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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ARNOLD PATTON  
Inmate No. 20948281,  
  
Plaintiff,  
  
v.  
ANTHONY REY, Interim Sheriff;  
SONIA L. MANNING, Facility  
Commander; MONTGOMERY, Chief  
Medical Officer; COUNTY OF SAN  
DIEGO,  
  
Defendants.

Case No.: 3:22-cv-02028-CAB-MDD

**ORDER:**  
  
**(1) GRANTING PLAINTIFF’S  
MOTION TO PROCEED IN FORMA  
PAUPERIS [ECF No. 2];**  
  
**AND**  
  
**(2) SUA SPONTE DISMISSING  
COMPLAINT FOR FAILING TO  
STATE A CLAIM PURSUANT TO  
28 U.S.C. § 1915(e)(2)(B)(ii)**

Arnold Patton (“Plaintiff”), currently detained at the Vista Detention Facility (“VDF”) in Vista, California, has filed a civil rights complaint pursuant to 42 U.S.C. § 1983. *See* Compl., ECF No. 1. Plaintiff did not pay the filing fee required by 28 U.S.C. § 1914(a) to commence a civil action when he filed his Complaint; instead, he has filed a Motion to Proceed In Forma Pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a). *See* ECF No. 2.

**I. Motion to Proceed IFP**

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of

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

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

20 Plaintiff has submitted a copy of his San Diego Sheriff’s Department account  
21 activity statement. *See* ECF No. 2 at 6-8. Based on this statement, the Court finds that  
22 Plaintiff has had an average monthly balance of \$47.92 and an average monthly deposit of  
23 \$100 for the six months prior to filing this action.

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27 <sup>1</sup> 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.  
*Id.* Dec., 2020). The additional \$50 administrative fee does not apply to persons granted leave to proceed IFP.

1           The Court **GRANTS** Plaintiff’s Motion to Proceed IFP (ECF No. 2), and assesses  
2 an initial partial filing fee of \$20.00 pursuant to 28 U.S.C. Section 1915(b)(1)(A). The  
3 Court directs the San Diego County Sheriff, or their designee, to collect this initial filing  
4 fee only if sufficient funds are available in Plaintiff’s account at the time this Order is  
5 executed. *See* 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event shall a prisoner be  
6 prohibited from bringing a civil action or appealing a civil action or criminal judgment for  
7 the reason that the prisoner has no assets and no means by which to pay the initial partial  
8 filing fee.”); *Bruce*, 136 S. Ct. at 630; *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C.  
9 Section 1915(b)(4) acts as a “safety-valve” preventing dismissal of a prisoner’s IFP case  
10 based solely on a “failure to pay . . . due to the lack of funds available to him when payment  
11 is ordered.”). The Court further directs the San Diego County Sheriff, or their designee, to  
12 collect the remaining balance of the filing fees required by 28 U.S.C. Section 1914 and to  
13 forward it to the Clerk of the Court pursuant to the installment payment provisions set forth  
14 in 28 U.S.C. Section 1915(b)(1).

## 15 **II. Screening Pursuant to 28 U.S.C. § 1915(e)(2)**

### 16 **A. Standard of Review**

17           Because he is proceeding IFP, Plaintiff’s Complaint is also subject to sua sponte  
18 review, and mandatory dismissal, if it is “frivolous, malicious, fail[s] to state a claim upon  
19 which relief may be granted, or seek[s] monetary relief from a defendant immune from  
20 such relief.” *See* 28 U.S.C. § 1915(e)(2)(B); *Coleman v. Tollefson*, 135 S. Ct. 1759, 1763  
21 (2015) (pursuant to 28 U.S.C. § 1915(e)(2) “the court shall dismiss the case at any time if  
22 the court determines that—(A) the allegation of poverty is untrue; or (B) the action or  
23 appeal—(i) is frivolous or malicious; [or] (ii) fails to state a claim on which relief may be  
24 granted.”); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (“[S]ection  
25 1915(e) not only permits, but requires a district court to dismiss an in forma pauperis  
26 complaint that fails to state a claim.”); *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001)  
27 (per curiam) (holding that “the provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to  
28 prisoners.”).

1           “The standard for determining whether a plaintiff has failed to state a claim upon  
2 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of  
3 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668 F.3d  
4 1108, 1112 (9th Cir. 2012); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir.  
5 2012) (noting that screening pursuant to § 1915A “incorporates the familiar standard  
6 applied in the context of failure to state a claim under Federal Rule of Civil Procedure  
7 12(b)(6)”). Federal Rules of Civil Procedure 8 and 12(b)(6) require a complaint to “contain  
8 sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its  
9 face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted).

