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

MICHAEL ANTHONY JONES,
Booking No. 14715955, et al.,

Plaintiffs,

vs.

VISTA DETENTION FACILITY;
SAN DIEGO SHERIFF DEPARTMENT,

Defendants.

Civil No. 15cv0820 GPC (BGS)

ORDER:

**(1) GRANTING PLAINTIFF'S
MOTION TO PROCEED IN
FORMA PAUPERIS PURSUANT
TO 28 U.S.C. § 1915(a)
[ECF Doc. No. 2]**

AND

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

Michael Anthony Jones ("Plaintiff"), who is currently detained at the George Bailey Detention Facility, and is proceeding pro se, has filed a civil rights complaint ("Compl.") pursuant to 42 U.S.C. § 1983 (ECF Doc. No. 1).

Plaintiff has not prepaid the filing fee required to commence a civil action pursuant to 28 U.S.C. § 1914(a); but rather has filed a Motion to Proceed In Forma Pauperis ("IFP") pursuant to 28 U.S.C. § 1915(a) (ECF 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
3 United States, except an application for writ of habeas corpus, must pay a filing fee of
4 \$400. *See* 28 U.S.C. § 1914(a).¹ An 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); *Rodriguez*
7 *v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, a prisoner who is granted leave
8 to proceed IFP remains obligated to pay the entire fee in “increments” *see Williams v.*
9 *Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), and regardless of whether his 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 Under 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act
13 (“PLRA”), a prisoner seeking leave to proceed IFP must submit a “certified copy of [his]
14 trust fund account statement (or institutional equivalent) for . . . the six-month period
15 immediately preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2); *Andrews v.*
16 *King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified trust account statement,
17 the Court assesses an initial payment of 20% of (a) the average monthly deposits in the
18 account for the past six months, or (b) the average monthly balance in the account for the
19 past six months, whichever is greater, unless the prisoner has no assets. *See* 28 U.S.C.
20 § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having custody of the prisoner then
21 collects subsequent payments, assessed at 20% of the preceding month’s income, in any
22 month in which his account exceeds \$10, and forwards those payments to the Court until
23 the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2).

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27 ¹ In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee
28 of \$50. *See* 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee
Schedule, § 14 (eff. Dec. 1, 2014)). 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 certified copy of his trust
2 account statement pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2.
3 *Andrews*, 398 F.3d at 1119. The Court has reviewed Plaintiff’s trust account statement,
4 as well as the attached institutional certificate verifying his available balances.
5 Plaintiff’s statements show that he had average monthly deposits of \$25.00 to his
6 account, and an average monthly balance of \$4.87 during the 6-month period preceding
7 the filing of this action. Thus, the Court assesses Plaintiff’s initial partial filing fee at
8 \$5.00 pursuant to 28 U.S.C. § 1915(b)(1) and will direct officials to collect it only if
9 funds are available to cover that amount at the time this Order is executed. *See* 28 U.S.C.
10 § 1915(b)(4) (providing that “[i]n no event shall a prisoner be prohibited from bringing
11 a civil action or appealing a civil action or criminal judgment for the reason that the
12 prisoner has no assets and no means by which to pay the initial partial filing fee.”);
13 *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve”
14 preventing dismissal of a prisoner’s IFP case based solely on a “failure to pay . . . due to
15 the lack of funds available to him when payment is ordered.”).

16 Therefore, the Court GRANTS Plaintiff’s Motion to Proceed IFP (ECF Doc. No.
17 2), and will direct the Watch Commander to collect the entire \$350 balance of the filing
18 fees mandated by 28 U.S.C. § 1914 and forward them to the Clerk of the Court pursuant
19 to the installment payment provisions set forth in 28 U.S.C. § 1915(b)(1).

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

21 **A. Standard of Review**

22 Notwithstanding Plaintiff’s IFP status or the payment of any partial filing fees, the
23 PLRA also obligates the Court to review complaints filed by all persons proceeding IFP
24 and by those, like Plaintiff, who are “incarcerated or detained in any facility [and]
25 accused of, sentenced for, or adjudicated delinquent for, violations of criminal law or the
26 terms or conditions of parole, probation, pretrial release, or diversionary program,” “as
27 soon as practicable after docketing.” 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under these
28 screening statutes, the Court must sua sponte dismiss complaints, or any portions thereof,

1 which are frivolous, malicious, fail to state a claim, or which seek damages from
2 defendants who are immune. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b); *Lopez v.*
3 *Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Rhodes v.*
4 *Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing 28 U.S.C. § 1915A(b)).

