
8 fails because he has not alleged sufficient “factual content that allows the court to draw the  
9 reasonable inference that [Defendants are] liable for the misconduct alleged.” *Iqbal*, 556  
10 U.S. at 678.

11 Until recently, the Ninth Circuit applied a single “deliberate indifference” test when  
12 analyzing claims brought by persons in custody whether they arose under the Eighth or the  
13 Fourteenth Amendment. *See Castro*, 833 F.3d at 1068 (citing *Clouthier v. Cnty. of Contra*  
14 *Costa*, 591 F.3d 1232 (9th Cir. 2010)). However, in *Kingsley v. Hendrickson*, 576 U.S. 389  
15 (2015), the Supreme Court made clear that proof of an intent or motive to punish is not  
16 required for a pretrial detainee to prevail on a claim that his due process rights were violated  
17 and concluded that “a pretrial detainee can prevail by providing only objective evidence  
18 that the challenged governmental action is not rationally related to a legitimate  
19 governmental objective or that it is excessive in relation to that purpose.” *Id.* at 398. The  
20 Ninth Circuit has interpreted *Kingsley* as “reject[ing] the notion that there exists a single  
21 ‘deliberate indifference’ standard applicable to all § 1983 claims, whether brought by  
22 pretrial detainees or by convicted prisoners.” *Castro*, 833 F.3d at 1069. The Ninth Circuit  
23 held in *Castro* that an objective standard of reasonableness should apply to failure-to-  
24 protect claims under the Fourteenth Amendment, *id.* at 1070-71, and has since extended  
25 the “objective deliberate indifference” standard to Fourteenth Amendment claims of  
26 inadequate medical care. *See Gordon v. Cty. of Orange*, 888 F.3d 1118, 1120 (9th Cir.  
27 2018); *see also Sandoval v. Cty. of San Diego*, No. 18-55289, 2021 WL 116539, at \*7 (9th  
28 Cir. Jan. 13, 2021) (explaining how *Kingsley* “cast doubt on [the Ninth Circuit’s] practice

1 of evaluating Eighth Amendment and Fourteenth Amendment claims under the same  
2 standard.”).

3       It remains unclear if *Kingsley*’s objective deliberate indifference standard applies  
4 beyond excessive force, failure-to-protect, and medical care claims to encompass all claims  
5 raised by a pretrial detainee involving the conditions of his or her confinement. *See Cheung*  
6 *v. Sequeira*, Civ. No. 17-00257 DKW-KSC, 2017 WL 3431586, at \*3 (D. Haw. Aug. 8,  
7 2017) (noting that only the Second Circuit has extended *Kingsley*’s holdings to all pretrial  
8 detainee deliberate indifference conditions of confinement claims). After *Gordon*,  
9 however, district courts in the Ninth Circuit have applied the objective deliberate  
10 indifference standard to pretrial conditions of confinement claims generally. *See, e.g.,*  
11 *Turano v. Cnty. of Alameda*, No. 17-cv-06953-KAW, 2018 WL 3054853, at \*6 (N.D. Cal.  
12 June 20, 2018) (finding the Ninth Circuit’s reasoning in *Gordon* applies to conditions of  
13 confinement claims); *Smith v. Cnty. of Riverside Sheriff Dept.*, No. EDCV 17-1969-DSF  
14 (SP), 2019 WL 2880419, at \*8 (C.D. Cal. Mar. 1, 2019) (finding that if plaintiff was a  
15 pretrial detainee, the objective deliberate indifference standard should apply to his “broader  
16 conditions of confinement claims”). Accordingly, in the event Hawkins has not yet been  
17 convicted, the Court will also apply the *Kingsley* standard to his conditions of confinement  
18 claims.

19       To state a claim for deliberate indifference under the Fourteenth Amendment, a  
20 pretrial detainee must establish the following four elements:

21           (i) the defendant made an intentional decision with respect to the  
22 conditions under which the plaintiff was confined; (ii) those conditions put  
23 the plaintiff at substantial risk of suffering serious harm; (iii) the defendant  
24 did not take reasonable available measures to abate that risk, even though a  
25 reasonable official in the circumstances would have appreciated the high  
26 degree of risk involved—making the consequences of the defendant’s conduct  
obvious; and (iv) by not taking such measures, the defendant caused the  
plaintiff’s injuries.