10           **B. Plaintiff’s Allegations**

11           Plaintiff claims to suffer from vision loss in one eye. *See* Compl. at 3. Plaintiff  
12 claims that he has not been “properly treated” and he has “done everything possible to  
13 request the proper attention” but the “matter is still not resolved.” *Id.*

14           In July, Plaintiff suffered a “major attack” while in his cell due to his “severe  
15 COPD.” *Id.* He “asked a deputy if [he] could be taken to medical” but alleges the unnamed  
16 deputy did not “take him seriously.” *Id.* When another staff member came by his cell they  
17 notified medical and Plaintiff was taken to the hospital. *See id.*

18           Finally, Plaintiff claims that there have been “extended periods of lockdown” and a  
19 staff shortage has resulted in more time spent in cells. *Id.* at 4. Plaintiff maintains that this  
20 practice can “lead to many mental health problems.” *Id.* He further claims the staff  
21 shortage has resulted in staff becoming “prone to mistakes and mistreatment.” *Id.*

22           Plaintiff names as Defendants the County of San Diego, the Sheriff of San Diego  
23 County Anthony C. Ray, the Chief Medical Officer Montgomery, and the Facility  
24 Commander Sonia Manning. *See id.* at 2. Plaintiff seeks injunctive relief in the form of  
25 “proper medical care and preventions of long hours on lockdown,” along with  
26 compensatory and punitive damages. *Id.* at 6.

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1           **C.    42 U.S.C. § 1983**

2           Section 1983 is a “vehicle by which plaintiffs can bring federal constitutional and  
3 statutory challenges to actions by state and local officials.” *Anderson v. Warner*, 451 F.3d  
4 1063, 1067 (9th Cir. 2006). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege  
5 two essential elements: (1) that a right secured by the Constitution or laws of the United  
6 States was violated, and (2) that the alleged violation was committed by a person acting  
7 under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Naffe v. Frye*, 789 F.3d  
8 1030, 1035-36 (9th Cir. 2015).

9           **D.    Discussion**

10          The principles underlying the Eighth Amendment’s prohibition on the infliction of  
11 cruel and unusual punishment “establish the government’s obligation to provide medical  
12 care for those whom it is punishing by incarceration.” *Estelle v. Gamble*, 429 U.S. 97, 103  
13 (1976). However, “[i]t is obduracy and wantonness, not inadvertence or error in good faith,  
14 that characterize the conduct prohibited by the Cruel and Unusual Punishments Clause,  
15 whether that conduct occurs in connection with establishing conditions of confinement,  
16 supplying medical needs, or restoring official control over a tumultuous cellblock.”  
17 *Whitley v. Albers*, 475 U.S. 312, 319 (1986). “[A]n inadvertent failure to provide adequate  
18 medical care,” allegations that “a physician has been negligent in diagnosing or treating a  
19 medical condition,” or “medical malpractice” do not state an Eighth Amendment claim.  
20 *Estelle*, 429 U.S. at 105-06 (“Medical malpractice does not become a constitutional  
21 violation merely because the victim is a prisoner.”)

22          “[A] prison official violates the Eighth Amendment only when two requirements are  
23 met. First, the deprivation alleged must be, objectively, ‘sufficiently serious.’” *Farmer v.*  
24 *Brennan*, 511 U.S. 825, 834 (1994), quoting *Wilson*, 501 U.S. at 298. “Although routine  
25 discomfort inherent in the prison setting is inadequate to satisfy the objective prong of an  
26 Eighth Amendment inquiry, ‘those deprivations denying “the minimal civilized measure  
27 of life’s necessities” are sufficiently grave to form the basis of an Eighth Amendment  
28 violation.’” *Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir. 2000), quoting *Wilson v. Seiter*,

1 501 U.S. 294, 298 (1991) and *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981).

2 Second, “a prison official must have a ‘sufficiently culpable state of mind,’” that is,  
3 “one of ‘deliberate indifference’ to inmate health or safety.” *Farmer*, 511 U.S. at 834,  
4 quoting *Wilson*, 501 U.S. at 302-03. The deliberate indifference prong of an Eighth  
5 Amendment violation “is satisfied by showing (a) a purposeful act or failure to respond to  
6 a prisoner’s pain or possible medical need and (b) harm caused by the indifference.” *Jett*  
7 *v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006). “[T]he prison official must not only ‘be  
8 aware of the facts from which the inference could be drawn that a substantial risk of serious  
9 harm exists,’ but that person ‘must also draw the inference.’” *Toguchi v. Chung*, 391 F.3d  
10 1051, 1057 (9th Cir. 2004), quoting *Farmer*, 511 U.S. at 837.

