

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Hunter v. Reece

No. 2:24-cv-02513 SCR P (E.D. Cal. June 17, 2025) · No. No. 2:24-cv-02513 SCR P · Decided June 18, 2025

SUMMARY

The United States District Court for the Eastern District of California screened Adrian D. Hunter’s 42 U.S.C. § 1983 prisoner civil rights complaint. The court granted leave to proceed in forma pauperis, denied the motions for appointment of counsel without prejudice, and found that the complaint failed to state a claim based on the alleged false rules violation report and grievance-process conduct. Plaintiff was granted thirty days to file an amended complaint.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Sean C. Riordan
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	June 18, 2025
DOCKET	No. 2:24-cv-02513 SCR P
DISPOSITION	other
PROCEDURAL POSTURE	Prisoner civil-rights action under 42 U.S.C. § 1983 screened under 28 U.S.C. § 1915A before service of process.
STANDARD OF REVIEW	Under 28 U.S.C. § 1915A, the court must dismiss a prisoner complaint that is frivolous, malicious, fails to state a claim, or seeks monetary relief from an immune defendant. In assessing failure to state a claim, the court accepts well-pleaded allegations as true and construes them in the plaintiff’s favor, but requires factual content sufficient to make the claim facially plausible.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Adrian D. Hunter v. P. Reece, C. Roberts, D. Hurtado, S. Williams

TOPICS

- prisoners rights
- section 1983
- due process
- pleadings
- civil procedure

PRACTICE AREAS

prisoner civil rights

constitutional law

federal civil procedure

disability accommodations

QUESTIONS PRESENTED

1. Whether the complaint stated a Fourteenth Amendment procedural-due-process claim based on Reece's allegedly false rules-violation report.
2. Whether the complaint stated due-process claims against officials who allegedly mishandled plaintiff's prison grievances and appeals.
3. Whether defendants sued in their official capacities for damages were immune from suit under § 1983.
4. Whether plaintiff demonstrated exceptional circumstances warranting appointment of counsel at the pleading stage.
5. Whether plaintiff should be granted leave to amend the deficient complaint.

HOLDINGS

1. The complaint failed to state a cognizable Fourteenth Amendment procedural-due-process claim against Reece because it did not allege the outcome or punishment resulting from the report, any protected liberty-interest deprivation, or denial of required procedures at a disciplinary hearing.
2. The complaint did not state a constitutional claim based on alleged deficiencies in the prison grievance and appeal process because prisoners have no constitutional right to an effective grievance or appeal procedure.
3. The claims for damages against Roberts, Hurtado, and Williams in their official capacities were barred by Eleventh Amendment immunity.
4. Appointment of counsel was premature and the motions were denied without prejudice because the complaint's deficiencies appeared potentially curable and plaintiff had received assistance from a prison library technical assistant.

KEY QUOTATIONS

“A false allegation against a prisoner does not create a claim so long as ... the prisoner receives procedural due process before there is a deprivation of liberty as a result of false allegations[.]” (Opinion at 4)

“Generally, prisoners do not have a constitutional right to an effective grievance or appeal procedure.” (Opinion at 6)

“Plaintiff’s complaint fails to state a valid claim for relief pursuant to the Due Process Clause of the Fourteenth Amendment against any defendant.” (Opinion at 7)

FACTUAL BACKGROUND

Plaintiff, a state prisoner and ADA worker at the California Medical Facility, alleged that correctional officer P. Reece ordered him out of a prison kitchen area and later issued a rules-violation report accusing him of being out of bounds and misbehaving. Plaintiff alleged that officials denied or mishandled aspects of his requests for

assistance, witnesses, and grievance review. He sought millions of dollars in compensatory and punitive damages for emotional and physical symptoms.

PROCEDURAL HISTORY

Hunter filed a pro se complaint alleging Fourteenth Amendment due-process violations arising from a allegedly false rules-violation report and the handling of related prison grievances. The court granted one in-forma-pauperis application, denied two others as moot, denied motions for appointment of counsel without prejudice, and determined that the complaint failed to state a claim and should not be served. The court granted thirty days to file an amended complaint and warned that failure to do so could result in a recommendation of dismissal under Federal Rule of Civil Procedure 41(b).

