UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 28 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

AZHAR LAL, Plaintiff-Appellant, v. UNITED STATES OF AMERICA; et al., Defendants-Appellees.	No. 22-16907 D.C. No. 2:20-cv-00349-DAD-DB Eastern District of California, Sacramento ORDER

Before: SILVERMAN, R. NELSON, and BUMATAY, Circuit Judges.

Upon a review of the record and the response to the court's April 11, 2023 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 3), *see* 28 U.S.C. § 1915(a), and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

All other pending motions are denied as moot.

DISMISSED.

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

AZHAR LAL,

Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,

Defendant.

No. 2:20-cv-00349-DAD-DB (PC)

ORDER ADOPTING FINDINGS AND RECOMMENDATIONS AND DISMISSING ACTION

(Doc. No. 40)

Plaintiff Azhar Lal, a state prisoner proceeding *pro se*, initiated this civil action on February 14, 2020. (Doc. No. 1). This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On January 3, 2022, the assigned magistrate judge screened plaintiff's first amended complaint ("FAC") and issued findings and recommendations recommending that this action be dismissed, without leave to amend, due to plaintiff's failure to state a cognizable claim upon which relief may be granted. (Doc. No. 40.) In particular, plaintiff's FAC states that this action is "brought pursuant to 28 U.S.C. § 1350 & 1350(a)," which is the federal Alien Tort Statute ("ATS"), but as the magistrate judge explained in the pending findings and recommendations, the "ATS is a jurisdictional statute creating no new causes of action." (Doc. No. 40 at 5) (citing *Sosa v. Alvarez-Machain*, 542 U.S. 692, 724 (2004)). Plaintiff is adamant that he has not brought this action pursuant to 42 U.S.C. § 1983. Nevertheless, the magistrate judge also concluded that even

if the court were to construe plaintiff's FAC as brought pursuant to 42 U.S.C. § 1983, plaintiff's FAC alleges unlawfulness of his criminal sentence (i.e., the improper collection of evidence and that he received ineffective assistance from his counsel at trial and on appeal), and those claims are not cognizable in a civil rights action brought under § 1983. (Doc. No. 40 at 5–7.) Finally, the magistrate judge concluded that conversion of plaintiff's FAC to a federal habeas petition is inappropriate because plaintiff previously filed successive petitions for federal habeas relief, which were dismissed. (*Id.* at 7–8.)

Those pending findings and recommendations were served on plaintiff and contained notice that any objections thereto were to be filed within twenty-one (21) days after service. (*Id.* at 8–9.) On May 31, 2022, plaintiff filed objections to the findings and recommendations. (Doc. No. 49.)[1]

In his objections, plaintiff does not meaningfully address the analysis in the findings and recommendations. Rather than addressing the finding that his FAC failed to state a cognizable claim for relief, plaintiff cites several cases in which courts addressed whether they had subject matter jurisdiction over an action based on the ATS. (*Id.*) But plaintiff's focus on subject matter jurisdiction is misplaced because the findings and recommendations do not rely on a lack of subject matter jurisdiction as a basis for dismissing this action. For these reasons, plaintiff's objections do not provide any basis upon which to reject the pending findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, including plaintiff's objections, the court concludes that the findings and recommendations are supported by the record and by proper analysis.

Accordingly,

1. The findings and recommendations issued on January 3, 2022 (Doc. No. 40) are adopted in full;

[1] This case was reassigned to the undersigned district judge on August 25, 2022. (Doc. No. 51.)

2. This action is dismissed due to plaintiff's failure to state a cognizable claim for relief; and

3. The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Dated: **November 9, 2022**

Dale A. Drozd
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

AZHAR LAL,

Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,

Defendant.

No. 2:20-cv-00349-DAD-DB (PC)

ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION

(Doc. No. 56)

Plaintiff Azhar Lal is a state prisoner proceeding *pro se* in this civil action. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On November 10, 2022, the undersigned issued an order adopting the assigned magistrate judge's findings and recommendations (Doc. No. 40) and dismissing this action due to plaintiff's failure to state a cognizable claim for relief. (Doc. No. 54.) On November 21, 2022, plaintiff filed the pending motion for reconsideration of the court's November 10, 2022 order. (Doc. No. 56.)

Federal Rule of Civil Procedure 60(b) governs the reconsideration of final orders of the district court. Rule 60(b) permits a district court to relieve a party from a final order or judgment on grounds of: "(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence . . .; (3) fraud . . . of an adverse party; (4) the judgment is void; (5) the judgment has

been satisfied . . . or (6) any other reason justifying relief from the operation of the judgment." Fed. R. Civ. P. 60(b). "A motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law," and it "may *not* be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009) (internal quotations marks and citations omitted) (emphasis in original).