27 *Castro*, 833 F.3d at 1071. “With respect to the third element, the defendant’s conduct must  
28 be objectively unreasonable.” *Id.* (citing *Kingsley*, 576 U.S. at 396). The plaintiff must

1 allege “more than negligence but less than subjective intent—something akin to reckless  
2 disregard.” *Id.* The ““mere lack of due care by a [county] official does not deprive an  
3 individual of life, liberty, or property under the Fourteenth Amendment.” *Id.* (quoting  
4 *Daniels v. Williams*, 474 U.S. 327, 330-31 (1986)).

5 Here, Hawkins fails to allege facts sufficient to plausibly show that the failure to  
6 establish and maintain access to services for individuals with mental and physical  
7 disabilities put him at substantial risk of suffering serious harm, that Defendants failed to  
8 take reasonable measures to abate that risk, or that a reasonable person in the Defendants’  
9 position would have appreciated a high risk of harm existed under the circumstances. *Id.*  
10 Instead, Hawkins merely proclaims that the conditions of his confinement in the SDCJ  
11 constitute “cruel and unusual punishment.” *See* Compl. at 5. But without more, these types  
12 of conclusory allegations are also insufficient to state a plausible Fourteenth Amendment  
13 claim. *See Iqbal*, 556 U.S. at 679 (stating that “[w]hile legal conclusions can provide the  
14 framework of a complaint, they must be supported by factual allegations”).

##### 15 5. Equal Protection

16 Hawkins also alleges in count two that the denial of services to disabled inmates  
17 violates the Equal Protection Clause of the Fourteenth Amendment. Compl. at 5. The Equal  
18 Protection Clause “is essentially a direction that all persons similarly situated should be  
19 treated alike.” *See City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985);  
20 *see also Vacco v. Quill*, 521 U.S. 793, 799 (1997) (citing *Plyler v. Doe*, 457 U.S. 202, 216  
21 (1982) and *Tigner v. Texas*, 310 U.S. 141, 147 (1940)); *Fraley v. Bureau of Prisons*, 1 F.3d  
22 924, 926 (9th Cir. 1993) (per curiam). To establish an equal protection violation, Hawkins  
23 must demonstrate “that the [challenged action], either on its face or in the manner of its  
24 enforcement, results in members of a certain group being treated differently from other  
25 persons based on membership in that group.” *McLean v. Crabtree*, 173 F.3d 1176, 1185  
26 (9th Cir. 1999). “Second, if it is demonstrated that a cognizable class is treated differently,  
27 the court must analyze under the appropriate level of scrutiny whether the distinction made  
28 between the two groups is justified.” *Id.* (citation and quotations omitted). If the aggrieved

1 party is a member of a protected or suspect class, or otherwise suffers the unequal  
2 burdening of a fundamental right, the court applies strict scrutiny. *City of Cleburne*, 473  
3 U.S. at 439-40. “Government actions that do not . . . involve suspect classifications will be  
4 upheld if [they] are rationally related to a legitimate state interest.” *Fields v. Palmdale Sch.*  
5 *Dist.*, 427 F.3d 1197, 1208 (9th Cir. 2005).

6 “[T]he disabled do not constitute a suspect class for equal protection purposes” and  
7 therefore the questioned government action need only be rationally related to a legitimate  
8 government interest. *See Lee v. City of Los Angeles*, 250 F.3d 668, 687 (9th Cir. 2001)  
9 (quoting *Does 1-5 v. Chandler*, 83 F.3d 1150, 1155 (9th Cir. 1996)). Hawkins has not  
10 made a sufficient showing that the denial of services he claims are occurring is not  
11 rationally related to a legitimate government interest, nor that “members of a certain group  
12 [are] being treated differently from other persons based on membership in that group.”  
13 *McLean*, 173 F.3d at 1185. He simply alleges that disabled inmates are being denied certain  
14 services, which is not sufficient to plausibly state an Equal Protection claim. “Intentional  
15 discrimination means that a defendant acted at least in part *because of* a plaintiff’s protected  
16 status.” *Serrano v. Francis*, 345 F.3d 1071, 1082 (9th Cir. 2003) (emphasis in original)  
17 (quoting *Maynard v. City of San Jose*, 37 F.3d 1396, 1404 (9th Cir. 1994)). Accordingly,  
18 the Court dismisses this claim pursuant to 28 U.S.C. § 1915A(b)(1) because Hawkins has  
19 not plausibly alleged a § 1983 claim upon which relief could be granted. *Iqbal*, 556 U.S. at  
20 678.