DISPOSITION

other

CASES CITED

- Neitzke v. Williams, 490 U.S. 319, 325, 327 (1989)
- Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557, 570 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Erickson v. Pardus, 551 U.S. 89, 93-94 (2007)
- Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)
- Benavidez v. County of San Diego, 993 F.3d 1134, 1144 (9th Cir. 2021)
- Monell v. Department of Social Services, 436 U.S. 658, 694 (1978)
- Rizzo v. Goode, 423 U.S. 362, 370-71 (1976)
- Starr v. Baca, 652 F.3d 1202, 1207-08 (9th Cir. 2011)
- Harper v. Costa, 2009 WL 1684599, at *2-*3 (E.D. Cal. June 16, 2009), aff'd, 393 F. App'x 488 (9th Cir. 2010)
- Muhammad v. Rubia, 2010 WL 1260425, at *3 (N.D. Cal. Mar. 29, 2010), aff'd, 453 F. App'x 751 (9th Cir. 2011)
- Goodwin v. Salagubang, 2019 WL 2026507, at *2 (E.D. Cal. May 8, 2019)
- Butts v. Ibarra, 2020 WL 4676375, at *4 (E.D. Cal. Aug. 12, 2020), report and recommendation adopted, 2020 WL 6020409 (E.D. Cal. Oct. 9, 2020)
- Sandin v. Conner, 515 U.S. 472, 484, 487 (1995)
- Heck v. Humphrey, 512 U.S. 477, 483-87 (1994)
- Nettles v. Grounds, 830 F.3d 922, 929 n.4 (9th Cir. 2016) (en banc)
- Muhammad v. Close, 540 U.S. 749, 754-55 (2004) (per curiam)
- Hebrard v. Nofziger, 90 F.4th 1000, 1006 (9th Cir. 2024)
- Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003)

- Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988)
- Arizonans for Official English v. Arizona, 520 U.S. 43, 69 n.24 (1997)
- Cornel v. Hawaii, 37 F.4th 527, 531 (9th Cir. 2022)
- Mallard v. United States District Court, 490 U.S. 296, 298 (1989)
- Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991)
- Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990)
- Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986)
- Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983)
- Franco-Gonzalez v. Holder, 2013 WL 3674492, at *3-*9 (C.D. Cal. Apr. 23, 2013)
- Turner v. Rogers, 564 U.S. 431, 444-45 (2011)
- Mathews v. Eldridge, 424 U.S. 319 (1976)
- Arnold v. International Business Machines Corp., 637 F.2d 1350, 1355 (9th Cir. 1981)
- Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)
- Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982)
- Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967)
- Lacey v. Maricopa County, 693 F.3d 896, 928 (9th Cir. 2012)

OPINION

1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 FOR THE EASTERN DISTRICT OF
CALIFORNIA 9 10 ADRIAN D. HUNTER, No. 2:24-cv-02513 SCR P 11 Plaintiff, 12 v. ORDER
13 P. REECE, et al., 14 Defendants. 15 16 Plaintiff is a state prisoner proceeding pro se with a
civil rights action under 42 U.S.C. § 17 1983.

Before the court are plaintiff's complaint for screening (ECF No. 1), applications to 18 proceed in
forma pauperis (ECF Nos. 2, 7, 10), and motions to appoint counsel (ECF Nos. 6, 8). 19 IN
FORMA PAUPERIS APPLICATONS 20 Plaintiff has requested leave to proceed without paying
the full filing fee for this action. 21 28 U.S.C. § 1915. Plaintiff has submitted a declaration
showing he cannot afford to pay the entire 22 filing fee.

See 28 U.S.C. § 1915(a)(2). Accordingly, plaintiff's application to proceed in forma 23 pauperis is
granted.¹ This means plaintiff is allowed to pay the \$350.00 filing fee in monthly 24 installments
taken from his trust account rather than in one lump sum. 28 U.S.C. §§ 1914(a).

As 25 part of this order, the prison is required to remove an initial partial filing fee from plaintiff's
trust 26 account. See 28 U.S.C. § 1915(b)(1). A separate order directed to CDCR requires monthly
27 1 The court will grant ECF No. 7 and deny ECF No. 2 as moot. Plaintiff's more recent 28
application, ECF No. 10, is not on the correct form and will also be denied as moot.