Here, plaintiff's motion does not identify any basis under Rule 60(b) upon which this court should reconsider its order. Plaintiff does not contest the substance of the court's November 10, 2022 order or the court's decision to dismiss this case. Rather, in his motion, plaintiff merely contends that the court should have dismissed his complaint promptly after it was filed on February 14, 2020, instead of waiting nearly three years to dismiss this case. (Doc. No. 56 at 1.) Accordingly, plaintiff has not articulated any basis for the court to reconsider its November 10, 2022 order.

Accordingly,

1. Plaintiff's motion for reconsideration (Doc. No. 56) is denied;
2. This case shall remain closed; and
3. No further filings will be entertained by the court in this closed case.

IT IS SO ORDERED.

Dated: **January 22, 2023**

Dale A. Drozd
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

AZHAR LAL, Plaintiff, v. UNITED STATES OF AMERICA, et al., Defendants.	No. 2:20-cv-00349 JAM DB P ORDER AND FINDINGS AND RECOMMENDATIONS

Plaintiff, a state prisoner proceeding pro se, has filed an action in this court. Plaintiff challenges the circumstances surrounding his extradition and prosecution. Before the court is plaintiff's amended complaint for screening (ECF No. 35), plaintiff's motion to proceed in forma pauperis (ECF No. 12), and plaintiff's renewed motions to appoint counsel, for judicial notice, to expand pages, and change of address (ECF No. 33).

For the reasons stated below, plaintiff's renewed motions will be denied (ECF No. 33). It will be recommended that this action be dismissed with prejudice. Plaintiff's motion to proceed in forma pauperis (ECF No. 12) will be denied as moot.

PLAINTIFF'S RENEWED MOTIONS

On March 3, 2021, plaintiff filed "motion(s) for change of address; to expand tort to 50 pages; for appointment of counsel and/or writ of mandate/prohibition under judicial notice." (ECF No. 29.) The undersigned ruled on these motions on April 2, 2021, denying all but the

change of address motion. (ECF No. 32.) On April 7, 2021, plaintiff renewed his previous motions. (ECF No. 33.) Except for the first three pages, these motions are identical to plaintiff's original motions. (Id.) The additionally three pages state that plaintiff refiled these motions on the grounds that "the district Judge maliciously abused his power, authority and discretion by taking it upon himself to adopt, rule, and then dismiss plaintiff's [motion(s)] with or without the Magistrate Judge's consent." (Id. at 2.) Specifically, plaintiff claims "footnote 1" in the District Judge's March 19, 2021 order dismissed plaintiff's original motions. (Id.)

Plaintiff is incorrect that the District Judge denied plaintiff's motions in the March 19, 2021 order. The order does note the existence of those motions in a footnote but simply states that "[these motions are] not responsive to the magistrate judge's findings and recommendations." (ECF No. 31 at 1.) This footnote simply indicates that these documents did not appear to be intended by the plaintiff as objections to the magistrate judge's findings and recommendations. There is nothing in this order indicating that plaintiff's March 3, 2021 motions had been denied by the District Judge. (See ECF No. 31.) Plaintiff's motions were denied by the undersigned on April 2, 2021. (ECF No. 33.)

Plaintiff's renewed motions are duplicative of his previously denied motions. (See ECF No. 29; ECF No. 33.) They do not appear to present any new facts or legal authority. (See ECF No. 33 at 3-8.) Accordingly, these motions will be denied on the same grounds as the previous motions.

FIRST AMENDED COMPLAINT – SCREENING

I. Legal Standards

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1) & (2).

////

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. See Franklin, 745 F.2d at 1227. Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).

However, in order to survive dismissal for failure to state a claim a complaint must contain more than "a formulaic recitation of the elements of a cause of action;" it must contain factual allegations sufficient "to raise a right to relief above the speculative level." Bell Atlantic, 550 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

The Civil Rights Act under which this action was filed provides as follows:

> Every person who, under color of [state law] . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution . . . shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See Monell v. Dept. of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). "A person 'subjects' another to the deprivation of a constitutional right, within the meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or omits to perform

////

an act which he is legally required to do that causes the deprivation of which complaint is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

Moreover, supervisory personnel are generally not liable under § 1983 for the actions of their employees under a theory of respondeat superior and, therefore, when a named defendant holds a supervisorial position, the causal link between him and the claimed constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory allegations concerning the involvement of official personnel in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

II. Rule 8(a)

a. Background

On May 4, 2020, the court screen plaintiff's initial complaint pursuant to 28 U.S.C. § 1915A(a). (ECF No. 7.) The court found that plaintiff's complaint, which was nearly 780 pages in length including fifty pages of factual allegations, did not comply with Rule 8(a) of the Federal Rules of Civil Procedure. (Id. at 4.) The court dismissed plaintiff's complaint with leave to amend. (Id.) In order to ensure compliance with the Federal Rules of Civil Procedure, the court imposed a limit of twenty-five pages on the amended complaint. (Id.)