## 21 6. Freedom of Religion

22 In count three, Hawkins claims his right to “freedom of religion” has been violated  
23 by Defendants. Compl. at 6. The First Amendment bars the government from, among other  
24 things, “making a law prohibiting the free exercise of religion.” *Hartmann v. Cal. Dep’t*  
25 *Corrs. & Rehab.*, 707 F.3d 1114, 1122 (9th Cir. 2013). Although Hawkins does not  
26 specifically invoke it, the Court liberally construes Hawkins’ Complaint as attempting to  
27 state claims under both the First Amendment and the Religious Land Use and  
28 Institutionalized Persons Act (“RLUIPA”). *See* 42 U.S.C. § 2000cc-1(a); *see also Alvarez*

1 *v. Hill*, 518 F.3d 1152, 1157-58 (9th Cir. 2008) (noting that a prisoner need not identify  
2 RLUIPA as a cause of action in order to state a claim based upon that law). Section 3 of  
3 RLUIPA provides that “[n]o government shall impose a substantial burden on the religious  
4 exercise of a person residing in or confined to an institution . . . even if the burden results  
5 from a rule of general applicability” absent a showing that the burden imposed is “in  
6 furtherance of a compelling government interest” and “is the least restrictive means of  
7 furthering . . . that interest.” 42 U.S.C. § 2000cc-1(a).

8 Hawkins’ Complaint fails to state a First Amendment free exercise or RLUIPA claim  
9 against Defendants. In order to state a free exercise claim, Hawkins must “show that the  
10 government action in question substantially burdens the person’s practice of [their]  
11 religion. “A substantial burden places more than an inconvenience on religious exercise; it  
12 must have a tendency to coerce individuals into acting contrary to their religious beliefs or  
13 exert substantial pressures on an adherent to modify his behavior and to violate his beliefs.”  
14 *Jones v. Williams*, 791 F.3d 1023, 1031-32 (9th Cir. 2015) (internal citations, quotation  
15 marks, and alterations omitted). Similarly, the Ninth Circuit has explained that a  
16 “substantial burden” sufficient to state a RLUIPA claim is a “significantly great  
17 restriction or onus upon [religious] exercise,” and “[i]n the context of a prisoner’s  
18 constitutional challenge to institutional policies, [the Ninth Circuit] has held that a  
19 substantial burden occurs ‘where the state . . . denies [an important benefit] because of  
20 conduct mandated by religious belief, thereby putting substantial pressure on an adherent  
21 to modify his behavior and to violate his beliefs.’” *Hartmann*, 707 F.3d at 1124-25 (quoting  
22 *San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1039 (9th Cir. 2004);  
23 *Warsoldier v. Woodford*, 418 F.3d 989, 995 (9th Cir. 2005)).

24 Applying either framework, Hawkins has not plausibly alleged how Defendants  
25 have placed a substantial burden on his religious exercise, and how, if at all, the conduct  
26 alleged “prevented him from fulfilling the commandments” of his religion. *Cf. Wolcott v.*  
27 *Bd. of Rabbis*, 738 F. App’x 538, 539 (9th Cir. 2018) (explaining that non-conclusory  
28 allegations “that [plaintiff’s] possession and use of Jewish artifacts were restricted, such

1 restriction prevented him from fulfilling the commandments of the Jewish faith, and a  
2 substantial burden on his exercise of Judaism resulted” were sufficient to survive screening  
3 pursuant to 28 U.S.C. Section 1915A). Instead, he simply makes conclusory allegations  
4 that “Defendants are depriving Plaintiffs of the right to practice their religion” by denying  
5 them religious services, books, symbolism, and diets. Compl. at 6. As a result, Hawkins’  
6 First Amendment free exercise and RLUIPA claims in count three of his Complaint must  
7 be dismissed for failure to state a claim upon which relief can be granted. *See* 28 U.S.C.  
8 § 1915(e)(2); 28 U.S.C. § 1915A(b); *Iqbal*, 556 U.S. at 678.

#### 9 7. Defendant San Diego County

10 Hawkins’ claims against the County of San Diego are also insufficient. In order to  
11 establish a county’s liability pursuant to 42 U.S.C. § 1983, “[a] plaintiff[] must show that  
12 the challenged conditions were part of a policy, custom or practice officially adopted by  
13 defendants.” *Upshaw v. Alameda County*, 377 F. Supp. 3d 1027, 1032 (N.D. Cal. March  
14 27, 3019) (citing *Monell v. Dep’t of Soc. Servs. of N.Y.*, 436 U.S. 658, 690 (1978)). A  
15 plaintiff must also allege that “the policy or custom “evince[s] a ‘deliberate indifference’  
16 to the constitutional right and [is] the ‘moving force behind the constitutional violation.’”  
17 *Id.* (citing *Rivera v. County of L.A.*, 745 F.3d 384, 389 (9th Cir. 2014)). “Mere negligence  
18 or accident” are not sufficient. *Kingsley*, 576 U.S. at 395. Here, Hawkins’ Complaint fails  
19 to allege that any staff at SDCJ acted pursuant to a county policy or custom. Therefore, he  
20 fails to state a claim upon which relief may be granted pursuant to § 1983 as to the County  
21 of San Diego.