1 payments of twenty percent of the prior month's income to be taken from plaintiff's trust
account. 2 These payments will be taken until the \$350 filing fee is paid in full. See 28 U.S.C. §

1915(b)(2). 3 LEGAL STANDARDS 4 I. Statutory Screening 5 The court is required to screen complaints brought by prisoners seeking relief against “a 6 governmental entity or officer or employee of a governmental entity.” 28 U.S.C. § 1915A(a).

In 7 performing this screening function, the court must dismiss any claim that “(1) is frivolous, 8 malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief 9 from a defendant who is immune from such relief.” Id. § 1915A(b). A claim is legally frivolous 10 when it lacks an arguable basis either in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 325 11 (1989).

The court may dismiss a claim as frivolous if it is based on an indisputably meritless 12 legal theory or factual contentions that are baseless. *Neitzke*, 490 U.S. at 327. The critical 13 inquiry is whether a constitutional claim, however inartfully pleaded, has an arguable legal and 14 factual basis. See *Jackson v. Arizona*, 885 F.2d 639, 640 (9th Cir. 1989).

15 In order to avoid dismissal for failure to state a claim a complaint must contain more than 16 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause 17 of action.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-557 (2007).

In other words, 18 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory 19 statements do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A claim upon which the 20 court can grant relief has facial plausibility. *Twombly*, 550 U.S. at 570. “A claim has facial 21 plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable 22 inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678.

When 23 considering whether a complaint states a claim, the court must accept the allegations as true, 24 *Erickson v. Pardus*, 551 U.S. 89, 93-94 (2007), and construe the complaint in the light most 25 favorable to the plaintiff, *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). 26 II. 42 U.S.C. § 1983 27 A plaintiff may bring an action under 42 U.S.C. § 1983 to redress violations of “rights, 28 privileges, or immunities secured by the Constitution and [federal] laws” by a person or entity, 1 including a municipality, acting under the color of state law.

42 U.S.C. § 1983. To state a claim 2 under 42 U.S.C. § 1983, a plaintiff must show that (1) a defendant acting under color of state law 3 (2) deprived plaintiff of rights secured by the Constitution or federal statutes. *Benavidez v. 4 County of San Diego*, 993 F.3d 1134, 1144 (9th Cir. 2021). 5 III. Linkage 6 Section 1983 requires that there be an actual connection or link between the actions of the 7 defendants and the deprivation alleged to have been suffered by plaintiff.

See *Monell v. 8 Department of Social Services*, 436 U.S. 658, 694 (1978); *Rizzo v. Goode*, 423 U.S. 362, 370-71 9 (1976). Plaintiff may demonstrate that connection by alleging facts showing:

(1) a defendant's 10 "personal involvement in the constitutional deprivation," or (2) that a defendant set "in motion a 11 series of acts by others" or "knowingly refus[ed] to terminate a series of acts by others, which 12 [the defendant] knew or reasonably should have known would cause others to inflict a 13 constitutional injury." *Starr v. Baca*, 652 F.3d 1202, 1207-08 (9th Cir.

2011) (quotation marks 14 and citation omitted). 15 PLAINTIFF'S COMPLAINT 16 I. Factual Allegations of the Complaint 17 Plaintiff is incarcerated at the California Medical Facility ("CMF") in Vacaville. His 18 complaint names four defendants: (1) P. Reece, correctional officer ("C/O"), sued in his 19 individual capacity; (2) Sgt. C. Roberts, sued in his official capacity; (3) D. Hurtado, ADA 20 Coordinator, sued in his official capacity; and (4) S. Williams, Chief Deputy Warden, sued in her 21 official capacity.

(ECF No. 1 at 1-4.) 22 On August 4, 2023, plaintiff was working as an ADA worker in the CMF's PTU kitchen. 23 (ECF No. 1 at 6.) Defendant Reece approached plaintiff and asked why he was there. Plaintiff 24 said he was assisting inmate #G1636. Defendant Reece asked for plaintiff's ID and told him to 25 leave and that he would receive a 115 if he came back. Plaintiff left the area and never worked 26 there again.