In the over one-year period following this order, plaintiff requested and was granted several extensions of time. (See e.g., ECF Nos. 15, 16, 25, 28, 30, 32.) Plaintiff also filed multiple additional motions during this period. (See e.g., ECF Nos. 19, 27, 29, 33.) Plaintiff filed the First Amended Complaint ("FAC") on July 1, 2021. (ECF No. 35.)

b. Discussion

The FAC is approximately 360 pages long including twenty-nine pages of factual allegations which are typed in dense, single-spaced font. (See ECF No. 35 at 1-30.) As such, the FAC does not comply with Local Rule 130(c), which requires that documents be double-spaced. L.R. 130(c). More importantly, the FAC exceeds the page limitation set by the court's May 4, 2020 screening order. (See ECF No. 7 at 4.) This page limitation was set to ensure that the amended complaint complied with Rule 8(a) of the Federal Rule of Civil Procedure. (Id.)

As written, the FAC is neither short nor plain and therefore does not comply with Rule 8. Hatch v. Reliance Ins. Co., 758 F.2d 409 (9th Cir. 1985), cert. denied, 474 U.S. 1021 (1985) (confusing and conclusory complaint exceeding 70 pages with attachments, was subject to dismissal for want of a short and plain statement of the claim); Hollis v. York, No. 1:09-cv-0463 OWW SMS, 2011 WL 3740811 at *1 (E.D. Cal. Aug. 24, 2011) (A 34-page complaint with 34 pages of exhibits "that lists multiple unrelated incidents and contains legal argument" violates Rule 8); Simmons v. Akanno, No. 1:09-cv-0659 GBC PC, 2010 WL 5186690 at *3 (E.D. Cal. Dec. 7, 2010) (A 33-page complaint with 53 pages of exhibits violates Rule 8); Knapp v. Cate, No. 1:08-cv-1779 SKO PC, 2010 WL 3521871 at *2 (E.D. Cal. Sept. 7, 2010) (A 26-page complaint with 60 pages of exhibits violates Rule 8). Accordingly, it will be recommended that this complaint be dismissed.

III. Cause of Action

In the FAC, plaintiff also states that this action is "brought pursuant to 28 U.S.C. § 1350 & 1350(a)." (ECF No. 35.) Plaintiff has previously asserted this in several of his other previous motions as well. (See e.g., ECF No. 29 at 2.) Additionally, in his objections to the court's May 4, 2020 screening order, plaintiff stated that "[p]laintiff did not file an action pursuant to 42 USC 1983 otherwise he would have used the Eastern District Form which is provided for prisoners." (ECF No. 17 at 3) (emphasis in original). However, 28 U.S.C. § 1350, also known as the Alien Tort Statute ("ATS"), does not create a cause of action. Sosa v. Alvarez-Machain, 542 U.S. 692, 713 (2004). "[T]he ATS is a jurisdictional statute creating no new causes of action." Id. at 724. As such, plaintiff cannot bring the present action pursuant to 28 U.S.C. § 1350.

Given that plaintiff asserts that he did not file this action pursuant to § 1983, plaintiff has failed to state a claim for which relief can be granted.

IV. Heck Bar

Though plaintiff states that this action is not brought under § 1983, it appears it should be a § 1983 claim. Even if plaintiff did intend to bring this as a § 1983 claim or amended his complaint to make it a § 1983 claim, this action would be barred under Heck v. Humphrey, 512 U.S. 477 (1994).

A. Legal Standard for Heck Bar

In Heck, the Supreme Court held that "habeas corpus is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release, even though such a claim may come within the literal terms of § 1983." Heck, 512 U.S. at 481. A plaintiff cannot maintain a § 1983 action to recover damages for "harm caused by actions whose unlawfulness would render [his] conviction or sentence invalid" when his sentence and conviction have not previously been reversed, expunged, declared invalid, or called into question upon issuance of a writ of habeas corpus by a federal court. Id. at 486–87. The Supreme Court has extended this holding to civil-rights actions in which the plaintiff seeks declaratory or injunctive relief as well as damages. Edwards v. Balisok, 520 U.S. 641, 648 (1997).

In Smith v. City of Hemet, the Ninth Circuit reiterated: "[I]f a criminal conviction arising out of the same facts stands and is fundamentally inconsistent with the unlawful behavior for which section 1983 damages are sought, the 1983 action must be dismissed." 394 F.3d 689, 695 (9th Cir. 2005) (quotation omitted). "Consequently, 'the relevant question is whether success in a subsequent § 1983 suit would necessarily imply or demonstrate the invalidity of the earlier conviction or sentence.'" Beets v. County of Los Angeles, 669 F.3d 1038, 1042 (9th Cir. 2012) (quoting Heck, 512 U.S. at 487).

B. Analysis

In his complaint, plaintiff states multiple claims whose alleged unlawfulness would have consequences on his criminal sentence. These include claims regarding the improper collection of evidence used at trial (ECF No. 35 at 15-20), the efficacy of plaintiff's counsel at trial (Id. at 20-21), and the efficacy of his counsel on appeal (Id. at 21-22). Further, plaintiff appears to specifically contest whether he could be convicted of the charges against him given the offenses in his extradition. (Id. at 1.)

