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

IVORY FRANKLIN DANIELS aka
FRANK FULLER,
Booking #14705639,

Plaintiff,

vs.

MEDICAL SERVICES DIVISION;
ALFRED JOSHUA, M.D.; SAN DIEGO
COUNTY SHERIFF’S DEP’T;
WILLIAM D. GORE,

Defendants.

Civil 15cv0030 BEN (BLM)
No.

ORDER:

- (1) GRANTING MOTION TO PROCEED *IN FORMA PAUPERIS* (ECF Doc. No. 2) AND**
- (2) DISMISSING COMPLAINT FOR FAILING TO STATE A CLAIM PURSUANT TO 28 U.S.C. §§ 1915(e)(2)(B) & 1915A(b)**

Ivory Franklin Daniels, also known as Frank Fuller, (“Plaintiff”), currently incarcerated at George Bailey Detention Facility (“GBDF”) in San Diego, California and proceeding pro se, has filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. Plaintiff has also filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) (ECF No. 2).

I. MOTION TO PROCEED IFP

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of

1 \$400. *See* 28 U.S.C. § 1914(a).¹ An action may proceed despite a plaintiff’s failure to
2 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.
3 § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, a
4 prisoner granted leave to proceed IFP remains obligated to pay the entire fee in
5 installments, regardless of whether his action is ultimately dismissed. *See* 28 U.S.C.
6 § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

7 The Court finds that Plaintiff has submitted an affidavit which complies with 28
8 U.S.C. § 1915(a)(1), and that he has attached a certified copy of his trust account
9 statement pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2. Plaintiff’s trust
10 account statement shows that he has insufficient funds from which to pay an initial
11 partial filing fee. Accordingly, the Court **GRANTS** Plaintiff’s Motion to Proceed IFP
12 (ECF No. 2) and assesses no initial partial filing fee per 28 U.S.C. § 1915(b)(1).
13 However, the Court further orders the Watch Commander at George Bailey Detention
14 Facility to garnish the entire \$350 balance of the filing fees owed in this case, collect and
15 forward them to the Clerk of the Court pursuant to the installment payment provisions
16 set forth in 28 U.S.C. § 1915(b)(1).

17 **II. SCREENING PURSUANT TO 28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

18 The Prison Litigation Reform Act (“PLRA”)’s amendments to 28 U.S.C. § 1915
19 also obligate the Court to review complaints filed by all persons proceeding IFP and by
20 those, like Plaintiff, who are “incarcerated or detained in any facility [and] accused of,
21 sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or
22 conditions of parole, probation, pretrial release, or diversionary program,” “as soon as
23 practicable after docketing.” *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b). Under
24 these provisions, the Court must sua sponte dismiss any prisoner civil action and all
25 other IFP complaints, or any portions thereof, which are frivolous, malicious, fail to state
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27 ¹ In addition to the \$350 statutory fee, all parties filing civil actions *on or after May 1, 2013*,
28 must pay an additional administrative fee of \$50. *See* 28 U.S.C. § 1914(a), (b); Judicial Conference
Schedule of Fees, District Court Misc. Fee Schedule (eff. May 1, 2013). However, the additional \$50
administrative fee is waived if the plaintiff is granted leave to proceed IFP. *Id.*

1 a claim, or which seek damages from defendants who are immune. *See* 28 U.S.C.
2 §§ 1915(e)(2)(B) and 1915A; *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000)
3 (en banc) (§ 1915(e)(2)); *Resnick v. Hayes*, 213 F.3d 443, 446 n.1 (9th Cir. 2000)
4 (§ 1915A).

5 “To state a claim under 42 U.S.C. § 1983, the plaintiff must allege two elements:
6 (1) that a right secured by the Constitution or laws of the United States was violated; and
7 (2) that the alleged violation was committed by a person acting under color of state law.”
8 *Campbell v. Washington Dep’t of Soc. Servs.*, 671 F.3d 837, 842 n.5 (9th Cir. 2011)
9 (citing *Ketchum v. Alameda Cnty.*, 811 F.2d 1243, 1245 (9th Cir. 1987)).

10 First, to the extent Plaintiff alleges that the “San Diego County Sheriff’s
11 Department,” and the “Medical Services Division” have violated his constitutional
12 rights, his Complaint fails to state a claim because these entities are not “persons” subject
13 to suit under § 1983. Neither a local law enforcement department (like the San Diego
14 County Sheriff’s Office), a jail (like the San Diego County Jail), or a state agency (like
15 the California Department of Corrections), are proper defendants under § 1983. *See*
16 *Vance v. County of Santa Clara*, 928 F. Supp. 993, 996 (N.D. Cal. 1996) (“Naming a
17 municipal department as a defendant is not an appropriate means of pleading a § 1983
18 action against a municipality.”) (citation omitted); *Powell v. Cook County Jail*, 814 F.
19 Supp. 757, 758 (N.D. Ill. 1993) (“Section 1983 imposes liability on any ‘person’ who
20 violates someone’s constitutional rights ‘under color of law.’ Cook County Jail is not
21 a ‘person.’);

22 While the County of San Diego *itself* may be considered a “person” and therefore,
23 a proper defendant under § 1983, *see Monell v. Department of Social Services*, 436 U.S.
24 658, 691 (1978); *Hammond v. County of Madera*, 859 F.2d 797, 801 (9th Cir. 1988),
25 Plaintiff has not named the County as a Defendant. Moreover, as a municipality, the
26 County *may* be held liable under § 1983—but only where the Plaintiff alleges facts to
27 show that a constitutional deprivation was caused by the implementation or execution
28 of “a policy statement, ordinance, regulation, or decision officially adopted and

1 promulgated” by the County, or a “final decision maker” for the County. *Monell*, 436
2 U.S. at 690; *Board of the County Commissioners v. Brown*, 520 U.S. 397, 402-04 (1997);
3 *Navarro v. Block*, 72 F.3d 712, 714 (9th Cir. 1995). In other words, “respondeat superior
4 and vicarious liability are not cognizable theories of recovery against a municipality.”
5 *Miranda v. Clark County, Nevada*, 279 F.3d 1102, 1109-10 (9th Cir. 2002). “Instead,
6 a *Monell* claim exists only where the alleged constitutional deprivation was inflicted in
7 ‘execution of a government’s policy or custom.’” *Id.* (quoting *Monell*, 436 U.S. at 694).