(Id.) Defendant Reece nonetheless initiated a rules violation report ("RVR") against 27 Plaintiff for the encounter. Plaintiff filed a grievance challenging the RVR. (Id.) 28 During the grievance process, plaintiff's "Due Process rights were violated." (ECF No. 1 1 at 6.) Defendant Reese falsified the RVR report against plaintiff by accusing plaintiff of being 2 out of bounds in an area he didn't belong and misbehaving on the job as an ADA worker.

(Id.) 3 Defendant Roberts also violated plaintiff's due process rights on September 6, 2023, during the 4 interview for the 1824 report.² (Id.) Plaintiff asked defendant Roberts for a staff assistant, which 5 is his right as a developmentally disabled incarcerated person. Defendant Roberts denied plaintiff 6 a continuance of the interview so he could obtain a staff assistant to help him understand.

(Id.) 7 Defendant Hurtado ignored the fact plaintiff had witnesses to the encounter with 8 defendant Reece. (ECF No. 1 at 6.) He did not ask any questions or have any forms of 9 communication with any of plaintiff's witnesses. Defendant Hurtado also did not send any of 10 plaintiff's grievances to central screening for review. (Id. at 6-7.) Defendant Williams denied 11 plaintiff's appeal.

She didn't review plaintiff's evidence and did not interview any of his 12 witnesses. (Id.) 13 As a result of defendants' actions, plaintiff suffered emotional distress, mental anguish, 14 backpain, sleeplessness, and anxiety. Plaintiff seeks \$4 million in "money damages," \$3 million 15 in compensatory damages, and \$3 million in punitive damages. (ECF No. 1 at 7.)

16 DISCUSSION 17 I. Fourteenth Amendment Due Process 18 The court construes plaintiff's complaint as alleging Fourteenth Amendment procedural 19 due process violations against defendants during either the RVR or grievance processes. (See 20 ECF No. 1 at 6.) 21 A. Defendant Reece 22 Plaintiff alleges defendant Reece issued an RVR that falsely accused plaintiff of being 23 "out of bound[s]" in an area he didn't belong and misbehaving on the job as an ADA worker.

24 (ECF No. 1 at 6.) 25 i. False RVR 26 Courts have generally found that the issuance of a false RVR does not, in and of itself, 27 2 A CDCR 1824 form is used by disabled individuals within the California prison system to 28 request a reasonable accommodation. 1 violate due process. See Harper v. Costa, 2009 WL 1684599, at *2-3 (E.D. Cal., June 16, 2009), 2 aff'd, 393 Fed.

App'x. 488 (9th Cir. 2010) ("Although the Ninth Circuit has not directly 3 addressed this issue in a published opinion, district courts throughout California... have 4 determined that a prisoner's allegation that prison officials issued a false disciplinary charge 5 against him fails to state a cognizable claim for relief under § 1983."); see also Muhammad v. 6 Rubia, 2010 WL 1260425, at *3 (N.D.

Cal., Mar. 29, 2010), aff'd, 453 Fed. App'x 751 (9th Cir. 7 2011) ("[A] prisoner has no constitutionally guaranteed immunity from being falsely or wrongly 8 accused of conduct which may result in the deprivation of a protected liberty interest." (citations 9 omitted)). "These courts have reasoned that the focus of the analysis is on the process required 10 by law and have thus concluded that false accusations do not violate the due process clause of the 11 Fourteenth Amendment so long as the inmate is afforded the procedural protections required by 12 federal law at the disciplinary hearing." Goodwin v. Salagubang, No. 2:18-cv-0363 JAM DMC, 13 2019 WL 2026507, at *2 (E.D.

Cal. May 8, 2019) (collecting cases); see also Muhammad, 2010 14 WL 12604235, at *3 ("As long as a prisoner is afforded procedural due process in the disciplinary 15 hearing, allegations of a fabricated charge fail to state a claim under § 1983"). 16 A fellow judge of this District reviewed the false RVR line of cases and succinctly 17 restated the thrust of its procedural due process framework as follows: "A false allegation against 18 a prisoner does not create a claim so long as ... the prisoner receives procedural due process 19 before there is a deprivation of liberty as a result of false allegations[.]" Butts v. Ibarra, No. 1:20- 20 cv-0273 EPG PC, 2020 WL 4676375, at *4 (E.D.