Plaintiff may not maintain a § 1983 action to recover damages for "harm caused by actions whose unlawfulness would render [his] conviction or sentence invalid" when his sentence and conviction have not previously been reversed, expunged, declared invalid, or called into

question upon issuance of a writ of habeas corpus by a federal court. Heck v. Humphrey, 512 U.S. 477, 486-87 (1994). Thus, in situations where the plaintiff's success on the § 1983 action would necessarily imply the invalidity of his underlying conviction or sentence, he must first demonstrate he has received a "favorable termination" of his criminal conviction through a reversal or similar court action. Id. Plaintiff has not done so. Accordingly, plaintiff's claims are barred by Heck. 512 U.S. at 489 (until and unless favorable termination of the conviction or sentence occurs, no cause of action under section 1983 exists). As such, it will be recommended that the complaint be dismissed as plaintiff has failed to state an appropriate cause of action and even if plaintiff intended to state claims under § 1983 they would be barred.

V. No Leave to Amend

If the court finds that a complaint should be dismissed for failure to state a claim, the court has discretion to dismiss with or without leave to amend. Lopez v. Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000) (en banc). Leave to amend should be granted if it appears possible that the defects in the complaint could be corrected, especially if a plaintiff is pro se. Id. at 1130-31; see also Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) ("A pro se litigant must be given leave to amend his or her complaint, and some notice of its deficiencies, unless it is absolutely clear that the deficiencies of the complaint could not be cured by amendment.") (citing Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987)). However, if, after careful consideration, it is clear that a complaint cannot be cured by amendment, the Court may dismiss without leave to amend. Cato, 70 F.3d at 1005-06.

Plaintiff has not stated an appropriate cause of action for this case. Even if plaintiff intended to bring the present action under § 1983, it would be more appropriately raised, if at all, in a habeas proceeding given that it represents a challenge to his conviction. However, plaintiff previously filed a federal habeas petition challenging his conviction which was denied. Lal v. Roe, 2002 WL 31356505 (9th Cir. 2002). Plaintiff also filed at least one other federal habeas petition which was dismissed as second or successive to plaintiff's previously denied petition. Lal v. Biter, 2:15-cv-01830-EFB (E.D. Cal.) It appears that plaintiff has filed this action in order to seek relief now that he has exhausted the avenue of federal habeas. Given this, as well as the

fact that plaintiff seeks damages, it would not be appropriate to convert the present action to a habeas petition.

The undersigned finds that, as set forth above, plaintiff has failed to state a claim for which relief can be granted. Additionally, plaintiff's potential §1983 claims are barred by Heck. The court finds it inappropriate to convert the complaint to a habeas petition. See Blueford v. Prunty, 108 F.3d 251, 255 (9th Cir. 1997) (treating defective § 1983 claim as a habeas petition could prevent consideration of other habeas claims prisoner may have; best course is dismissal of the § 1983 claims without prejudice) (citing Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir. 1995)). Accordingly, it will be recommended that this action be dismissed with prejudice.

IN FORMA PAUPERIS

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). (ECF No. 7.) However, as it will be recommended that this action be dismissed without leave to amend, plaintiff's motion will be denied as moot. Should these findings and recommendations not be adopted, plaintiff will be permitted to file a renewed motion to proceed in forma pauperis.

CONCLUSION

For the reasons stated above, IT IS HEREBY ORDERED as follows:

1. Plaintiff's motions to appoint counsel, for judicial notice, to expand pages, and for change of address (ECF No. 33) are denied.
2. Plaintiff's motion to proceed in forma pauperis (ECF No. 12) is denied as moot.

Additionally, IT IS RECOMMENDED that this action be dismissed with prejudice for failure to state a claim under 42 U.S.C. § 1983.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within twenty-one days after being served with these findings and recommendations, plaintiff may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file

////

objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: January 3, 2022

DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

DB:14
DB/DB Prisoner Inbox/Civil Rights/S/lal0349.fr.dism

ATTACHMENT - 1

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

AZHAR LAL,

Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

No. 2:20-cv-0349 JAM DB P

ORDER AND FINDINGS AND RECOMMENDATIONS

Plaintiff, a state prisoner proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff claims that his rights were violated in connection with extradition proceedings initiated by the United States. Presently before the court is, plaintiff's October 5, 2020 filing (ECF No. 22) and his motion for reconsideration (ECF No. 23).

I. Notice – Motion for Preliminary Injunction

A. Plaintiff's Allegations

Plaintiff's filing has been captioned as a "Notice." However, the court construes this filing as a motion for injunctive relief because plaintiff requests that the court order his release from custody. He argues he should be released from custody because California State Prison, Los Angeles County (CSP-LAC) is not adequately protecting him from contracting COVID-19. Plaintiff cites statistics from various California Department of Corrections and Rehabilitation ("CDCR") institutions and his underlying health conditions.

