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

ERIC B. JACKSON,
Inmate Booking No. 09771031

Plaintiff,

vs.

CORRECTIONS CORPORATION OF
AMERICA, et al.,

Defendants.

Civil No. 10cv0325 MMA (CAB)

ORDER:

**(1) GRANTING MOTION TO
PROCEED *IN FORMA PAUPERIS*,
IMPOSING NO INITIAL PARTIAL
FILING FEE AND GARNISHING
\$350.00 BALANCE FROM
PRISONER TRUST ACCOUNT
[Doc. No. 2];**

AND

**(2) DISMISSING CIVIL ACTION
FOR FAILING TO STATE A
CLAIM PURSUANT TO
28 U.S.C. § 1915(e)(2)(B) & 1915A(b)**

Eric B. Jackson (“Plaintiff”), currently incarcerated at the George Bailey Detention Facility located in San Diego, California, and proceeding pro se, has filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. Plaintiff has not prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a); instead, he has filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) [Doc. No. 2].

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1 **I. MOTION TO PROCEED IFP**

2 All parties instituting any civil action, suit or proceeding in a district court of the United
3 States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28
4 U.S.C. § 1914(a). An action may proceed despite a party’s failure to prepay the entire fee only
5 if the party is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v.*
6 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). Prisoners granted leave to proceed IFP however,
7 remain obligated to pay the entire fee in installments, regardless of whether the action is
8 ultimately dismissed for any reason. *See* 28 U.S.C. § 1915(b)(1) & (2).

9 Under 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act (“PLRA”), a
10 prisoner seeking leave to proceed IFP must submit a “certified copy of the trust fund account
11 statement (or institutional equivalent) for the prisoner for the six-month period immediately
12 preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2). From the certified trust account
13 statement, the Court must assess an initial payment of 20% of (a) the average monthly deposits
14 in the account for the past six months, or (b) the average monthly balance in the account for the
15 past six months, whichever is greater, unless the prisoner has no assets. *See* 28 U.S.C.
16 § 1915(b)(1); 28 U.S.C. § 1915(b)(4). That institution having custody of the prisoner must
17 collect subsequent payments, assessed at 20% of the preceding month’s income, in any month
18 in which the prisoner’s account exceeds \$10, and forward those payments to the Court until the
19 entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2).

20 The Court finds that Plaintiff has attached a certified copy of his trust account statement
21 pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2. Plaintiff’s trust account statement
22 shows that he has insufficient funds from which to pay filing fees at this time. *See* 28 U.S.C.
23 § 1915(b)(4) (providing that “[i]n no event shall a prisoner be prohibited from bringing a civil
24 action or appealing a civil action or criminal judgment for the reason that the prisoner has no
25 assets and no means by which to pay the initial partial filing fee.”); *Taylor*, 281 F.3d at 850
26 (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve” preventing dismissal of a prisoner’s
27 IFP case based solely on a “failure to pay . . . due to the lack of funds available to him when
28 payment is ordered.”). Therefore, the Court **GRANTS** Plaintiff’s Motion to Proceed IFP [Doc.

1 No. 2] and assesses no initial partial filing fee per 28 U.S.C. § 1915(b)(1). However, the entire
2 \$350 balance of the filing fees mandated shall be collected and forwarded to the Clerk of the
3 Court pursuant to the installment payment provisions set forth in 28 U.S.C. § 1915(b)(1).

4 **II. SUA SPONTE SCREENING PER 28 U.S.C. §§ 1915(e) AND 1915A**

5 The PLRA’s amendments to 28 U.S.C. § 1915 also obligate the Court to review
6 complaints filed by all persons proceeding IFP and by those, like Plaintiff, who are “incarcerated
7 or detained in any facility [and] accused of, sentenced for, or adjudicated delinquent for,
8 violations of criminal law or the terms or conditions of parole, probation, pretrial release, or
9 diversionary program,” “as soon as practicable after docketing.” See 28 U.S.C. §§ 1915(e)(2)(B)
10 and 1915A(b). Under these provisions, the Court must sua sponte dismiss any prisoner civil
11 action and all other IFP complaints, or any portions thereof, which are frivolous, malicious, fail
12 to state a claim, or which seek damages from defendants who are immune. See 28 U.S.C.
13 §§ 1915(e)(2)(B) and 1915A; *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)
14 (§ 1915(e)(2)); *Resnick v. Hayes*, 213 F.3d 443, 446 n.1 (9th Cir. 2000) (§ 1915A).