Cal. Aug. 12, 2020), report and 21 recommendation adopted, No. 1:20-cv-0273 AWI EPG PC, 2020 WL 6020409 (E.D. Cal. Oct. 9, 22 2020) (emphasis in original). A deprivation implicates a protected liberty interest where (1) the 23 conditions of confinement impose an "atypical and significant hardship on the inmate in relation 24 to the ordinary incidents of prison life," or (2) the

state action “will inevitably affect the duration 25 of [a] sentence.” *Sandin v. Conner*, 515 U.S. 472, 484, 487 (1995).

26 Turning to plaintiff’s complaint, the undersigned finds that it does not state a cognizable 27 Fourteenth Amendment procedural due process claim against defendant Reece. The complaint 28 discusses procedural violations during plaintiff’s grievance appeal of the allegedly false RVR (see 1 ECF No. 1 at 6) but does not allege any such violations during a disciplinary hearing on the RVR 2 itself.

Nor does the complaint describe any penalties stemming from the RVR, or whether a 3 formal disciplinary hearing on the RVR even occurred. 4 Accordingly, the complaint fails to state a procedural due process claim against defendant 5 Reece based on his alleged falsified RVR.

The court will grant plaintiff an opportunity to amend 6 his complaint and explain the RVR process and outcome of the RVR issued by defendant Reece. 7 The amended complaint should address whether a formal disciplinary hearing occurred and, if so, 8 whether prison officials provided procedural protections during the hearing and whether the 9 hearing resulted in punishment that implicated plaintiff’s protected liberty interests.

10 ii. Potential Heck-Bar 11 Plaintiff’s challenge to the RVR issued by defendant Reece may also implicate *Heck v. 12 Humphrey*, 512 U.S. 477 (1994).³ There, the U.S. Supreme Court held that to recover damages 13 for “harm caused by actions whose unlawfulness would render a conviction or sentence invalid,” 14 a § 1983 plaintiff must prove that the conviction or sentence was reversed, expunged, or 15 otherwise invalidated.

Id. at 486-87. This “favorable termination rule” may also apply to prison 16 disciplinary proceedings, including RVR hearings. See *Nettles v Grounds*, 830 F.3d 922, 929 n.4 17 (9th Cir. 2016) (en banc) (Heck applies to “administrative determinations,” including prison 18 disciplinary actions, “that ‘necessarily’ have an effect on ‘the duration of time to be served.’” 19 (quoting *Muhammad v. Close*, 540 U.S. 749, 754-55 (2004) (per curiam))).

20 Because plaintiff’s complaint does not detail any RVR proceedings or their outcomes, the 21 undersigned cannot determine at this stage whether plaintiff’s claim against defendant Reece is 22 barred by Heck. If plaintiff amends his complaint to challenge an RVR outcome that would 23 necessarily imply the invalidity of his conviction or sentence, plaintiff must establish that the 24 underlying sentence or conviction has been invalidated on appeal, by a habeas petition, or through 25 some similar proceeding.

See *Heck*, 512 U.S. at 483–87. 26 27 3 Although Heck is an affirmative defense, the Prison Litigation Reform Act permits district courts to sua sponte evaluate whether a claim is Heck-barred. See *Hebrard v. Nofziger*, 90 F.4th 28 1000, 1006 (9th Cir. 2024) (citing 28 U.S.C. § 1915(e)(2)(B)(ii)). 1 B. Official Capacity Defendants 2 Plaintiff’s complaint also alleges that

defendants Roberts, Hurtado, and Williams, in their 3 respective official capacities, violated his due process rights during the grievance process.

(ECF 4 No. 1 at 6.) 5 Generally, prisoners do not have a constitutional right to an effective grievance or appeal 6 procedure. See *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003); *Mann v. Adams*, 855 F.2d 7 639, 640 (9th Cir. 1988). Regardless, because all three defendants are state officials sued in their 8 official capacities for damages (see *id.* at 2, 4), they are immune from suit under § 1983.

See 9 *Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 69 n.24 (1997) (“State officers in their official 10 capacities, like States themselves, are not amenable to suit for damages under § 1983.”). 11 However, because it appears that plaintiff may be able to plead each defendant’s personal 12 participation in handling his grievance, the court will grant plaintiff leave to amend.