B. Legal Standards

A party requesting injunctive relief must show that "he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v. Natural Res. Def. Council, 555 U.S. 7, 20 (2008). The propriety of a request for injunctive relief hinges on a significant threat of irreparable injury that must be imminent in nature. Caribbean Marine Serv. Co. v. Baldridge, 844 F.2d 668, 674 (9th Cir. 1988).

Alternatively, under the so-called sliding scale approach, as long as the plaintiff demonstrates the requisite likelihood of irreparable harm and can show that an injunction is in the public interest, a preliminary injunction may issue so long as serious questions going to the merits of the case are raised and the balance of hardships tips sharply in plaintiff's favor. Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131-36 (9th Cir. 2011) (concluding that the "serious questions" version of the sliding scale test for preliminary injunctions remains viable after Winter).

The principle purpose for preliminary injunctive relief is to preserve the court's power to render a meaningful decision after a trial on the merits. See 9 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2947 (3d ed. 2014). Implicit in this required showing is that the relief awarded is only temporary and there will be a full hearing on the merits of the claims raised in the injunction when the action is brought to trial. Preliminary injunctive relief is not appropriate until the court finds that the plaintiff's complaint presents cognizable claims. See Zepeda v. United States Immigration Serv., 753 F.2d 719, 727 (9th Cir. 1985) ("A federal court may issue an injunction if it has personal jurisdiction over the parties and subject matter jurisdiction over the claims . . . .").

In cases brought by prisoners involving conditions of confinement, any preliminary injunction "must be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm." 18 U.S.C. § 3626(a)(2). Further, an injunction against individuals not parties to an action is strongly disfavored. See Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 110

(1969) ("It is elementary that one is not bound by a judgment . . . resulting from litigation in which he is not designated as a party . . . .").[1] The Supreme Court has cautioned the federal courts not to interfere with day-to-day operations of the prisons, especially those decisions related to security, a task which is best left to prison officials who have particular experience in dealing with prisons and prisoners. See Turner v. Safley, 482 U.S. 78 (1987).

Plaintiff's underlying claim in this action is that his extradition from the United Kingdom violated his rights. His motion for injunctive relief is related to his allegations that current prison conditions violate his Eighth Amendment rights. The motion for injunctive relief should be denied because the court cannot provide relief that is unrelated to plaintiff's underlying claim. See Pacific Radiation Oncology, LLC, v. Queen's Medical Center, 810 F.3d 631, 636 (9th Cir. 2015) (holding there must be a "sufficient nexus between the request in a motion for injunctive relief and the underlying claim itself.").

C. Analysis

Plaintiff's underlying claim in this action appears to be that his rights were violated when he was extradited from the United Kingdom. Plaintiff's original complaint was dismissed for failure to comply with Federal Rule of Civil Procedure 8(a) and he has yet to file an amended complaint. (ECF No. 7.) Thus, the court is not yet able to make any determination regarding the merits of this case because the defendants have not yet filed a responsive pleading. See Barrett v. Belleque, 544 F.3d 1060, 1062 (9th Cir. 2008) (At the pleading stage, the court is not in a position to determine questions of the claim's merit which require submission of evidence, versus only a determination as to whether a claim has been plausibly stated). Moreover, release from custody is not a proper remedy for an Eighth Amendment violation. See Preiser v. Rodriguez,

[1] However, the fact that injunctive relief is sought from one not a party to litigation does not automatically preclude the court from acting. The All Writs Act, 28 U.S.C. § 1651(a) permits the court to issue writs "necessary or appropriate in aid of their jurisdictions and agreeable to the usages and principles of law." The All Writs Act is meant to aid the court in the exercise and preservation of its jurisdiction. Plum Creek Lumber Co. v. Hutton, 608 F.2d 1283, 1289 (9th Cir. 1979). The United States Supreme Court has authorized the use of the All Writs Act in appropriate circumstances against persons or entities not a party to the litigation. United States v. New York Telephone Co., 434 U.S. 159, 174 (1977).

411 U.S. 574, 489 (1973) ("Release from custody is not an available remedy under the Civil Rights Act"). If plaintiff feels that his rights under the Eighth Amendment are being violated, he may file a civil rights claim in the appropriate judicial district after exhausting administrative remedies. However, injunctive relief in this unrelated action is not appropriate.

II. Motion for Reconsideration

Plaintiff has filed a motion for "reconsideration and/or correction." (ECF No. 23.) However, he does not specify which order he challenges. In his motion he argues the court improperly charged him a filing fee and forced jurisdiction pursuant to 42 U.S.C. § 1983 upon him.

Plaintiff appears to believe that the court charged him a filing fee. However, court records indicate that plaintiff's motion to proceed in forma pauperis remains pending. By order dated May 4, 2020, plaintiff was directed to either pay the filing fee or submit a properly completed application to proceed in forma pauperis. (ECF No. 7 at 1-2.) 28 U.S.C. § 1915 provides that inmates may commence a civil action without paying the filing fee in full, but are obligated to make monthly payments in the amount of twenty percent of the preceding month's income credited to the inmate's trust account each time the amount in the account exceeds $10.00. Plaintiff has not yet been granted leave to proceed in forma pauperis nor ordered to pay the filing fee. Accordingly, to the extent his motion sought to challenge a ruling granting his motion to proceed in forma pauperis, it will be denied as premature.