#### 22 8. Defendants San Diego County Jail and Office of Assigned Counsel

23 To the extent Hawkins names the “San Diego County Jail” and “Office of Assigned  
24 Counsel” as Defendants, he fails to state a claim upon which § 1983 relief may be granted.  
25 As the Court has noted, “[t]o establish § 1983 liability, a Plaintiff must show both (1)  
26 deprivation of a right secured by the Constitution and laws of the United States, and (2)  
27 that the deprivation was committed by a *person* acting under color of state law.” *Tsao*, 698  
28 F.3d at 1138 (emphasis added). “Persons” under § 1983 are state and local officials sued

1 in their individual capacities, private individuals and entities which act under color of state  
 2 law, and/or the local governmental entity itself; departments of municipal entities are not  
 3 “persons” subject to suit under § 1983. *See Vance v. County of Santa Clara*, 928 F. Supp.  
 4 993, 995-96 (N.D. Cal. 1996) (stating that “[n]aming a municipal department as a  
 5 defendant is not an appropriate means of pleading a § 1983 action against a municipality”)  
 6 (citation omitted). The SDCJ and OAC are departments of the County of San Diego;<sup>2</sup> they  
 7 are not “persons” subject to suit under § 1983. *See e.g., Salas v. San Diego County Jail*,  
 8 2018 WL 1394283, at \*3 (S.D. Cal. Apr. 8, 2016); *Jones v. San Diego County Jail*, 2013  
 9 WL 5670923394, at \*2 (S.D. Cal. Oct. 15, 2013); *Rodriguez v. Cnty. of Contra Costa*, 2013  
 10 WL 5946112, at \*3 (N.D. Cal. Nov. 5, 2013) (citing *Hervey v. Estes*, 65 F.3d 784, 791 (9th  
 11 Cir. 1995)) (stating that “[a]lthough municipalities, such as cities and counties, are  
 12 amenable to suit under *Monell [v. Dep’t of Social Servs*, 436 U.S. 658 (1978)], sub-  
 13 departments or bureaus of municipalities . . . are not generally considered ‘persons’ within  
 14 the meaning of § 1983.”). Accordingly, Hawkins’ claims against San Diego County Jail  
 15 and the Office of Assigned Counsel are dismissed sua sponte for failure to state a plausible  
 16 claim and for seeking monetary relief against an immune defendant. *See* 28 U.S.C.  
 17 § 1915(e)(2)(B); 28 U.S.C. § 1915A(b).

18 **IV. Motion for ADA Access [ECF No. 3] and Motion for Class Certification [ECF**  
 19 **No. 4]**

20 Hawkins has also filed a document entitled “Motion for ADA Access Fed. Rules of  
 21 Regulations 35.107/CRC 1.100.” *See* ECF No. 3. The document states: “Plaintiffs  
 22  
 23

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24 <sup>2</sup> *See* <https://www.sandiegocounty.gov/content/sdc/oac/aboutus.html> (last visited Jan. 27,  
 25 2021) (“The San Diego County Office of Assigned Counsel (OAC) was established by  
 26 County resolution on December 9, 2008, as an independent and ethically separate division  
 27 of the Department of the Public Defender. [¶] OAC arranges for high quality legal  
 28 representation on behalf of individuals charged with a crime in state court who are entitled  
 by law to court appointed attorney services but who cannot be represented by the Public  
 Defender or Alternate Public Defender due to conflict of interest or other issues.”)

1 complain that they have made requests to access court ADA coordinator according to fed.  
2 rule of regulations 35.107 and CRC 1.100 and received no response [thereby] being  
3 discriminated against as qualified ADA individuals and now motion for clarity on this  
4 matter by the court.” *Id.* He has also filed a Motion for Class Certification. *See* ECF No. 4.  
5 Because the Court has concluded that Hawkins has not stated a plausible claim for relief,  
6 the motions are **DENIED** without prejudice.