See *Cornel 13 v. Hawaii*, 37 F.4th 527, 531 (9th Cir. 2022) (“[P]laintiffs may seek damages against a state 14 official in his personal capacity.”). 15 II. Failure to State a Claim 16 Having conducted the screening required by 28 U.S.C. § 1915A, the court finds that the 17 complaint does not state a valid claim for relief pursuant to the Due Process Clause of the 18 Fourteenth Amendment against any defendant.

Plaintiff’s claim against defendant Reece fails to 19 state a claim because the complaint does allege any punishment from the allegedly false RVR that 20 impacted his conditions of confinement or affected the duration of his sentence. Nor does the 21 complaint identify any procedural protections denied to plaintiff during the RVR disciplinary 22 proceeding.

Further, because defendants Roberts, Hurtado, and Williams are state officials sued 23 in their official capacities for damages, plaintiff’s due process claims against them are barred by 24 the Eleventh Amendment. Because of these defects, the court will not order the complaint to be 25 served on defendants. 26 Plaintiff may try to fix these problems by filing an amended complaint.

In deciding 27 whether to file an amended complaint, plaintiff is provided with the relevant legal standards 28 governing amended complaints. See Attachment A. Plaintiff is further advised to review the 1 relevant legal standards discussed above concerning his substantive legal claims. 2
III. Plain Language Summary for Party Proceeding Without a Lawyer 3 Your complaint will not be served because the facts alleged are not enough to state a 4 claim.

Specifically, you did not explain the outcome of the allegedly false RVR issued by 5 defendant Reece, and defendants Roberts, Hurtado, and William cannot be sued for money 6 damages in their official capacities. You are being given a chance to fix these problems by filing 7 an amended complaint. If you file an amended complaint, pay particular attention to the legal 8 standards attached to this order.

Be sure to provide facts that show exactly what each defendant 9 did to violate your rights. Any claims and information not in the amended complaint will not 10 be considered. 11 MOTIONS FOR THE APPOINTMENT OF COUNSEL 12 Plaintiff has requested the appointment of counsel. (ECF Nos. 6, 8.)

In his motions, he 13 explains that he needs help understanding the legal process and proceeding with his case because 14 of his cognitive disabilities and hearing impairments. (Id.) Those motions consist of “Inmate 15 Request for Assistance from the Court” forms that indicate a CDCR Library Technical Assistant 16 (“LTA”) assisted plaintiff in the completion of those forms.

17 District courts lack authority under 28 U.S.C. § 1915 to require counsel to represent 18 indigent prisoners in section 1983 cases. *Mallard v. United States Dist. Court*, 490 U.S. 296, 298 19 (1989). In exceptional circumstances, the court may request that an attorney voluntarily represent 20 such a plaintiff. See 28 U.S.C. § 1915(e)(1); *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir.

21 1991); *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990). The test for exceptional 22 circumstances requires the court to evaluate the plaintiff’s likelihood of success on the merits and 23 the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal 24 issues involved. See *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir.

1986); *Weygandt v. 25 Look*, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances common to most prisoners, such as lack 26 of legal education and limited law library access, do not establish exceptional circumstances that 27 would warrant a request for voluntary assistance of counsel. *Wood*, 900 F.2d at 1335; *Riley v. 28 Franke*, 340 F. Supp. 3d 783, 787 (E.D. Wis. 2018).

1 Beyond § 1915(e)(1), other sources of law may implicate a request for counsel. For 2 example, appointed counsel may be required in a civil proceeding as an accommodation for a 3 litigant who is disabled. See *Franco-Gonzalez v. Holder*, No. 10-cv-2211 DMG (DTBx), 2013 4 WL 3674492, at *3-*9 (C.D. Cal. Apr. 23, 2013) (granting summary judgment to class of 5 mentally disabled individuals in civil immigration proceedings on their request for appointed 6 representatives under Section 504 of the Rehabilitation Act).

Due process may also require 7 appointment of counsel in certain proceedings. See *Turner v. Rogers*, 564 U.S. 431, 444-45 8 (2011) (analyzing request for appointment of counsel in civil proceeding under the *Mathews v. 9 Eldridge*, 424 U.S. 319 (1976), procedural due process framework). 10 It is not lost on the undersigned that an LTA—a CDCR staff member whose function is to 11 aid individuals with disabilities—has already assisted plaintiff with his initial complaint and his 12 requests for appointment of counsel.