Plaintiff also argues that the court improperly forced him into jurisdiction pursuant to 42 U.S.C. § 1983. The court notes that plaintiff's original complaint was construed as a civil rights claim pursuant to § 1983 because plaintiff sought damages from various government employees for false arrest and prosecution in violation of various constitutional amendments. (See ECF No. 1 at 1.) Section 1983 provides:

> Every person who, under color of [state law] . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution . . . shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

////

42 U.S.C. § 1983. There is nothing contained in the court's screening order indicating that plaintiff cannot bring his original claim. Rather, the court's screening order explains that the complaint was dismissed for failure to comply with Federal Rule of Civil Procedure 8(a)'s requirement that the claim be set forth plainly and succinctly. (ECF No. 7 at 4.) The original complaint spanned more than 750 pages including fifty pages of factual allegations and numerous exhibits. He was directed to file an amended complaint not exceeding twenty-five pages. Accordingly, to the extent plaintiff challenges the court's dismissal of the original complaint, such motion will be denied.

III. Conclusion

For the reasons set forth above, IT IS HEREBY ORDERED that plaintiff's motion for reconsideration (ECF No. 23) is denied.

IT IS HEREBY RECOMMENDED that plaintiff's motion for injunction (ECF No. 22) be denied.

These findings and recommendations will be submitted to the United States District Judge Assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, plaintiff may file written objections with the court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within the specified time may result in a waiver of the right to appeal the district court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: October 19, 2020

DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

AZHAR LAL,

Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

No. 2:20-cv-0349 JAM DB P

ORDER AND FINDINGS AND RECOMMENDATIONS

Plaintiff, a state prisoner proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff claims that his rights were violated in connection with extradition proceedings initiated by the United States. Presently before the court is plaintiff's motion to proceed in forma pauperis (ECF No. 2), motion for disqualification and injunction (ECF No. 6), and his complaint for screening (ECF No. 1).

IN FORMA PAUPERIS

Plaintiff has filed a notice requesting to proceed in forma pauperis. (ECF No. 2.) Plaintiff has not, however, filed an in forma pauperis affidavit or paid the required filing fee of $350.00 plus the $50.00 administrative fee.[1] See 28 U.S.C. §§ 1914(a), 1915(a).

[1] If leave to file in forma pauperis is granted, plaintiff will still be required to pay the filing fee but will be allowed to pay it in installments. Litigants proceeding in forma pauperis are not required to pay the $50.00 administrative fee.

Plaintiff's states that he is proceeding in forma pauperis in a separate action in the United States District Court for the Central District of California. He requests that the court take judicial notice of that case and allow him to proceed in forma pauperis in this action.

Plaintiffs is advised that litigants are required to pay the filing fee or move to proceed in forma pauperis in each action filed. See 28 U.S.C. § 1915. When an inmate wishes to proceed with a civil action without full payment of the filing fee, he must submit an affidavit stating the nature of the action and a certified copy of the trust account statement for the 6-month period immediately preceding the filing of the complaint. Id. Additionally, he may not rely on his prior application because in forma pauperis status is made on a case-by-case basis. Accordingly, plaintiff will be provided the opportunity either to submit the appropriate affidavit in support of a request to proceed in forma pauperis or to submit the required fees totaling $400.00.

SCREENING

I. Legal Standards

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1) & (2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. See Franklin, 745 F.2d at 1227.

Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the

////

defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).

However, in order to survive dismissal for failure to state a claim a complaint must contain more than "a formulaic recitation of the elements of a cause of action;" it must contain factual allegations sufficient "to raise a right to relief above the speculative level." Bell Atlantic, 550 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

The Civil Rights Act under which this action was filed provides as follows:

> Every person who, under color of [state law] . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution . . . shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See Monell v. Dept. of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). "A person 'subjects' another to the deprivation of a constitutional right, within the meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

Moreover, supervisory personnel are generally not liable under § 1983 for the actions of their employees under a theory of respondeat superior and, therefore, when a named defendant holds a supervisorial position, the causal link between him and the claimed constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory allegations concerning the involvement of official personnel in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

////

II. Federal Rules of Civil Procedure – Rule 8(a)

To determine whether a complaint states a claim, the court looks to the pleading standards under Federal Rule of Civil Procedure 8(a). "Rule 8(a)'s simplified pleading standard applies to all civil actions, with limited exceptions," none of which applies here. Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512 (2002). Although the Federal Rules of Civil Procedure adopt a flexible pleading policy, a complaint must give fair notice and state the elements of the claim plainly and succinctly. Jones v. Community Redevelopment Agency of City of Los Angeles, 733 F.2d 646, 649 (9th Cir. 1984).