7 **V. Motion for Appointment of Counsel [ECF No. 5]**

8 Hawkins also seeks the appointment of counsel because of the complexity of the  
9 case. (Mot. to Appt. Counsel, ECF No. 3 at 1.) There is no constitutional right to counsel  
10 in a civil case. *Lassiter v. Dept. of Social Servs.*, 452 U.S. 18, 25 (1981); *Palmer v. Valdez*,  
11 560 F.3d 965, 970 (9th Cir. 2009). And while 28 U.S.C. § 1915(e)(1) grants the district  
12 court limited discretion to “request” that an attorney represent an indigent civil litigant,  
13 *Agyeman v. Corr. Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004), this discretion  
14 may be exercised only under “exceptional circumstances.” *Id.*; *see also Terrell v. Brewer*,  
15 935 F.2d 1015, 1017 (9th Cir. 1991). A finding of exceptional circumstances requires the  
16 Court “to consider whether there is a ‘likelihood of success on the merits’ and whether ‘the  
17 prisoner is unable to articulate his claims in light of the complexity of the legal issues  
18 involved.’” *Harrington v. Scribner*, 785 F.3d 1299, 1309 (9th Cir. 2015) (quoting *Palmer*,  
19 560 F.3d at 970).

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

1 succeed on the merits of any potential constitutional claim against any of the named  
2 Defendants. *Id.* Finally, Hawkins states that counsel should be appointed “due to the  
3 complexities of a class action [lawsuit].” ECF No. 5 at 1. The Court has denied Hawkins’  
4 Motion for Class Certification, as discussed above, and thus this is not a valid reason for  
5 the appointment of counsel in this case.

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

#### 11 **VI. Motion for Temporary Restraining Order [ECF No. 6]**

12 Hawkins also seeks immediate injunctive relief. *See* Mot. for TRO, ECF No. 6. In  
13 his motion, Hawkins makes the same basic allegations as he does in his Complaint. *Id.* He  
14 claims that “without intervention by this Court Plaintiffs will suffer irreparable injury and  
15 harm in their cases in that they will continue to be denied fair hearings by way of the denial  
16 of the tools necessary to prosecute their claims in opposition” because “the Defendants  
17 have developed laws, procedures, regulations or policies that abridge the Plaintiff’s const.  
18 rights under California [and] United States.” ECF No. 6 at 2-3. He further states that “the  
19 tools defined by the federal courts are access to copying, service and research for  
20 meaningful access to the courts.” *Id.* at 3.

21 To the extent Hawkins seeks a TRO without notice upon an adverse party, he cannot  
22 prevail because his submission fails to set out “specific facts in an affidavit or a verified  
23 complaint . . . [which] clearly show that immediate and irreparable injury, loss, or damage  
24 will result . . . before the adverse party can be heard in opposition.” Fed. R. Civ. P.  
25 65(b)(1)(A); *Gomez v. Vernon*, 255 F.3d 1118, 1128 (9th Cir. 2001) (stating that  
26 “injunctive relief is ‘to be used sparingly, and only in a clear and plain case,’” especially  
27 when the court is asked to enjoin the conduct of a state agency) (quoting *Rizzo v. Goode*,  
28 423 U.S. 362, 378 (1976)).

1           Second, a plaintiff seeking a preliminary injunction must establish: (1) a likelihood  
2 of succeed on the merits; (2) a likelihood that plaintiff will suffer irreparable harm in the  
3 absence of preliminary relief; (3) that the balance of equities tips in his favor; and (4) that  
4 an injunction is in the public interest. *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20  
5 (2008). “The standard for issuing a temporary restraining order is identical to the standard  
6 for issuing a preliminary injunction.” *Lockheed Missile & Space Co., Inc. v. Hughes*  
7 *Aircraft Co.*, 887 F. Supp. 1320, 1323 (N.D. Cal. 1995); *see also Stuhlbarg Intern. Sales*  
8 *Co., Inc. v. John D. Brushy and Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (stating  
9 that standards for issuing a TRO are “substantially identical” to those for issuing a  
10 preliminary injunction). As the movant, Hawkins “must do more than merely allege  
11 imminent harm sufficient to establish standing; [he] must demonstrate immediate  
12 threatened injury as a prerequisite to preliminary injunctive relief.” *Caribbean Marine*  
13 *Servs. Co., Inc. v. Baldrige*, 844 F.2d 668, 674-675 (9th Cir. 1988) (noting that speculative  
14 injury does not constitute irreparable harm sufficient to warrant granting a preliminary  
15 injunction) (internal citations omitted).

