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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DAVID B. TURNER, Jr.,
CDCR #G-30643,
Booking No. 13719099,

Plaintiff,

vs.

SAN DIEGO COUNTY;
SAN DIEGO COUNTY SHERIFF;
WILLIAM D. GORE;
VISTA DETENTION,

Defendants.

Civil No. 14cv1965 LAB (WVG)

ORDER:

**(1) GRANTING PLAINTIFF'S
MOTION TO PROCEED
IN FORMA PAUPERIS
(ECF Doc. No. 4)**

AND

**(2) SUA SPONTE DISMISSING
COMPLAINT FOR FAILING TO
STATE A CLAIM AND AS
FRIVOLOUS PURSUANT TO
28 U.S.C. § 1915(e)(2)(B)(ii)
AND 28 U.S.C. § 1915A(b)(1)**

David B. Turner, Jr., (“Plaintiff”), a former state prisoner serving his sentence at the San Diego County Sheriff’s Department Vista Detention Facility (“VDF”), in Vista, California,¹ initiated this civil rights action pursuant to 42 U.S.C. § 1983 on August 21, 2014 (ECF Doc. No. 1).

¹ On September 22, 2014, Plaintiff filed a Notice of Change of Address in *Turner v. San Diego Central Jail, et al.*, S.D. Cal. Civil Case No. 13cv1133 WQH (BGS) (Doc. No. 68), indicating his anticipated release from state custody on September 29, 2014.

1 **I.**

2 **Procedural History**

3 Plaintiff did not prepay the \$400 civil filing fee required to commence a civil
4 action by 28 U.S.C. § 1914(a) at the time of filing; instead he filed a Motion to Proceed
5 *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) (ECF Doc. No. 2).

6 On November 7, 2014, the Court denied Plaintiff’s Motion to Proceed IFP,
7 however, because it failed to adequately describe his post-incarceration income, assets,
8 or expenses. *See* Nov. 7, 2014 Order (ECF Doc. No. 3) at 6-7. Plaintiff was granted
9 thirty days in which to file a supplemental IFP motion which “include[d] an affidavit
10 documenting his post-release income, assets, and expenses,” and demonstrated his current
11 inability to pay the filing fees required by 28 U.S.C. § 1914(a). *Id.* at 7-8. Plaintiff was
12 further cautioned that should he elect to proceed by filing a supplemental Motion to
13 Proceed IFP, his Complaint would be subject to the sua sponte screening required by 28
14 U.S.C. § 1915A, and immediately dismissed if it was found frivolous or malicious, if it
15 failed to state a claim, or if it sought damages from immune governmental defendants.
16 *Id.* at 6-7 & n.5.

17 Plaintiff has since filed a supplemental Motion to Proceed IFP in compliance with
18 the Court’s November 7, 2014 Order (ECF Doc. No. 4).

19 **II.**

20 **Supplemental Motion to Proceed IFP**

21 As Plaintiff knows, all parties instituting any civil action, suit, or proceeding in a
22 district court of the United States, except an application for writ of habeas corpus, must
23 pay a filing fee of \$400. *See* 28 U.S.C. § 1914(a). An action may proceed despite a
24 plaintiff’s failure to prepay the entire fee only if he is granted leave to proceed IFP
25 pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir.
26 1999). A federal court may authorize the commencement of a civil action without
27 prepayment of fees if a person submits an affidavit, including a statement of all assets he
28 possesses, that shows he is unable to pay the required filing fee. *See* 28 U.S.C. § 1915(a).

1 The determination of indigency falls within the court’s discretion. *See Cal. Men’s*
2 *Colony v. Rowland*, 939 F.2d 854, 858 (9th Cir. 1991), *rev’d on other grounds*, 506 U.S.
3 194 (1993). *See also Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948)
4 (noting that while a civil litigant need not “be absolutely destitute to enjoy the benefit of
5 the [28 U.S.C. § 1915],” his affidavit must nevertheless demonstrate to the court that he
6 cannot, because of poverty, pay or give security for the costs of suit “and still be able to
7 provide himself and dependents with the necessities of life.”) (internal quotations
8 omitted). The facts as to the affiant’s poverty must be stated with “some particularity,
9 definiteness, and certainty,” however. *United States v. McQuade*, 647 F.2d 938, 940 (9th
10 Cir. 1981) (citation omitted).