11 It appears that the claims in Plaintiff’s Complaint detail events that occurred while  
12 he was a pre-trial detainee. As a pre-trial detainee, an objective test for deliberate  
13 indifference under the Due Process Clause of the Fourteenth Amendment is applied rather  
14 than a subjective test under the Cruel and Unusual Punishments Clause of the Eighth  
15 Amendment. *See Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979) (noting that the Due  
16 Process Clause of the Fourteenth Amendment is applicable to claims of pre-trial detainees  
17 rather than the Eighth Amendment because “Eighth Amendment scrutiny is appropriate  
18 only after the State has complied with the constitutional guarantees traditionally associated  
19 with criminal prosecutions.”) Under the objective reasonableness standard, Plaintiff must  
20 “prove more than negligence but less than subjective intent - something akin to reckless  
21 disregard.” *Gordon v. County of Orange*, 888 F.3d 1118, 1125 (9th Cir. 2018). To state a  
22 42 U.S.C. § 1983 claim for inadequate medical care or unconstitutional conditions of  
23 confinement, a pre-trial detainee must plausibly allege that: “(i) the defendant made an  
24 intentional decision with respect to the conditions under which the plaintiff was confined;  
25 (ii) those conditions put the plaintiff at substantial risk of suffering serious harm; (iii) the  
26 defendant did not take reasonable available measures to abate that risk, even though a  
27 reasonable official in the circumstances would have appreciated the high degree of risk  
28 involved - making the consequences of the defendant’s conduct obvious; and (iv) by not



1 taking such measures, the defendant caused plaintiff's injuries." *Id.*

## 2 **1. County of San Diego**

3 In order to state a claim against Defendant County of San Diego, Plaintiff must allege  
4 that: (1) he was deprived of a constitutional right, (2) the County has a policy, custom or  
5 practice which amounted to deliberate indifference to that constitutional right; and (3) the  
6 policy, custom or practice was the moving force behind the constitutional violation.  
7 *Dougherty v. City of Covina*, 654 F.3d 892, 900-01 (9th Cir. 2011), citing *Monell v.*  
8 *Department of Social Services*, 436 U.S. 658, 694 (1978) ("We conclude, therefore, that a  
9 local government may not be sued under § 1983 for an injury inflicted solely by its  
10 employees or agents. Instead, it is when execution of a government's policy or custom,  
11 whether made by its lawmakers or by those whose edicts or acts may fairly be said to  
12 represent official policy, inflicts the injury that the government as an entity is responsible  
13 under § 1983.") Municipal liability may be shown when an employee who committed the  
14 constitutional violation was "acting pursuant to an expressly adopted official policy,  
15 longstanding practice or custom, or as a final policymaker." *Thomas v. County of*  
16 *Riverside*, 763 F.3d 1167, 1170 (9th Cir. 2014), citing *Monell*, 436 U.S. at 694. Municipal  
17 liability arising from an alleged failure to train jail staff requires allegations "that 'the need  
18 for more or different training is so obvious, and the inadequacy so likely to result in the  
19 violation of constitutional rights, that the policymakers of the city can reasonably be said  
20 to have been deliberately indifferent to the need.'" *Rodriguez v. City of Los Angeles*, 891  
21 F.3d 776, 802 (9th Cir. 2018), quoting *City of Canton v. Harris*, 489 U.S. 378, 390 (1989).

22 Plaintiff's allegation that inadequate medical care for his vision problems or the  
23 delay in response to his request for treatment for his COPD, by themselves, fails to state a  
24 municipal liability claim because "proof of a single incident of unconstitutional activity,"  
25 or even a series of "isolated or sporadic incidents" will not give rise to § 1983 municipal  
26 liability. *Grant v. County of Los Angeles*, 772 F.3d 608, 618 (9th Cir. 1996); *Monell*, 436  
27 U.S. at 691 (for an unwritten policy or custom to form the basis of a claim, it must be so  
28 "persistent and widespread" that it constitutes a "permanent and well settled" practice).

1 Rather, liability based on custom, practice or policy “must be founded upon practices of  
2 sufficient duration, frequency and consistency that the conduct has become a traditional  
3 method of carrying out policy.” *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996). Facts  
4 regarding the specific nature of the policy, custom or practice are required, as merely  
5 stating the subject to which the policy relates, such as medical care, is insufficient. *See*  
6 *Hernandez v. County of Tulare*, 666 F.3d 631, 637 (9th Cir. 2012) (a complaint with  
7 conclusory allegation of a municipal policy fails to state a claim where it does not “put  
8 forth additional facts regarding the specific nature of this alleged policy, custom or  
9 practice.”)