16           Hawkins’ allegations do not meet these standards. He fails to state a plausible claim  
17 for relief and therefore he has not shown any likelihood of success on the merits of those  
18 claims. *See Pimental v. Dreyfus*, 670 F.3d 1096, 1111 (9th Cir. 2012) (stating that “at an  
19 irreducible minimum,” the party seeking immediate injunctive relief “must demonstrate a  
20 fair chance of success on the merits, or questions serious enough to require litigation”). He  
21 has also not established that he will “suffer irreparable harm in the absence of preliminary  
22 relief,” nor has he “demonstrated immediate threatened injury.” *Winter*, 555 U.S. at 20;  
23 *Caribbean Marine Servs. Co., Inc.*, 844 F.2d at 674-675. For these reasons, Hawkins’  
24 Motion for TRO (ECF No. 6) is **DENIED**.

## 25 **VII. Conclusion and Orders**

26           Good cause appearing, the Court:

27           1.       **DENIES** in part the Motion to Proceed IFP as to Plaintiff Dunsmore pursuant  
28 to 28 U.S.C. Section 1915(g) (ECF No. 2);

1           2.     **DISMISSES** this civil action sua sponte without prejudice as to Plaintiff  
2 Dunsmore for failing to prepay the \$400 civil and administrative filing fees required by 28  
3 U.S.C. § 1914(a) and directs the Clerk of Court to **DISMISS** Daryl Dunsmore as a plaintiff  
4 in this action;

5           3.     **GRANTS** in part the Motion to Proceed IFP as to Plaintiff Hawkins pursuant  
6 to 28 U.S.C. § 1915(a) (ECF No. 2);

7           4.     **DIRECTS** the Watch Commander for the San Diego Central, or their  
8 designee, to collect from Hawkins' trust account the \$350 filing fee owed by collecting  
9 monthly payments from Hawkins' account in an amount equal to twenty percent (20%) of  
10 the preceding month's income and forwarding those payments to the Clerk of the Court  
11 each time the amount in the account exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2). **ALL**  
12 **PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER**  
13 **ASSIGNED TO THIS ACTION;**

14           5.     **DIRECTS** the Clerk of the Court to serve a copy of this Order on Watch  
15 Commander, San Diego Central Jail, 1173 Front Street, San Diego, CA 92101;

16           6.     **DENIES** Hawkins' Motion for ADA Access (ECF No. 3);

17           7.     **DENIES** Hawkins' Motion for Class Certification (ECF No. 4);

18           8.     **DENIES** Hawkins' Motion for Appointment of Counsel (ECF No. 5);

19           9.     **DENIES** Hawkins' Motion for TRO (ECF No. 6);

20           10.    **DISMISSES** Hawkins' Complaint for failing to state a claim upon which  
21 relief may be granted pursuant to 28 U.S.C. Section 1915(e)(2)(B)(ii) and Section  
22 1915A(b)(1).

23           11.    **GRANTS** Hawkins **sixty (60)** days leave from the date of this Order in which  
24 to file an Amended Complaint which cures all the deficiencies of pleading noted above.  
25 Hawkins' Amended Complaint must be complete by itself without reference to his original  
26 pleading. Defendants not named and any claim not re-alleged in his Amended Complaint  
27 will be considered waived. *See* S.D. Cal. Civ. L.R. 15.1; *Hal Roach Studios, Inc. v. Richard*  
28 *Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (“[A]n amended pleading

1 supersedes the original.”); *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012)  
2 (noting that claims dismissed with leave to amend which are not re-alleged in an amended  
3 pleading may be “considered waived if not repled.”).

4 If Hawkins fails to file an Amended Complaint within the time provided, the Court  
5 will enter a final Order dismissing this civil action based both on Hawkins’ failure to state  
6 a claim upon which relief can be granted pursuant to 28 U.S.C. Sections 1915(e)(2)(B)(ii)  
7 and 1915A(b)(1), and his failure to prosecute in compliance with a court order requiring  
8 amendment. *See Lira v. Herrera*, 427 F.3d 1164, 1169 (9th Cir. 2005) (“If a plaintiff does  
9 not take advantage of the opportunity to fix his complaint, a district court may convert the  
10 dismissal of the complaint into dismissal of the entire action.”).

11 **IT IS SO ORDERED.**

12 Dated: February 16, 2021

13   
14 Hon. William Q. Hayes  
15 United States District Court  
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