11 Here, the Court finds that Plaintiff has now submitted an affidavit sufficient to
12 satisfy both 28 U.S.C. § 1915(a)(1) and S.D. CAL. CIVLR 3.2. Plaintiff claims he is a
13 “poor person” and has “no way to pay the full filing fee for this case.” *See* Pl.’s Mot.
14 (ECF Doc. No. 4) at 1. He further claims to receive a monthly income of only \$194 in
15 food stamps and \$307 in cash relief, and has attached photocopies of his monthly Notice
16 of Benefits under the County of San Diego’s General Relief and CalFresh Benefits
17 Program. Plaintiff’s General Relief Notice also indicates he has been “found
18 unemployable through 02/28/2015.” *Id.* at 2.

19 From this supplemental accounting, the Court finds Plaintiff has insufficient
20 available funds from which to pay any filing fees at this time. *See* 28 U.S.C.
21 § 1915(b)(4). Therefore, the Court **GRANTS** Plaintiff’s Motion to Proceed IFP (ECF
22 Doc. No. 4).

23 III.

24 **Sua Sponte Screening per 28 U.S.C. § 1915(e)(2) and § 1915A(b)**

25 **A. Standard**

26 As Plaintiff is also aware, the Prison Litigation Reform Act’s amendments to 28
27 U.S.C. § 1915 also require that the Court review complaints filed by all persons
28 proceeding IFP and by those, like Plaintiff, who file while “incarcerated or detained in

1 any facility [and] accused of, sentenced for, or adjudicated delinquent for, violations of
2 criminal law or the terms or conditions of parole, probation, pretrial release, or
3 diversionary program,” “as soon as practicable after docketing.” *See* 28 U.S.C.
4 §§ 1915(e)(2) and 1915A(b). Under these statutes, the Court must sua sponte dismiss
5 complaints, or any portions thereof, which are frivolous, malicious, fail to state a claim,
6 or which seek damages from defendants who are immune. *See* 28 U.S.C.
7 §§ 1915(e)(2)(B) and 1915A; *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en
8 banc) (§ 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010)
9 (discussing 28 U.S.C. § 1915A(b)).

10 Every complaint must contain “a short and plain statement of the claim showing
11 that the pleader is entitled to relief.” FED.R.CIV.P. 8(a)(2). Detailed factual allegations
12 are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported
13 by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
14 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “When there
15 are well-pleaded factual allegations, a court should assume their veracity, and then
16 determine whether they plausibly give rise to an entitlement to relief.” *Id.* at 679.
17 “Determining whether a complaint states a plausible claim for relief [is] . . . a context-
18 specific task that requires the reviewing court to draw on its judicial experience and
19 common sense.” *Id.* The “mere possibility of misconduct” falls short of meeting this
20 plausibility standard. *Id.*; *see also Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th
21 Cir. 2009).

22 While a plaintiff’s factual allegations are taken as true, courts “are not required to
23 indulge unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th
24 Cir. 2009) (internal quotation marks and citation omitted). Indeed, while courts “have
25 an obligation where the petitioner is pro se, particularly in civil rights cases, to construe
26 the pleadings liberally and to afford the petitioner the benefit of any doubt,” *Hebbe v.*
27 *Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026,
28 1027 n.1 (9th Cir. 1985)), it may not “supply essential elements of claims that were not

1 initially pled.” *Ivey v. Board of Regents of the University of Alaska*, 673 F.2d 266, 268
2 (9th Cir. 1982). Even before *Iqbal*, “[v]ague and conclusory allegations of official
3 participation in civil rights violations” were not “sufficient to withstand a motion to
4 dismiss.” *Id.*

5 **B. Plaintiff’s Complaint**

6 In his Complaint, Plaintiff alleges the County of San Diego, its Sheriff William D.
7 Gore, and the Vista Detention Facility itself, violated his constitutional rights in
8 December 2013, January 2014, and April 2014, by exposing him to unsanitary cell
9 conditions and polluted air. *See* Compl. at 2-5. Plaintiff seeks injunctive relief as well
10 as \$700,000 in both compensatory and punitive damages.² *Id.* at 7.