Plaintiff's complaint is approximately 780 pages long, including fifty pages factual allegations and numerous exhibits. The complaint is neither short nor plain, and therefore does not comply with Rule 8. Hatch v. Reliance Ins. Co., 758 F.2d 409 (9th Cir. 1985), cert. denied, 474 U.S. 1021 (1985) (confusing and conclusory complaint exceeding 70 pages with attachments, was subject to dismissal for want of a short and plain statement of the claim); Hollis v. York, No. 1:09-cv-0463 OWW SMS, 2011 WL 3740811 at *1 (E.D. Cal. Aug. 24, 2011) (A 34-page complaint with 34 pages of exhibits "that lists multiple unrelated incidents and contains legal argument" violates Rule 8); Simmons v. Akanno, No. 1:09-cv-0659 GBC PC, 2010 WL 5186690 at *3 (E.D. Cal. Dec. 7, 2010) (A 33-page complaint with 53 pages of exhibits violates Rule 8); Knapp v. Cate, No. 1:08-cv-1779 SKO PC, 2010 WL 3521871 at *2 (E.D. Cal. Sept. 7, 2010) (A 26-page complaint with 60 pages of exhibits violates Rule 8).

Plaintiff will be granted leave to file an amended complaint that complies with Rule 8(a). Twenty-five pages is more than sufficient for plaintiff to identify his claims and set forth specific facts in support of those claims. Accordingly, the amended complaint may not exceed twenty-five pages in length, and it will be stricken from the record if it violates this page limitation.

III. Amending the Complaint

As stated above, the complaint must be dismissed because plaintiff has failed to show the court has jurisdiction over this action and the complaint fails to comply with Rule 8(a). The court will provide plaintiff with the opportunity to cure the deficiencies identified above.

////

The amended complaint should be brief, but must state what each named defendant did that led to the deprivation of plaintiff's constitutional or other federal rights. Fed. R. Civ. P. 8(a); Ashcroft v. Iqbal, 556 U.S. 662, 667 (2009); Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff must also demonstrate that each defendant personally participated in the deprivation of his rights. Jones, 297 F.3d at 934.

With respect to exhibits, while they are permissible if incorporated by reference, Fed. R. Civ. P. 10(c), they are not necessary in the federal system of notice pleading, Fed. R. Civ. P. 8(a). The court suggests to plaintiff that they should not be submitted where (1) they serve only to confuse the record and burden the court, or (2) they are intended as future evidence. If this action reaches a juncture at which the submission of evidence is appropriate and necessary (e.g., summary judgment or trial), plaintiff will have the opportunity at that time to submit his evidence.

An amended complaint must be complete in itself without reference to any prior pleading. E.D. Cal. R. 220. Once plaintiff files an amended complaint, all prior pleadings are superseded. Therefore, in an amended complaint, as in an original complaint, each claim and the involvement of each defendant must be sufficiently alleged.

MOTION FOR DISQUALIFICATION

Plaintiff has filed a motion requesting that Judge Mendez be disqualified. (ECF No. 6.) In support of his motion, plaintiff states that Judge Mendez was assigned to a previous civil action brought by plaintiff. Plaintiff states, "as a pro se litigant [he] does not know if this Judge could have any personal interests, internal motives or other objectives in the outcome of this action due to his previous assignment and involvement in a similar earlier presented controversy."

"Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding." 28 U.S.C. § 144; see also Pesnell v. Arsenault, 543 F.3d 1038, 1043 (9th Cir. 2008), abrogated on other grounds in Simmons v. Himmelreich, 136 S. Ct. 1843 (2016). Section 144 expressly conditions relief upon

////

the filing of a timely and legally sufficient affidavit. United States v. Axhocar, 581 F.2d 735, 738 (9th Cir. 1978).

A judge must disqualify himself if "his impartiality might be reasonably questioned," 28 U.S.C. § 455(a), or if "he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding," 28 U.S.C. § 455(b)(1). However, the bias must arise "from an extrajudicial source" and cannot be based solely on information gained in the course of the proceedings. Pesnell, 543 F.3d at 1043-44 (citing Liteky v. United States, 510 U.S.

"[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion." Id. at 1044 (quoting Liteky, 510 U.S. at 555). "In and of themselves . . . they cannot possibly show reliance upon an extrajudicial source; and can only in the rarest circumstances evidence the degree of favoritism or antagonism required . . . when no extrajudicial source is involved." Liteky, 510 U.S. at 555. Judicial bias or prejudice formed during current or prior proceedings is sufficient for recusal only when the judge's actions "display a deep-seated favoritism or antagonism that would make fair judgment impossible." Id.; Pesnell, 543 F.3d at 1044. "'[E]xpressions of impatience, dissatisfaction, annoyance, and even anger' are not grounds for establishing bias or impartiality, nor are a judge's efforts at courtroom administration." Pesnell, 543 F.3d at 1044 (quoting Liteky, 510 U.S. at 555-56).

