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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 ERIC JAMES MUSE,
12 Booking # 15746082,

13 Plaintiff,

14 vs.

15 ERNIE GARCIA CASTILLO;
16 LATOSHA WHITE

17 Defendants.
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Case No.: 3:16-cv-01722-JAH-PCL

ORDER:

**1) GRANTING MOTION TO
PROCEED IN FORMA PAUPERIS
[ECF No. 2]**

AND

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

22 Plaintiff, Eric James Muse, is a pretrial detainee at the South Bay Detention
23 Facility in Chula Vista, California. He has filed a civil rights Complaint pursuant to 42
24 U.S.C. § 1983 (ECF No. 1) and a Motion to Proceed In Forma Pauperis (“IFP”) pursuant
25 to 28 U.S.C. § 1915(a) (ECF No. 2). Because Plaintiff’s Motion to Proceed IFP complies
26 with 28 U.S.C. § 1915(a)(2), the Court grants him leave to proceed without full
27 prepayment of the civil filing fees required by 28 U.S.C. § 1914(a), but dismisses his
28 Complaint for failing to state a claim pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b).

1 **I. Plaintiff’s IFP Motion**

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); *Rodriguez v.*
7 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, a prisoner who is granted leave to
8 proceed IFP remains obligated to pay the entire fee in “increments” or “installments,”
9 *Bruce v. Samuels*, ___ S. Ct. ___, 136 S. Ct. 627, 629 (U.S. 2016); *Williams v. Paramo*,
10 775 F.3d 1182, 1185 (9th Cir. 2015), and regardless of whether his action is ultimately
11 dismissed. See 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th
12 Cir. 2002).

13 Section 1915(a)(2) requires prisoners seeking leave to proceed IFP to submit a
14 “certified copy of the trust fund account statement (or institutional equivalent) for . . . the
15 6-month period immediately preceding the filing of the complaint.” 28 U.S.C.
16 § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified
17 trust account statement, the Court assesses an initial payment of 20% of (a) the average
18 monthly deposits in the account for the past six months, or (b) the average monthly
19 balance in the account for the past six months, whichever is greater, unless the prisoner
20 has no assets. See 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having
21 custody of the prisoner then collects subsequent payments, assessed at 20% of the
22 preceding month’s income, in any month in which his account exceeds \$10, and forwards
23 those payments to the Court until the entire filing fee is paid. See 28 U.S.C. § 1915(b)(2);
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25
26 ¹ In addition to the \$350 statutory fee, civil litigants must pay an additional administrative
27 fee of \$50. See 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court
28 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 Bruce, 136 S. Ct. at 629.

2 In support of his IFP Motion, Plaintiff has submitted a certified prison certificate,
3 verified by an accounting officer, pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL.
4 CivLR 3.2. See ECF No. 2 at 4; Andrews, 398 F.3d at 1119. This certificate shows that
5 Plaintiff has insufficient funds from which to pay a partial initial filing fee. See 28 U.S.C.
6 § 1915(b)(4) (providing that “[i]n no event shall a prisoner be prohibited from bringing a
7 civil action or appealing a civil action or criminal judgment for the reason that the
8 prisoner has no assets and no means by which to pay the initial partial filing fee.”);
9 Bruce, 136 S. Ct. at 630; Taylor, 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4)
10 acts as a “safety-valve” preventing dismissal of a prisoner’s IFP case based solely on a
11 “failure to pay . . . due to the lack of funds available to him when payment is ordered.”).

12 Therefore, the Court grants Plaintiff leave to proceed IFP and directs the Watch
13 Commander to collect the entire \$350 balance of the filing fees required by 28 U.S.C.
14 § 1914 and forward them to the Clerk of the Court pursuant to the installment payment
15 provisions set forth in 28 U.S.C. § 1915(b)(1). See id.

16 **II. Initial Screening Pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)**

17 Because Plaintiff is a prisoner and is proceeding IFP, his Complaint requires a pre-
18 Answer screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b). Under these
19 statutes, the Court must sua sponte dismiss a prisoner’s IFP complaint, or any portion of
20 it, which is frivolous, malicious, fails to state a claim, or seeks damages from defendants
21 who are immune. See Lopez v. Smith, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)
22 (discussing 28 U.S.C. § 1915(e)(2)); Rhodes v. Robinson, 621 F.3d 1002, 1004 (9th Cir.
23 2010) (discussing 28 U.S.C. § 1915A(b)). “The purpose of [screening] is ‘to ensure that
24 the targets of frivolous or malicious suits need not bear the expense of responding.’”
25 Nordstrom v. Ryan, 762 F.3d 903, 920 n.1 (9th Cir. 2014) (quoting Wheeler v. Wexford
26 Health Sources, Inc., 689 F.3d 680, 681 (7th Cir. 2012)).

27 “The standard for determining whether a plaintiff has failed to state a claim upon
28 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of

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

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

16 **A. 42 U.S.C. § 1983**

17 Title 42 U.S.C. § 1983 provides a cause of action for the “deprivation of any rights,
18 privileges, or immunities secured by the Constitution and laws” of the United States.
19 *Wyatt v. Cole*, 504 U.S. 158, 161 (1992). To state a claim under § 1983, a plaintiff must
20 allege two essential elements: (1) that a right secured by the Constitution or laws of the
21 United States was violated, and (2) that the alleged violation was committed by a person
22 acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Long v. Cty. of*
23 *Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006).

24 **B. Private Parties**

25 In his Complaint, Plaintiff claims that he was “attacked in my residence by
26 [Defendant] Ernie Garcia Castillo.” (Compl. at 3.) As a result, it appears that Plaintiff
27 was charged with a crime but was later found “not guilty.” (*Id.*) Plaintiff claims
28 Defendant Castillo “violated my right to personal safety/self-defense.” (*Id.*) Plaintiff

1 does not set forth any allegations pertaining to Defendant Latosha White.