11 **C. Defendant Vista Detention Facility**

12 First, the Court finds Plaintiff’s Complaint requires sua sponte dismissal pursuant
13 to 28 U.S.C. § 1915(e)(2)(B)(1) and § 1915A(b)(1) to the extent it seeks relief under
14 § 1983 against the “Vista Detention Facility.” *See* Compl. at 1, 2.

15 “To state a claim under 42 U.S.C. § 1983, the plaintiff must allege two elements:
16 (1) that a right secured by the Constitution or laws of the United States was violated; and
17 (2) that the alleged violation was committed by a person acting under color of state law.”
18 *Campbell v. Washington Dep’t of Soc. Servs.*, 671 F.3d 837, 842 n.5 (9th Cir. 2011)
19 (citing *Ketchum v. Alameda Cnty.*, 811 F.2d 1243, 1245 (9th Cir. 1987)). A county jail
20 or detention facility (like VDF) is not a proper defendant under § 1983. *See Vance v.*
21 *County of Santa Clara*, 928 F. Supp. 993, 996 (N.D. Cal. 1996) (“Naming a municipal
22 department as a defendant is not an appropriate means of pleading a § 1983 action against
23

24 ² Plaintiff’s release from custody has rendered moot his claims for injunctive relief
25 related to conditions at VDF. *See Preiser v. Newkirk*, 422 U.S. 395 (1975) (inmate’s
26 request for declaratory judgment rendered moot by his transfer to another prison). When
27 an inmate has been released from custody or transferred to another prison and there is no
28 reasonable expectation or demonstrated probability that he will again be subjected to the
conditions from which he seeks injunctive relief, his claim for injunctive relief should be
dismissed as moot. *See Dilley v. Gunn*, 64 F.3d 1365, 1368-69 (9th Cir. 1995). The
possibility that an inmate might be transferred back to the prison where the injury
occurred is too speculative to overcome mootness. *Id.*; *see also Wiggins v. Rushen*, 760
F.2d 1009 (9th Cir. 1985).

1 a municipality.”) (citation omitted); *Powell v. Cook County Jail*, 814 F. Supp. 757, 758
2 (N.D. Ill. 1993) (“Section 1983 imposes liability on any ‘person’ who violates someone’s
3 constitutional rights ‘under color of law.’ Cook County Jail is not a ‘person.’”).

4 Therefore, Plaintiff’s Complaint fails to state a claim upon which § 1983 relief can
5 be granted against VDF and any purported claims against VDF must be dismissed
6 pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and § 191A(b)(1).

7 **D. Municipal Liability**

8 Second, while Plaintiff’s Complaint also names the County of San Diego as a
9 Defendant, and the County may be considered a “person” properly subject to suit under
10 § 1983, *see Monell v. Dept. of Social Services*, 436 U.S. 658, 691 (1978); *Hammond v.*
11 *County of Madera*, 859 F.2d 797, 801 (9th Cir. 1988), the County may be held liable only
12 where the Plaintiff alleges facts to show that a constitutional deprivation was caused by
13 the implementation or execution of “a policy statement, ordinance, regulation, or decision
14 officially adopted and promulgated” by the municipality, or a “final decision maker” for
15 the municipality. *Monell*, 436 U.S. at 690; *Board of the County Comm’rs v. Brown*, 520
16 U.S. 397, 402-04 (1997); *Navarro v. Block*, 72 F.3d 712, 714 (9th Cir. 1995). In other
17 words, “respondeat superior and vicarious liability are not cognizable theories of recovery
18 against a municipality.” *Miranda v. Clark County, Nevada*, 279 F.3d 1102, 1109-10 (9th
19 Cir. 2002).