The objective test for determining whether recusal is required is whether a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned. United States v. Johnson, 610 F.3d 1138, 1147 (quotation marks and citation omitted). "Adverse findings do not equate bias." Id. at 1148.

Plaintiff has not provided any arguments that tend to show bias. Prior judicial rulings alone are not sufficient to show bias. Accordingly, the court will deny plaintiff's motion for disqualification.

////

////

////

MOTION FOR PRELIMINARY INJUNCTION

I. Legal Standards

A party requesting preliminary injunctive relief must show that "he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v. Natural Res. Def. Council, 555 U.S. 7, 20 (2008). The propriety of a request for injunctive relief hinges on a significant threat of irreparable injury that must be imminent in nature. Caribbean Marine Serv. Co. v. Baldridge, 844 F.2d 668, 674 (9th Cir. 1988).

Alternatively, under the so-called sliding scale approach, as long as the plaintiff demonstrates the requisite likelihood of irreparable harm and can show that an injunction is in the public interest, a preliminary injunction may issue so long as serious questions going to the merits of the case are raised and the balance of hardships tips sharply in plaintiff's favor. Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131-36 (9th Cir. 2011) (concluding that the "serious questions" version of the sliding scale test for preliminary injunctions remains viable after Winter).

The principle purpose of preliminary injunctive relief is to preserve the court's power to render a meaningful decision after a trial on the merits. See 9 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2947 (3d ed. 2014). Implicit in this required showing is that the relief awarded is only temporary and there will be a full hearing on the merits of the claims raised in the injunction when the action is brought to trial. Preliminary injunctive relief is not appropriate until the court finds that the plaintiff's complaint presents cognizable claims. See Zepeda v. United States Immigration Serv., 753 F.2d 719, 727 (9th Cir. 1985) ("A federal court may issue an injunction if it has personal jurisdiction over the parties and subject matter jurisdiction over the claims . . . .").

In cases brought by prisoners involving conditions of confinement, any preliminary injunction must be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct the harm." 18 U.S.C. § 3626(a)(2). Further, an injunction against individuals not parties to an action is

strongly disfavored. See Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 110 (1969) ("It is elementary that one is not bound by a judgment . . . resulting from litigation in which he is not designated as a party . . . .").[2]

Further, preliminary injunctive relief is not appropriate until the court finds that the plaintiff's complaint presents cognizable claims. See Zepeda v. United States Immigration Serv., 753 F.2d 719, 727 (9th Cir. 1985) ("A federal court may issue an injunction if it has personal jurisdiction over the parties and subject matter jurisdiction over the claim; [however] it may not attempt to determine the rights of persons not before the court.").

II. Analysis

Plaintiff requests that the court issue an injunction directed toward prison officials at California State Prison, Los Angeles County (CSP-LAC) directing them to refrain from losing or damaging plaintiff's legal property. (ECF No. 6.) Plaintiff has not named any prison officials at CSP-LAC as defendants in this action. Thus, plaintiff seeks injunctive relief against individuals who are not named as defendants in this action. This court is unable to issue an order against individuals who are not parties to a suit pending before it. See Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 112 (1969). Accordingly, the court will recommend that plaintiff's motion for injunctive relief be denied.

CONCLUSION

In accordance with the above, IT IS HEREBY ORDERED that:

1. Plaintiff shall submit, within thirty days from the date of this order, an affidavit in support of his request to proceed in forma pauperis on the form provided by the Clerk of Court, or the required fees in the amount of $400.00.

---

[2] However, the fact that injunctive relief is sought from one not a party to litigation does not automatically preclude the court from acting. The All Writs Act, 28 U.S.C. § 16519(a) permits the court to issue writs "necessary or appropriate in aid of their jurisdictions and agreeable to the usages and principles of law." The All Writs Act is meant to aid the court in the exercise and preservation of its jurisdiction. Plum Creek Lumber Co. v. Hutton, 608 F.2d 1283, 1289 (9th Cir. 1979). The United States Supreme Court has authorized the use of the All Writs Act in appropriate circumstances against persons or entities not a party to the underlying litigation. United States v. New York Telephone Co., 434 U.S. 159, 174 (1977).

2. The Clerk of the Court is directed to send plaintiff a new Application to Proceed In Forma Pauperis By a Prisoner.

3. Plaintiff's motion for disqualification (ECF No. 6) is denied.

4. Plaintiff's complaint is dismissed with leave to amend.

5. Plaintiff is granted sixty days from the date of service of this order to file an amended complaint that complies with this order, the Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must bear the docket number assigned to this case and must be labeled "First Amended Complaint."

6. Failure to Comply with this order will result in a recommendation that this action be dismissed.

IT IS HEREBY RECOMMENDED that plaintiff's motion for injunction (ECF No. 6) be denied.

These findings and recommendations will be submitted to the United States District Judge Assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, plaintiff may file written objections with the court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within the specified time may result in a waiver of the right to appeal the district court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: May 2, 2020

DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

DB:12
DB:1/Prisoner/Civil.Rights/lal0349.scrn.pi.fee