The LTA’s assistance suggests two possibilities, which exist 13 in some tension: (1) the possibility that plaintiff will not be able to prosecute this action without 14 counsel, and (2) the concurrent

possibility that existing accommodations available to him may be 15 sufficient to protect his rights.

As a result, appointment of counsel may become necessary at 16 some point to ensure that plaintiff can properly frame and prosecute his claims. 17 However, the appointment of counsel is premature at this precise stage of the proceedings. 18 The deficiencies in plaintiff's complaint described above appear to be fixable. If plaintiff is able 19 to address the defects in his complaint with the further assistance of an LTA, appointed counsel 20 may be unnecessary at the pleading stage of this case.

Plaintiff's motions will be denied without 21 prejudice, which means that plaintiff may again seek the appointment of counsel in the future. If 22 plaintiff chooses to amend, the undersigned advises him to consider the standards attached to this 23 order and to do his best in drafting an amended complaint that states cognizable claims for relief. 24 CONCLUSION 25 In accordance with the above, IT IS HEREBY ORDERED that: 26 1.

Plaintiff's application to proceed in forma pauperis (ECF No. 7) is GRANTED. 27 2. Plaintiff's other applications to proceed in forma pauperis (ECF Nos. 2, 10) are 28 DENIED as moot. 1 3. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff 2 || is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. 3 || § 1915(b) (1).

All fees shall be collected and paid in accordance with this court's order to the 4 || appropriate agency filed concurrently herewith. 5 4. Plaintiffs motions for the appointment of counsel (ECF Nos. 6, 8) are DENIED 6 || without prejudice. 7 5. Plaintiffs complaint fails to state a claim upon which relief may be granted, see 28 8 || U.S.C. § 1915A, and will not be served.

9 6. Within thirty (30) days from the date of service of this order, plaintiff may file an 10 | amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules 11 | of Civil Procedure, and the Local Rules of Practice.

The amended complaint must bear the 12 | docket number assigned this case, 2:24-cv-02513 SCR P, and must be labeled "First Amended 13 | Complaint." 14 7. Failure to file an amended complaint in accordance with this order will result in a 15 || recommendation that this action be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil 16 | Procedure. 17 8.

The Clerk of the Court is directed to send plaintiff a copy of the prisoner complaint 18 | form used in this district. 19 | DATED: June 17, 2025 emda 71 SEAN C. RIORDAN 9 UNITED STATES MAGISTRATE JUDGE 23 24 25 26 27 28 10 1 ATTACHMENT A 2 This Attachment provides, for informational purposes only, the legal standards that may 3 apply to your claims for relief.

Pay particular attention to these standards if you choose to file an amended complaint. 5 I. Legal Standards Governing Amended Complaints 6 If plaintiff chooses to file an amended complaint, he must demonstrate how the conditions 7 about which he complains resulted in a deprivation of his constitutional rights. *Rizzo v. Goode*, 8 423 U.S. 362, 370-71 (1976).

Also, the complaint must specifically identify how each named 9 defendant is involved. *Arnold v. Int'l Bus. Machs. Corp.*, 637 F.2d 1350, 1355 (9th Cir. 1981). 10 There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or 11 connection between a defendant's actions and the claimed deprivation. *Id.*; *Johnson v. Duffy*, 12 588 F.2d 740, 743 (9th Cir.

1978). Furthermore, "[v]ague and conclusory allegations of official 13 participation in civil rights violations are not sufficient." *Ivey v. Bd. of Regents*, 673 F.2d 266, 14 268 (9th Cir. 1982) (citations omitted). 15 Plaintiff is also informed that the court cannot refer to a prior pleading in order to make 16 his amended complaint complete. See Local Rule 220.

This is because, as a general rule, an 17 amended complaint replaces the prior complaint. *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967) 18 (citations omitted), overruled in part by *Lacey v. Maricopa County*, 693 F.3d 896, 928 (9th Cir. 19 2012).

Therefore, in an amended complaint, every claim and every defendant must be included. 20 21 22 23 24 25 26 27 28