15 Before amendment by the PLRA, the former 28 U.S.C. § 1915(d) permitted sua sponte
16 dismissal of only frivolous and malicious claims. *Lopez*, 203 F.3d at 1126, 1130. However, 28
17 U.S.C. § 1915(e)(2) and § 1915A now mandate that the court reviewing an IFP or prisoner’s suit
18 make and rule on its own motion to dismiss before directing that the Complaint be served by the
19 U.S. Marshal pursuant to FED.R.CIV.P. 4(c)(2). *Id.* at 1127 (“[S]ection 1915(e) not only permits,
20 but requires a district court to dismiss an in forma pauperis complaint that fails to state a
21 claim.”); see also *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (discussing
22 § 1915A).

23 “[W]hen determining whether a complaint states a claim, a court must accept as true all
24 allegations of material fact and must construe those facts in the light most favorable to the
25 plaintiff.” *Resnick*, 213 F.3d at 447; *Barren*, 152 F.3d at 1194 (noting that § 1915(e)(2)
26 “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”). Here, however, even
27 presuming Plaintiff’s allegations true, the Court finds his Complaint fails to state a claim upon
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1 which relief can be granted. *See* 28 U.S.C. §§ 1915(e)(2)(B); 1915A(b); *Lopez*, 203 F.3d at
2 1126-27; *Resnick*, 213 F.3d at 446, n.1.

3 **A. 42 U.S.C. § 1983**

4 To state a claim under § 1983, Plaintiff must allege that: (1) the conduct he complains
5 of was committed by a person acting under color of state law; and (2) that conduct violated a
6 right secured by the Constitution and laws of the United States. *Humphries v. County of Los*
7 *Angeles*, 554 F.3d 1170, 1184 (9th Cir. 2009) (citing *West v. Atkins*, 487 U.S. 42, 48 (1988)).

8 **B. Inadequate medical care claims**

9 In his Complaint, it is unclear whether Plaintiff is a pre-trial detainee or whether he is
10 serving a sentence following a criminal conviction. The Ninth Circuit has noted that while
11 different Constitutional provisions may be applied dependent on whether a plaintiff's claim arise
12 before or after conviction, a "pretrial detainees' rights under the Fourteenth Amendment are
13 comparable to prisoners' rights under the Eighth Amendment," and therefore, "the same
14 standards apply." *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998); *but cf. Gibson v. County*
15 *of Washoe*, 290 F.3d 1175, 1188 n.10 (9th Cir. 2002) (noting that while the Court generally
16 looks to Eighth Amendment cases when reviewing conditions of confinement claims raised by
17 pretrial detainees under the Fourteenth Amendment, "[i]t is quite possible ... that the protections
18 provided pretrial detainees by the Fourteenth Amendment in some instances exceed those
19 provided convicted prisoners by the Eighth Amendment."); *see also Lolli v. County of Orange*,
20 351 F.3d 410, 419 n.6 (9th Cir. 2003) (quoting *Gibson*, 290 F.3d at 1188 n.10).

21 In order to assert a claim for inadequate medical care, Plaintiff must allege facts which
22 are sufficient to show that each person sued was "deliberately indifferent to his serious medical
23 needs." *Helling v. McKinney*, 509 U.S. 25, 32 (1993); *Estelle v. Gamble*, 429 U.S. 97, 106
24 (1976). Prison officials must purposefully ignore or fail to respond to Plaintiff's pain or medical
25 needs; neither an inadvertent failure to provide adequate medical care, nor mere negligence or
26 medical malpractice constitutes a constitutional violation. *Estelle*, 429 U.S. at 105-06.