2 Private parties or entities do not generally act under color of state law; thus,
3 “purely private conduct, no matter how wrongful, is not within the protective orbit of
4 section 1983.” *Ouzts v. Maryland Nat’l Ins. Co.*, 505 F.2d 547, 550 (9th Cir. 1974); see
5 also *Price v. Hawaii*, 939 F.2d 702, 707-08 (9th Cir. 1991). While a plaintiff may seek to
6 hold a private actor liable under section 1983, he must allege facts that show some “state
7 involvement which directly or indirectly promoted the challenged conduct.” *Ouzts*, 505
8 F.2d at 553; *West v. Atkins*, 457 U.S. 42, 49, 54 (1988); *Johnson v. Knowles*, 113 F.3d
9 1114, 1118-1120 (9th Cir. 1997). In other words, Plaintiff must allege facts to show that
10 the private actor’s conduct is “fairly attributable” to the government. *Rendell-Baker v.*
11 *Kohn*, 457 U.S. 830, 838 (1982).

12 Here, Plaintiff’s Complaint fails to allege facts sufficient to show that Defendants
13 acted on behalf of, or in any way which is attributable to, the State. Thus, without more,
14 Plaintiff’s allegations fail to satisfy the first essential prong of a § 1983 claim and are
15 dismissed from this action.

16 As for Defendant White, Plaintiff’s Complaint contains no allegations as to how
17 this Defendant allegedly violated his constitutional rights and contains no “further factual
18 enhancement” which describes how, or to what extent, any individual became aware of,
19 or were actually aware of, alleged constitutional violations. “Because vicarious liability
20 is inapplicable to . . . §1983 suits, a plaintiff must plead that each government-official
21 defendant, through the official’s own individual actions, has violated the Constitution.”
22 *Iqbal*, 556 U.S. at 676; see also *Jones v. Community Redevelopment Agency of City of*
23 *Los Angeles*, 733 F.2d 646, 649 (9th Cir. 1984) (even pro se plaintiff must “allege with at
24 least some degree of particularity overt acts which defendants engaged in” in order to
25 state a claim).

26 “Causation is, of course, a required element of a § 1983 claim.” *Estate of Brooks*
27 *v. United States*, 197 F.3d 1245, 1248 (9th Cir. 1999). “The inquiry into causation must
28 be individualized and focus on the duties and responsibilities of each individual

1 defendant whose acts or omissions are alleged to have caused a constitutional
2 deprivation.” *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988), citing *Rizzo v. Goode*,
3 423 U.S. 362, 370-71 (1976). Plaintiff does not offer any other factual allegations
4 linking Defendant White to any of his claims regarding alleged constitutional violations.

5 Accordingly, Plaintiff’s Complaint requires dismissal on this basis pursuant to 28
6 U.S.C. § 1915(e)(2) and § 1915A(b). See *Lopez*, 203 F.3d at 1126-27; *Rhodes*, 621 F.3d
7 at 1004.

8 **III. Conclusion and Order**

9 Good cause appearing, the Court:

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

12 2. **DIRECTS** the Watch Commander of the South Bay Detention Facility, or
13 his designee, to collect from Plaintiff’s trust account the \$350 filing fee owed in this case
14 by garnishing monthly payments from his account in an amount equal to twenty percent
15 (20%) of the preceding month’s income and forwarding those payments to the Clerk of
16 the Court each time the amount in the account exceeds \$10 pursuant to 28 U.S.C.
17 § 1915(b)(2). ALL PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME
18 AND NUMBER ASSIGNED TO THIS ACTION.

19 3. **DIRECTS** the Clerk of the Court to serve a copy of this Order on the Watch
20 Commander, South Bay Detention Facility, 500 Third Avenue, Chula Vista, California
21 91910.

22 4. **DISMISSES** Plaintiff’s Complaint for failing to state a claim upon which
23 § 1983 relief can granted pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b)(1).

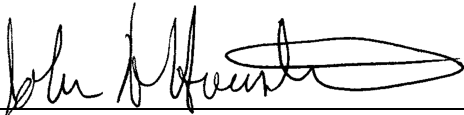
24 5. **GRANTS** Plaintiff forty-five (45) days leave in which to file an Amended
25 Complaint which cures all the deficiencies of pleading described in this Order. Plaintiff is
26 cautioned, however, that should he choose to file an Amended Complaint, it must be
27 complete by itself, comply with Federal Rule of Civil Procedure 8(a), and that any claim
28 not re-alleged will be considered waived. See S.D. CAL. CIVLR 15.1; *Hal Roach Studios*,

1 Inc. v. Richard Feiner & Co., Inc., 896 F.2d 1542, 1546 (9th Cir. 1989) (“[A]n amended
2 pleading supersedes the original.”); Lacey v. Maricopa Cnty., 693 F.3d 896, 928 (9th Cir.
3 2012) (noting that claims dismissed with leave to amend which are not re-alleged in an
4 amended pleading may be “considered waived if not repled.”).

5 If Plaintiff fails to follow these instructions and/or files an Amended Complaint
6 that still fails to state a claim, his case may be dismissed without further leave to amend.
7 See Lira v. Herrera, 427 F.3d 1164, 1169 (9th Cir. 2005) (“If a plaintiff does not take
8 advantage of the opportunity to fix his complaint, a district court may convert the
9 dismissal of the complaint into dismissal of the entire action.”).

10 **IT IS SO ORDERED.**

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12 Dated: July 14, 2016

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15 HON. JOHN A. HOUSTON
16 United States District Judge
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