8 As currently pleaded, Plaintiff’s Complaint fails to state a claim under 28 U.S.C.
9 § 1915A(b) because he has failed to allege any facts which “might plausibly suggest”
10 that either the County itself, or any *individual* County employee (a “person”), like Sheriff
11 Gore, violated his constitutional rights. *See Hernandez v. County of Tulare*, 666 F.3d
12 631, 637 (9th Cir. 2012) (applying *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)’s pleading
13 standards to *Monell* claims); *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (42
14 U.S.C. § 1983 provides for relief only against those who, through their personal
15 involvement as evidenced by affirmative acts, participation in another’s affirmative acts,
16 or failure to perform legally required duties, cause the deprivation of plaintiff’s
17 constitutionally protected rights).

18 Plaintiff does make general allegations of refusal by unnamed medical staff to
19 provide him with medication he was receiving before he was incarcerated. Where an
20 inmate’s claim is one of inadequate medical care, the inmate must allege “acts or
21 omissions sufficiently harmful to evidence deliberate indifference to serious medical
22 needs.” *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). Such a claim has two elements:
23 “the seriousness of the prisoner’s medical need and the nature of the defendant’s
24 response to that need.” *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1991),
25 *overruled on other grounds by WMX Techs., Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir.
26 1997). A medical need is serious “if the failure to treat the prisoner’s condition could
27 result in further significant injury or the ‘unnecessary and wanton infliction of pain.’”
28 *McGuckin*, 974 F.2d at 1059 (quoting *Estelle*, 429 U.S. at 104). Indications of a serious

1 medical need include “the presence of a medical condition that significantly affects an
2 individual’s daily activities.” *Id.* at 1059-60. By establishing the existence of a serious
3 medical need, an inmate satisfies the objective requirement for proving an Eighth
4 Amendment violation. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994).

5 In general, deliberate indifference may be shown when prison officials deny,
6 delay, or intentionally interfere with a prescribed course of medical treatment, or it may
7 be shown by the way in which prison medical officials provide necessary care.
8 *Hutchinson v. United States*, 838 F.2d 390, 393-94 (9th Cir. 1988). Before it can be said
9 that a inmate’s civil rights have been abridged with regard to medical care, however, “the
10 indifference to his medical needs must be substantial. Mere ‘indifference,’ ‘negligence,’
11 or ‘medical malpractice’ will not support this cause of action.” *Broughton v. Cutter*
12 *Laboratories*, 622 F.2d 458, 460 (9th Cir. 1980) (citing *Estelle*, 429 U.S. at 105-06). *See*
13 *also Toguchi v. Chung*, 391 F.3d 1051, 1060 (9th Cir. 2004).

14 While Plaintiff may be able to allege additional facts to support an Eighth
15 Amendment claim against individually named medical staff, he currently only pleads
16 facts that demonstrate a difference of opinion. A mere difference of opinion between
17 an inmate and prison medical personnel regarding appropriate medical diagnosis and
18 treatment are not enough to establish a deliberate indifference claim. *Sanchez v. Vild*,
19 891 F.2d 240, 242 (9th Cir. 1989).

20 Accordingly, the Court finds that Plaintiff’s Complaint fails to state a viable
21 section 1983 claim against any of the currently named Defendants, it is therefore subject
22 to sua sponte dismissal pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Because
23 Plaintiff is proceeding *pro se*, however, the Court having now provided him with “notice
24 of the deficiencies in his complaint,” will also provide him an opportunity to
25 “effectively” amend. *See Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) (citing
26 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992)).

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1 **III. CONCLUSION AND ORDER**

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

3 1. Plaintiff's Motion to proceed IFP pursuant to 28 U.S.C. § 1915(a) (ECF No.
4 2) is **GRANTED**.

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

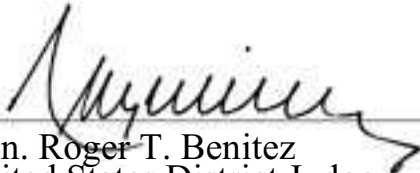
12 3. The Clerk of the Court is directed to serve a copy of this Order on the
13 WATCHCOMMANDER, George Bailey Detention Facility, 446 Alta Road, Suite 5300,
14 San Diego, California 92158.

15 **IT IS FURTHER ORDERED** that:

16 4. Plaintiff's Complaint is **DISMISSED** without prejudice for failing to state
17 a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B) and
18 § 1915A(b). However, Plaintiff is further **GRANTED** forty-five (45) days leave from
19 the date this Order is filed in which to submit a First Amended Complaint which cures
20 all the deficiencies of pleading noted above. Plaintiff's Amended Complaint must be
21 complete in itself without reference to his original pleading. *See* S.D. CAL. CIVLR 15.1.
22 Defendants not named and any claims not re-alleged in the Amended Complaint will be
23 considered waived. *See King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987).

24 5. The Clerk of Court is directed to mail a court approved civil rights
25 complaint form to Plaintiff.

26 DATED: February 18, 2015

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Hon. Roger T. Benitez
United States District Judge