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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DOUGLAS WAYNE BROWN, Inmate Booking No. 21148122, Plaintiff,	vs.	WILLIAM D. GORE, San Diego County Sheriff, Defendants.
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Case No.: 22-cv-00348-MMA (WVG)

ORDER GRANTING MOTION TO PROCEED IN FORMA PAUPERIS AND DISMISSING COMPLAINT FOR FAILURE TO STATE A CLAIM PURSUANT TO 28 U.S.C. § 1915(e)(2) & 28 U.S.C. § 1915A(b)

[Doc. No. 4]

Douglas Wayne Brown (“Plaintiff”), currently housed at the South Bay Detention Facility (“SBDF”) located in Chula Vista in San Diego, California and proceeding *pro se*, has filed a civil rights complaint pursuant to 42 U.S.C. § 1983. *See* Doc. No. 1 (“Compl.”). In addition, Plaintiff filed additional pages, which appear to be part of his Complaint and as such the Court will consider them in conducting the required *sua sponte* screening. *See* Doc. No. 5. Plaintiff has also filed a Motion to Proceed In Forma Pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a). Doc. No. 4. For the following reasons, the Court **GRANTS** Plaintiff’s Motion to Proceed IFP and **DISMISSES** his Complaint.

1 **I. MOTION TO PROCEED IFP**

2 All parties instituting any civil action, suit or proceeding in a district court of the
3 United States, except an application for writ of habeas corpus, must pay a filing fee of
4 \$400.¹ See 28 U.S.C. § 1914(a). The action may proceed despite a plaintiff’s failure to
5 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.
6 § 1915(a). See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007). However,
7 prisoners who are granted leave to proceed IFP remain obligated to pay the entire fee in
8 “increments” or “installments,” *Bruce v. Samuels*, 577 U.S. 82, 84 (2016); *Williams*
9 *v. Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), and regardless of whether their action is
10 ultimately dismissed. See 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d
11 844, 847 (9th Cir. 2002).

12 Section 1915(a)(2) also requires prisoners seeking leave to proceed IFP to submit a
13 “certified copy of the trust fund account statement (or institutional equivalent) for . . . the
14 6-month period immediately preceding the filing of the complaint.” 28 U.S.C.
15 § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified
16 trust account statement, the Court assesses an initial payment of 20% of (a) the average
17 monthly deposits in the account for the past six months, or (b) the average monthly
18 balance in the account for the past six months, whichever is greater, unless the prisoner
19 has no assets. See 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution
20 having custody of the prisoner then collects subsequent payments, assessed at 20% of the
21 preceding month’s income, in any month in which his account exceeds \$10, and forwards
22 those payments to the Court until the entire filing fee is paid. See 28 U.S.C.
23 § 1915(b)(2); *Bruce*, 136 S. Ct. at 629.

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27 ¹ In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$50.
28 See 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14
(eff. June 1, 2016). The additional \$50 administrative fee does not apply to persons granted leave to
proceed IFP. *Id.*

1 In support of his IFP Motion, Plaintiff has submitted a copy of his Inmate
2 Statement. *See* Doc. No. 5; 28 U.S.C. § 1915(a)(2); S.D. Cal. CivLR 3.2; *Andrews*, 398
3 F.3d at 1119. These statements show that Plaintiff had a \$1.12 balance at the time of
4 filing. *See* Doc. No. 5. Based on this accounting, the Court **GRANTS** Plaintiff’s Motion
5 to Proceed IFP and assesses his initial partial filing fee to be \$16.00 pursuant to 28 U.S.C.
6 § 1915(b)(1).

7 The Court will direct the Watch Commander, or their designee, to collect an initial
8 partial filing fee only if sufficient funds are available in Plaintiff’s account at the time this
9 Order is executed. *See* 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event shall a
10 prisoner be prohibited from bringing a civil action or appealing a civil action or criminal
11 judgment for the reason that the prisoner has no assets and no means by which to pay the
12 initial partial filing fee”); *Bruce*, 136 S. Ct. at 630; *Taylor*, 281 F.3d at 850 (finding that
13 28 U.S.C. § 1915(b)(4) acts as a “safety-valve” preventing dismissal of a prisoner’s IFP
14 case based solely on a “failure to pay . . . due to the lack of funds available to him when
15 payment is ordered”). The balance of the \$350 total fee owed in this case must be
16 collected by the agency having custody of the prisoner and forwarded to the Clerk of the
17 Court pursuant to 28 U.S.C. § 1915(b)(2).

18 **II. SCREENING PURSUANT TO 28 U.S.C. §§ 1915(e)(2)(B) AND 1915A(b)**

19 **A. Standard of Review**

20 Because Plaintiff is a prisoner and is proceeding IFP, his Complaint also requires a
21 pre-answer screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b). Under these
22 statutes, the Court must *sua sponte* dismiss a prisoner’s IFP complaint, or any portion of
23 it, which is frivolous, malicious, fails to state a claim, or seeks damages from defendants
24 who are immune. *See Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc)
25 (discussing 28 U.S.C. § 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir.
26 2010) (discussing 28 U.S.C. § 1915A(b)). “The purpose of [screening] is ‘to ensure that
27 the targets of frivolous or malicious suits need not bear the expense of responding.’”
28 *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir. 2014) (citation omitted).