5 All complaints must contain “a short and plain statement of the claim showing that
6 the pleader is entitled to relief.” FED.R.CIV.P. 8(a)(2). Detailed factual allegations are not
7 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by
8 mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
9 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “Determining whether
10 a complaint states a plausible claim for relief [is] . . . a context-specific task that requires
11 the reviewing court to draw on its judicial experience and common sense.” *Id.* The “mere
12 possibility of misconduct” falls short of meeting this plausibility standard. *Id.*; *see also*
13 *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).

14 “When there are well-pleaded factual allegations, a court should assume their
15 veracity, and then determine whether they plausibly give rise to an entitlement to relief.”
16 *Iqbal*, 556 U.S. at 679; *see also Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000)
17 (“[W]hen determining whether a complaint states a claim, a court must accept as true all
18 allegations of material fact and must construe those facts in the light most favorable to
19 the plaintiff.”); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (noting that
20 § 1915(e)(2) “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”).

21 However, while the Court “ha[s] an obligation where the petitioner is pro se,
22 particularly in civil rights cases, to construe the pleadings liberally and to afford the
23 petitioner the benefit of any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir.
24 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)), it may not
25 “supply essential elements of claims that were not initially pled.” *Ivey v. Bd. of Regents*
26 *of the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

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1 **B. San Diego County Sheriff’s Department**

2 In this case, because Plaintiff names the “Vista Detention Facility” and the “San
3 Diego County Sheriff’s Department” as the only Defendants in his Complaint, his claims
4 must be dismissed sua sponte pursuant to both 28 U.S.C. § 1915(e)(2)(B)(ii) and
5 § 1915A(b)(1) for failing to state a claim upon which § 1983 relief can be granted. *See*
6 *Lopez*, 203 F.3d at 1126-27; *Rhodes*, 621 F.3d at 1004.

7 A local law enforcement department is not a proper defendant under § 1983. *See*
8 *Vance v. County of Santa Clara*, 928 F. Supp. 993, 996 (N.D. Cal. 1996) (“Naming a
9 municipal department as a defendant is not an appropriate means of pleading a § 1983
10 action against a municipality.”) (citation omitted); *Powell v. Cook County Jail*, 814 F.
11 Supp. 757, 758 (N.D. Ill. 1993) (“Section 1983 imposes liability on any ‘person’ who
12 violates someone’s constitutional rights ‘under color of law.’ Cook County Jail is not
13 a ‘person.’”).

14 It appears that Plaintiff may be attempting to hold the County of San Diego liable
15 for the actions alleged in his Complaint. However, the County may be held liable only
16 where the Plaintiff alleges facts to show that a constitutional deprivation was caused by
17 the implementation or execution of “a policy statement, ordinance, regulation, or
18 decision officially adopted and promulgated” by the municipality, or a “final decision
19 maker” for the municipality. *Monell v. New York City Dept. of Social Services*, 436 U.S.
20 658, 690 (1978)); *Board of the County Comm’rs v. Brown*, 520 U.S. 397, 402-04 (1997);
21 *Navarro v. Block*, 72 F.3d 712, 714 (9th Cir. 1995). In other words, “respondeat superior
22 and vicarious liability are not cognizable theories of recovery against a municipality.”
23 *Miranda v. Clark County, Nevada*, 279 F.3d 1102, 1109-10 (9th Cir. 2002).

24 “A municipality cannot be held liable solely because it employs a tortfeasor.”
25 *Monell*, 436 U.S. at 691; *Navarro*, 72 F.3d at 714. Instead, to allege a claim of municipal
26 liability, Plaintiff must include in his pleading enough “factual content” to support a
27 reasonable inference to show that: (1) he was deprived of a constitutional right; (2) the
28 county had a policy; (3) the policy amounted to deliberate indifference to his

1 constitutional right; and (4) the policy was the “moving force behind the constitutional
2 violation.” *Van Ort v. Estate of Stanewich*, 92 F.3d 831, 835 (9th Cir. 1996); *see also*
3 *Iqbal*, 556 U.S. at 678; *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996).

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

17 **III. Conclusion and Order**

18 Good cause appearing, the Court:

19 1. **GRANTS** Plaintiff’s Motion to Proceed IFP pursuant to 28 U.S.C.
20 § 1915(a) (ECF Doc. No. 2).

21 2. **DIRECTS** the Watch Commander at the George Bailey Detention Facility,
22 or his designee, to collect from Plaintiff’s trust account the \$350 balance of the filing fee
23 owed in this case by collecting monthly payments from the account in an amount equal
24 to twenty percent (20%) of the preceding month’s income and forwarding those
25 payments to the Clerk of the Court each time the amount in Plaintiff’s account exceeds
26 \$10 in accordance with 28 U.S.C. § 1915(b)(2). **ALL PAYMENTS MUST BE**
27 **CLEARLY IDENTIFIED BY THE NAME AND NUMBER ASSIGNED TO THIS**
28 **ACTION.**