20 Plaintiff’s Complaint seeks to hold the County liable based on claims that
21 unidentified “local prison officials” at VDF failed to provide “humane conditions of
22 confinement.” *See* Compl. at 3. However, “a municipality cannot be held liable solely
23 because it employs a tortfeasor.” *Monell*, 436 U.S. at 691; *Navarro*, 72 F.3d at 714.
24 Instead, to allege a claim of municipal liability, Plaintiff must include in his pleading
25 enough “factual content” to support a reasonable inference to show that: (1) he was
26 deprived of a constitutional right; (2) the county had a policy; (3) the policy amounted
27 to deliberate indifference to his constitutional right; and (4) the policy was the “moving
28 force behind the constitutional violation.” *Van Ort v. Estate of Stanewich*, 92 F.3d 831,

1 835 (9th Cir. 1996); *see also Iqbal*, 556 U.S. at 678; *Trevino v. Gates*, 99 F.3d 911, 918
2 (9th Cir. 1996).

3 As currently pleaded, however, Plaintiff’s Complaint fails to state a claim under
4 28 U.S.C. §§ 1915(e)(2) and § 1915A(b) because he has failed to allege any facts which
5 “might plausibly suggest” that he was subject to unsanitary or unsafe conditions pursuant
6 to any municipal custom, policy, or practice implemented or promulgated with deliberate
7 indifference to his constitutional rights, or that such a policy was the “moving force” or
8 cause of his injury. *See Hernandez v. County of Tulare*, 666 F.3d 631, 637 (9th Cir.
9 2012) (applying *Iqbal*’s pleading standards to *Monell* claims); *Brown*, 520 U.S. at 404
10 (“[I]t is not enough for a § 1983 plaintiff merely to identify conduct properly attributable
11 to the municipality . . . [t]he plaintiff must also demonstrate that, through its *deliberate*
12 conduct, the municipality was the ‘moving force’ behind the injury alleged. That is, a
13 plaintiff must show that the municipal action was taken with the requisite degree of
14 culpability and must demonstrate a causal link between the municipal action and the
15 deprivation of federal rights.”).

16 **E. Vicarious Liability**

17 Third, as to the only individual person currently named as a Defendant, William
18 D. Gore, the San Diego County Sheriff, Plaintiff’s Complaint also fails to state a claim
19 upon which § 1983 relief can be granted, because it contains no individualized allegations
20 of wrongdoing by Sheriff Gore, and instead only describes him as the “local prison
21 official” presumably responsible for failing to provide him with “humane conditions.”
22 *See Compl.* at 2, 3.

23 “Because vicarious liability is inapplicable to . . . § 1983 suits,” Plaintiff “must
24 plead that each Government-official defendant, though the official’s own individual
25 actions, has violated the Constitution.” *Iqbal*, 556 U.S. at 676. Plaintiff’s Complaint,
26 however, contains no further “factual enhancement” to describe what Gore did, or failed
27 to do with regard to his overflowing toilet on January 21, 2014, or his alleged exposure
28 to “toxic fumes” on April 6, 2014. *See Compl.* at 3, 5; *Estate of Brooks v. United States*,

1 197 F.3d 1245, 1248 (9th Cir. 1999) (“Causation is, of course, a required element of a §
2 1983 claim.”). “The inquiry into causation must be individualized and focus on the duties
3 and responsibilities of each individual defendant whose acts or omissions are alleged to
4 have caused a constitutional deprivation.” *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir.
5 1988) (citing *Rizzo v. Goode*, 423 U.S. 362, 370-71 (1976)); *Berg v. Kincheloe*, 794 F.2d
6 457, 460 (9th Cir. 1986).

7 A person deprives another “of a constitutional right, within the meaning of section
8 1983, if he does an affirmative act, participates in another’s affirmative acts, or omits to
9 perform an act which he is legally required to do that causes the deprivation of which [the
10 plaintiff complains].” *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). There is no
11 respondeat superior liability under 42 U.S.C. § 1983. *Palmer v. Sanderson*, 9 F.3d 1433,
12 1437-38 (9th Cir. 1993).