10 In addition, Plaintiff has alleged that systemic operational deficiencies caused by  
11 understaffing have resulted in the conditions of confinement listed in the Complaint, but  
12 other than the vague allegations relating to his vision care and the one incident that his  
13 COPD treatment was delayed, he has not set forth any factual allegations regarding how  
14 those alleged systemic operational deficiencies have affected him. If Plaintiff wishes to  
15 proceed with a claim against the County of San Diego, he must set forth factual allegations  
16 which identify a San Diego County custom, policy or practice *and* plausibly allege a “direct  
17 causal link between a municipal policy or custom and the alleged constitutional  
18 deprivation.” *Collins v. County of Harker Heights*, 503 U.S. 115, 123 (1992); *Connick v.*  
19 *Thompson*, 563 U.S. 51, 60 (2011) (in order to impose liability on a local government under  
20 § 1983 a plaintiff must plead and prove that an “action pursuant to official municipal  
21 policy” caused their injury.) Otherwise, he must allege a failure to train or that an  
22 “individual who committed the constitutional tort was an official with final policy-making  
23 authority or such an official ratified a subordinate’s unconstitutional decision or action and  
24 the basis for it.” *Rodriguez*, 891 F.3d at 802-03. Even assuming the allegations of systemic  
25 failures are sufficient to allege a custom or policy of the County of San Diego, Plaintiff has  
26 not plausibly alleged that custom or policy has resulted in deliberate indifference because  
27 he has not identified any effect on him, other than a single instance of delay in medical care  
28 for his COPD and unspecified inadequate treatment for his vision problem, which does not



1 plausibly allege a violation of the Eighth or Fourteenth Amendment. *See Grant*, 772 F.3d  
2 at 618 (“proof of a single incident of unconstitutional activity,” or even a series of “isolated  
3 or sporadic incidents” will not give rise to § 1983 municipal liability); *Monell*, 436 U.S. at  
4 691 (for an unwritten policy or custom to form the basis of a claim, it must be so “persistent  
5 and widespread” that it constitutes a “permanent and well settled” practice).

## 6 **2. Individual Defendants**

7 Plaintiff names as the remaining Defendants the Sheriff of San Diego County, the  
8 Chief Medical Director, and the Facility Commander. Plaintiff does not allege any specific  
9 factual allegations as to any of these named Defendants. In order to state a claim under  
10 U.S.C. § 1983 against these Defendants, Plaintiff must allege facts sufficient to show that  
11 each Defendant individually participated in causing a constitutional violation. “[A]  
12 plaintiff must plead that each Government official defendant, through the official’s own  
13 individual actions, has violated the constitution.” *Iqbal*, 556 U.S. at 676-77 (rejecting  
14 argument that “a supervisor’s mere knowledge of his subordinate’s [unconstitutional  
15 actions] amounts to the supervisor’s violating the Constitution.”) “A supervisory official  
16 may be held liable under § 1983 only if ‘there exists either (1) his or her personal  
17 involvement in the constitutional violation, or (2) a sufficient causal connection between  
18 the supervisor’s wrongful conduct and the constitutional violation.’” *Keates v. Koile*, 883  
19 F.3d 1228, 1242-43 (9th Cir. 2018), quoting *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir.  
20 2011). “In a section 1983 claim, a supervisor is liable for the acts of his subordinates if the  
21 supervisor participated in or directed the violations, or knew of the violations of  
22 subordinates and failed to act to prevent them.” *Corales v. Bennett*, 567 F.3d 554, 570 (9th  
23 Cir. 2009) (internal quote marks omitted).

24 Plaintiff must set forth factual allegations identifying individual acts or omissions  
25 by each person related to his medical treatment or conditions of confinement which resulted  
26 in a constitutional violation. *See Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988) (“The  
27 inquiry into causation must be individualized and focus on the duties and responsibilities  
28 of each individual defendant whose acts or omissions are alleged to have caused a