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1 Thus, to state a claim, Plaintiff must allege facts sufficient to show both: (1) an
2 objectively “serious” medical need, i.e., one that a reasonable doctor would think worthy of
3 comment, one which significantly affects his daily activities, or one which is chronic and
4 accompanied by substantial pain, *see Doty v. County of Lassen*, 37 F.3d 540, 546 (9th Cir. 1994);
5 and (2) a subjective, and “sufficiently culpable” state of mind on the part of each individual
6 Defendant. *See Wilson v. Seiter*, 501 U.S. 294, 302 (1991).

7 Here, Plaintiff’s allegations are rambling and, at times, incoherent. However, Plaintiff
8 does allege that he suffers from unspecified stomach pain and dental issues. In his Complaint,
9 Plaintiff alleges that he has been seen by medical personnel at the jail, along with having been
10 transported to an office of a Dentist to perform a tooth extraction. In one instance, Plaintiff
11 alleges that he was seen by a jail doctor for his stomach pain. (*See Compl.* at 13.) Plaintiff
12 alleges that he was told by the Doctor that he would continue on the same medication. (*Id.*)
13 Plaintiff believes that he should have been provided a different medication. (*Id.*) In addition,
14 when Plaintiff was seen by Dr. Torchia for his dental issues, Plaintiff requested a root canal
15 while Dr. Torchia indicated that his condition required a tooth extraction. (*Id.* at 12.) A mere
16 difference of opinion between an inmate and prison medical personnel regarding appropriate
17 medical diagnosis and treatment are not enough to establish a deliberate indifference claim.
18 *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989).

19 In addition, Plaintiff seeks to hold Defendant Wee liable for the alleged violation of his
20 constitutional rights because she caused him harm while trying to draw blood from him. (*See*
21 *Compl.* at 7.) As stated above, inadequate treatment due to malpractice, or even gross
22 negligence, does not amount to a constitutional violation. *Estelle*, 429 U.S. at 106; *Wood v.*
23 *Housewright*, 900 F.2d 1332, 1334 (9th Cir. 1990)

24 Accordingly, Plaintiff’s Complaint must be dismissed for failing to state a claim upon
25 which section 1983 relief may be granted. *See* 28 U.S.C. § § 1915(e)(2) & 1915A(b)(1).

26 **III. CONCLUSION AND ORDER**

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

28 (1) Plaintiff’s Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a) is **GRANTED**.

1 (2) The Watch Commander, or his designee, is ordered to collect from Plaintiff's
2 prison trust account the \$350 balance of the filing fee owed in this case by collecting monthly
3 payments from the trust account in an amount equal to twenty percent (20%) of the preceding
4 month's income credited to the account and forward payments to the Clerk of the Court each
5 time the amount in the account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2). ALL
6 PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER
7 ASSIGNED TO THIS ACTION.

8 (3) The Clerk of the Court is directed to serve a copy of this Order on Watch
9 Commander, George Bailey Detention Facility, 446 Alta Road, San Diego, California 92158.

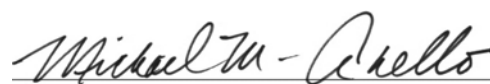
10 **IT IS FURTHER ORDERED** that:

11 (4) Plaintiff's Complaint is **DISMISSED** without prejudice for failing to state a claim
12 upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b).
13 However, Plaintiff is further **GRANTED** sixty (60) days leave from the date this Order is filed
14 in which to file a First Amended Complaint which cures all the deficiencies of pleading noted
15 above. Plaintiff's Amended Complaint must be complete in itself without reference to his
16 previous pleading. *See* S.D. CAL. CIVLR 15.1. Defendants not named and all claims not re-
17 alleged in the Amended Complaint will be considered waived. *See King v. Atiyeh*, 814 F.2d 565,
18 567 (9th Cir. 1987).

19 Further, Plaintiff is cautioned that should he elect not to amend, or if his Amended
20 Complaint still fails to state a claim upon which relief may be granted, the dismissal of this
21 action may hereafter be counted as a "strike" against him pursuant to 28 U.S.C. § 1915(g). *See*
22 *McHenry v. Renne*, 84 F.3d 1172, 1177-79 (9th Cir. 1996).

23 **IT IS SO ORDERED.**

24 DATED: April 15, 2010

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27 Hon. Michael M. Anello
28 United States District Judge