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

10 Detailed factual allegations are not required, but “[t]hreadbare recitals of the
11 elements of a cause of action, supported by mere conclusory statements, do not suffice.”
12 *Iqbal*, 556 U.S. at 678. “Determining whether a complaint states a plausible claim for
13 relief [is] . . . a context-specific task that requires the reviewing court to draw on its
14 judicial experience and common sense.” *Id.* The “mere possibility of misconduct” or
15 “unadorned, the defendant-unlawfully-harmed me accusation[s]” fall short of meeting
16 this plausibility standard. *Id.*; *see also Moss v. U.S. Secret Service*, 572 F.3d 962, 969
17 (9th Cir. 2009).

18 **B. Plaintiff’s Factual Allegations**

19 Plaintiff alleges that he was “arrested [on] December 8, 2021” and he has not
20 received his “heart meds.” Compl. at 2. Plaintiff also claims to be “allergic” to the
21 Covid-19 vaccine. *Id.* In addition, he claims he has been denied the right to a “fast and
22 speedy trial” and his counsel will “not investigate case until April 1, 2022.” Doc. No. 5
23 at 1–2.

24 **C. 42 U.S.C. § 1983**

25 “Section 1983 creates a private right of action against individuals who, acting
26 under color of state law, violate federal constitutional or statutory rights.” *Devereaux*
27 *v. Abbey*, 263 F.3d 1070, 1074 (9th Cir. 2001). Section 1983 “is not itself a source of
28 substantive rights, but merely provides a method for vindicating federal rights elsewhere

1 conferred.” *Graham v. Connor*, 490 U.S. 386, 393–94 (1989) (internal quotation marks
2 and citations omitted). “To establish § 1983 liability, a plaintiff must show both
3 (1) deprivation of a right secured by the Constitution and laws of the United States, and
4 (2) that the deprivation was committed by a person acting under color of state law.” *Tsao*
5 *v. Desert Palace, Inc.*, 698 F.3d 1128, 1138 (9th Cir. 2012).

6 **D. Younger Abstention**

7 As an initial matter, Plaintiff appears to challenge the basis for his current
8 detention and ongoing state criminal proceedings. To the extent that Plaintiff is currently
9 in the process of facing state criminal charges and requests that this Court intervene in the
10 state court’s decisions, the Court declines to do so. A federal court cannot interfere with
11 ongoing state criminal proceedings by granting injunctive relief absent a showing of the
12 state’s bad faith or harassment, or a showing that the statute challenged is “flagrantly and
13 patently violative of express constitutional prohibitions.” *Younger v. Harris*, 401 U.S.
14 37, 46, 53–54 (1971).

15 Younger abstention is appropriate if four criteria are met: (1) state judicial
16 proceedings are ongoing; (2) the state proceedings implicate an important state interest;
17 (3) the state proceedings offer an adequate opportunity to litigate federal questions; and
18 (4) the federal court action would “enjoin the proceeding or have the practical effect of
19 doing so, i.e., would interfere with the state proceeding in a way that *Younger*
20 disapproves.” *San Jose Silicon Valley Chamber of Commerce PAC v. City of San Jose*,
21 546 F.3d 1087, 1092 (9th Cir. 2008). Here, because it appears that Plaintiff has ongoing
22 criminal proceedings in state court, abstention as to Plaintiff’s claims pursuant to the
23 *Younger* doctrine is warranted.

24 **E. Medical Claims**

25 Plaintiff also alleges that he been denied his medication that he takes for an
26 unspecified heart condition. While this is a serious concern, based on Plaintiff’s lack of
27 factual allegations and failure to identify specific individuals whom he claims is
28 responsible for the purported failure to receive his medication, the Court finds that he

1 fails to state a claim upon which relief may be granted. Plaintiff does not name any
2 individual as responsible for alleged constitutional violations with the exception of
3 Sheriff William Gore. *See* Compl. at 1.

4 However, there is no respondeat superior liability under 42 U.S.C. § 1983. *Palmer*
5 *v. Sanderson*, 9 F.3d 1433, 1437-38 (9th Cir. 1993). “Because vicarious liability is
6 inapplicable to . . . § 1983 suits, [Plaintiff] must plead that each government-official
7 defendant, through the official’s own individual actions, has violated the Constitution.”
8 *Iqbal*, 556 at 676; *see also Jones v. Community Redevelopment Agency of City of Los*
9 *Angeles*, 733 F.2d 646, 649 (9th Cir. 1984) (even pro se plaintiff must “allege with at
10 least me degree of particularity overt acts which defendants engaged in” in order to state
11 a claim). “A plaintiff must allege facts, not simply conclusions, t[o] show that [each
12 defendant] was personally involved in the deprivation of his civil rights.” *Barren*
13 *v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998); *see also Estate of Brooks ex rel.*
14 *Brooks v. United States*, 197 F.3d 1245, 1248 (9th Cir. 1999) (“Causation is, of course, a
15 required element of a § 1983 claim.”).