13 Thus, without some specific “factual content” that might allow the Court to “draw
14 the reasonable inference” that Sheriff Gore may be held personally liable for any
15 unconstitutional conduct directed at Plaintiff, the Court finds his Complaint, as currently
16 pleaded, contains only the type of “defendant-unlawfully-harmed-me accusations,” which
17 *Iqbal* makes clear, fail to “state a claim to relief that is plausible on its face.” *Iqbal*, 556
18 U.S. at 568.

19 **F. Duplicative Claims**

20 Finally, the Court finds that Plaintiff’s claims of being exposed to “polluted” air
21 that “c[ame] out of the vents” while he was housed not at VDF, but rather, at George
22 Bailey Detention Facility on December 23, 2013, *see* Compl. at 4, must be dismissed as
23 frivolous pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b)(1). These allegations are
24 simply duplicative of claims he has previously alleged in a separate civil rights case
25 currently pending before Judge Sammartino. *See Turner v. County of San Diego, et al.*,
26 S.D. Cal. Civil Case No. 13cv2729 JLS (PCL) (ECF Doc. No. 4), “Amend. Compl.” at
27 1, 3. *See Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (court ““may take notice
28 of proceedings in other courts, both within and without the federal judicial system, if

1 those proceedings have a direct relation to matters at issue.”) (quoting *Bennett v.*
2 *Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)). A prisoner’s complaint is
3 considered frivolous under 28 U.S.C. § 1915A(b)(1) if it “merely repeats pending or
4 previously litigated claims.” *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir.
5 1995) (construing former 28 U.S.C. § 1915(d)) (citations and internal quotations
6 omitted).

7 IV.

8 Conclusion and Order

9 Good cause appearing, **IT IS HEREBY ORDERED** that:

10 1. Plaintiff’s Supplemental Motion to Proceed IFP pursuant to 28 U.S.C.
11 § 1915(a) (ECF Doc. No. 4) is **GRANTED**.

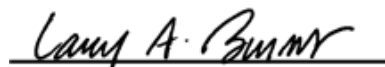
12 2. Plaintiff’s duplicative claims are **DISMISSED** as frivolous pursuant to 28
13 U.S.C. § 1915(e)(2)(B)(ii) and § 1915A(b)(1) and *without* leave to amend. *See Lopez v.*
14 *Smith*, 203 F.3d 1122, 1127 n.8 (9th Cir. 2000) (en banc) (“When a case may be classified
15 as frivolous or malicious, there is, by definition, no merit to the underlying action and so
16 no reason to grant leave to amend.”).

17 3. Plaintiff’s remaining claims are **DISMISSED** without prejudice and *with*
18 leave to amend for failing to state a claim upon which relief may be granted pursuant to
19 28 U.S.C. § 1915(e)(2)(B)(ii) and § 1915A(b)(1). Plaintiff is **GRANTED** thirty (30)
20 days leave from the date this Order is filed in which to re-open this case by filing a
21 Amended Complaint which cures the deficiencies of pleading described above.
22 Plaintiff’s Amended Complaint must be complete by itself without reference to his
23 original complaint. *See S.D. CAL. CIVLR 15.1; Hal Roach Studios, Inc. v. Richard Feiner*
24 *& Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (“[A]n amended pleading supersedes
25 the original.”); *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (noting that
26 claims dismissed with leave to amend which are not re-alleged in an amended pleading
27 may be “considered waived if not repled.”).

28 ///

1 Should Plaintiff elect *not* to proceed by filing a Amended Complaint within the
2 time provided, the Court will enter a final Order of dismissal of this civil action as
3 frivolous, for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(b)(ii) and
4 § 1915A(b)(1), and based on Plaintiff's failure to prosecute in compliance with a Court
5 Order requiring amendment.

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7 DATED: March 13, 2015

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9 **HONORABLE LARRY ALAN BURNS**
10 United States District Judge

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