1 constitutional deprivation.”); *Gordon*, 888 F.3d at 1125 (in order to state a § 1983 claim  
2 for inadequate medical care or unconstitutional conditions of confinement a pre-trial  
3 detainee must plausibly allege that: “(i) the defendant made an intentional decision with  
4 respect to the conditions under which the plaintiff was confined; (ii) those conditions put  
5 the plaintiff at substantial risk of suffering serious harm; (iii) the defendant did not take  
6 reasonable available measures to abate that risk, even though a reasonable official in the  
7 circumstances would have appreciated the high degree of risk involved - making the  
8 consequences of the defendant’s conduct obvious; and (iv) by not taking such measures,  
9 the defendant caused plaintiff’s injuries.”) Plaintiff does not identify any individual  
10 Defendant who knew of and deliberately ignored his need for treatment. Although Plaintiff  
11 states he submitted requests for treatment regarding the delay as to his vision care and an  
12 unnamed deputy did not take his medical claims seriously, there are no factual allegations  
13 regarding who those requests were directed to or any other facts which plausibly allege any  
14 individual Defendant was aware of his need for treatment. In addition, allegations of  
15 differences of opinion over proper medical care, inadequate medical treatment, medical  
16 malpractice, or even gross negligence by themselves do not rise to the level of an Eighth  
17 or Fourteenth Amendment violation. *See Farmer*, 511 U.S. at 835 (“[N]egligen(ce) in  
18 diagnosing or treating a medical condition” does not amount to deliberate indifference),  
19 quoting *Estelle*, 429 U.S. at 105-06 (holding that “an inadvertent failure to provide medical  
20 care,” allegations that “a physician has been negligent in diagnosing or treating a medical  
21 condition,” or “medical malpractice” do not state an Eighth Amendment claim as  
22 “[m]edical malpractice does not become a constitutional violation merely because the  
23 victim is a prisoner.”); *Toguchi*, 391 F.3d at 1058 (a disagreement over the necessity or  
24 extent of medical treatment does not show deliberate indifference); *Gordon*, 888 F.3d at  
25 1124-25 (a pre-trial detainee must show more than lack of due care or negligence).

26 If Plaintiff wishes to proceed with his claims against any individual Defendant, he  
27 must provide facts which plausibly allege they “made an intentional decision with respect  
28 to the conditions under which” he was confined, which placed him “at substantial risk of

1 suffering serious harm,” and caused his injuries by failing to “take reasonable available  
2 measures to abate that risk, even though a reasonable official in the circumstances would  
3 have appreciated the high degree of risk involved.” *Gordon*, 888 F.3d at 1125.

4 Accordingly, the Court *sua sponte* dismisses the Complaint for failure to state a  
5 claim pursuant to 28 U.S.C. § 1915(e)(2).

6 **E. Leave to Amend**

7 In light of Plaintiff’s pro se status, the Court grants him leave to amend his pleading  
8 to attempt to sufficiently allege a § 1983 claim if he can and if he wishes to attempt to do  
9 so. *See Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir. 2015) (“A district court should  
10 not dismiss a pro se complaint without leave to amend [pursuant to 28 U.S.C. § 1915(e)(2)]  
11 unless ‘it is absolutely clear that the deficiencies of the complaint could not be cured by  
12 amendment.’”), quoting *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012).

13 **III. Conclusion and Order**

14 For the reasons explained, the Court:

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

17 3. **DIRECTS** the Watch Commander VDF, or their designee, to collect from  
18 Plaintiff’s inmate trust account the \$350 filing fee owed in this case by garnishing monthly  
19 payments in an amount equal to twenty percent (20%) of the preceding month’s income  
20 and forwarding those payments to the Clerk of the Court each time the amount in the  
21 account exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2). **ALL PAYMENTS MUST BE**  
22 **CLEARLY IDENTIFIED BY THE NAME AND NUMBER ASSIGNED TO THIS**  
23 **ACTION.**

24 4. **DIRECTS** the Clerk of the Court to serve a copy of this Order on Watch  
25 Commander, Vista Detention Facility, 325 South Melrose Drive, Vista, California 92081.

26 5. **DISMISSES** Plaintiff’s Complaint for failing to state a claim upon which  
27 relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b), and  
28 **GRANTS** him thirty (30) days leave from the date of this Order in which to file an

1 Amended Complaint which cures all the deficiencies of pleading noted. Plaintiff's  
2 Amended Complaint must be complete by itself without reference to his original pleading.  
3 Defendants not named and any claim not re-alleged in his Amended Complaint will be  
4 considered waived. *See* S.D. Cal. CivLR 15.1; *Hal Roach Studios, Inc. v. Richard Feiner*  
5 *& Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (“[A]n amended pleading supersedes the  
6 original.”); *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (noting that claims  
7 dismissed with leave to amend which are not re-alleged in an amended pleading may be  
8 “considered waived if not repled.”).

9 6. The Clerk of Court is directed to mail Plaintiff a court approved civil rights  
10 complaint form for his use in amending.

11 **IT IS SO ORDERED.**

12 Dated: January 17, 2023



\_\_\_\_\_  
Hon. Cathy Ann Bencivengo  
United States District Judge

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