16 As currently pleaded, Plaintiff’s Complaint offers no factual detail from which the
17 Court might reasonably infer a plausible inadequate medical care claim as to Defendant
18 Gore. Instead, Plaintiff only lists “San Diego County Sheriff William D. Gore” as the
19 sole Defendant. Compl. at 1. But Fed. R. Civ. P. 8 “demands more than an unadorned,
20 the-defendant-unlawfully-harmed-me accusation,” and in order “[t]o survive a motion to
21 dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a
22 claim for relief that is plausible on its face.’” *Iqbal*, 662 U.S. at 678 (quoting *Twombly*,
23 550 U.S. at 555, 570).

24 Moreover, supervisory officials may only be held liable under § 1983 if Plaintiff
25 alleges their “personal involvement in the constitutional deprivation, or . . . a sufficient
26 causal connection between the supervisor’s wrongful conduct and the constitutional
27 violation.” *Keates v. Koile*, 883 F.3d 1228, 1242–43 (9th Cir. 2018); *Starr v. Baca*, 652
28 F.3d 1202, 1207 (9th Cir. 2011). Plaintiff makes no such allegations in his Complaint.

1 Therefore, the Court **DIMISSES** Defendant Gore *sua sponte* based on Plaintiff's failure
2 to state a claim against him. *See* 28 U.S.C. § 1915(e)(2)(B)(ii) and § 1915A(b)(1).

3 **F. Leave to Amend**

4 Accordingly, the Court finds Plaintiff's Complaint, together with the additional
5 pages he filed, fails to state a claim against any named Defendant, and therefore, it is
6 subject to *sua sponte* dismissal in its entirety pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii)
7 and § 1915A(b)(1). *See Lopez*, 203 F.3d at 1126–27; *Rhodes*, 621 F.3d at 1004.

8 Because he is proceeding *pro se*, however, the Court having now provided him
9 with “notice of the deficiencies in his complaint,” will also grant Plaintiff an opportunity
10 to amend. *See Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) (citing *Ferdik*
11 *v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992)). If Plaintiff chooses to file an amended
12 pleading, he must allege more specific factual allegations regarding his claims.

13 **III. CONCLUSION**

14 For the reasons explained, the Court **GRANTS** Plaintiff's Motion to Proceed IFP
15 pursuant to 28 U.S.C. § 1915(a) and **DIRECTS** the Watch Commander of the SBDF, or
16 their designee, to collect from Plaintiff's inmate trust account the \$350 filing fee owed in
17 this case by garnishing monthly payments in an amount equal to twenty percent (20%) of
18 the preceding month's income and forwarding those payments to the Clerk of the Court
19 each time the amount in the account exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2).

20 ALL PAYMENTS MUST BE CLEARLY IDENTIFIED BY THE NAME AND
21 NUMBER ASSIGNED TO THIS ACTION. The Court **DIRECTS** the Clerk of the
22 Court to serve a copy of this Order on Watch Commander, South Bay Detention Facility,
23 500 Third Avenue, Chula Vista, California 91910.

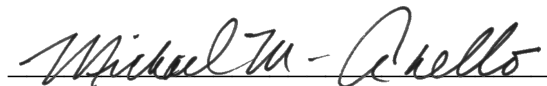
24 The Court further **DISMISSES** Plaintiff's Complaint for failure to state a claim
25 upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)
26 and **GRANTS** him forty-five (45) days leave from the date of this Order in which to file
27 an Amended Complaint which cures all the deficiencies of pleading noted. Plaintiff's
28 Amended Complaint must be complete by itself without reference to his original

1 pleading. Defendants not named and any claim not re-alleged in his Amended Complaint
2 will be considered waived. *See* S.D. Cal. CivLR 15.1; *Hal Roach Studios, Inc. v. Richard*
3 *Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (“[A]n amended pleading
4 supersedes the original.”); *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012)
5 (noting that claims dismissed with leave to amend which are not re-alleged in an
6 amended pleading may be “considered waived if not repled.”).

7 If Plaintiff fails to file an Amended Complaint within the time provided, the Court
8 will enter a final Order dismissing this civil action based both on Plaintiff’s failure to
9 state a claim upon which relief can be granted pursuant to 28 U.S.C. §§ 1915(e)(2)(B)
10 and 1915A(b), and his failure to prosecute in compliance with a court order requiring
11 amendment. *See Lira v. Herrera*, 427 F.3d 1164, 1169 (9th Cir. 2005) (“If a plaintiff
12 does not take advantage of the opportunity to fix his complaint, a district court may
13 convert the dismissal of the complaint into dismissal of the entire action.”). The Court
14 DIRECTS the Clerk of Court to mail Plaintiff a court approved civil rights complaint
15 form for his use in amending.

16 **IT IS SO ORDERED.**

17 Dated: May 3, 2022

18 

19 HON. MICHAEL M. ANELLO
20 United States District Judge