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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 CHARLES E. GRIFFIN, II,
12 CDCR #H-77636,

13 Plaintiff,

14 vs.

15 RAQUEL E. ZURBANO; DORRIE P.
16 STEADMAN; MICHAEL J. ROGGELIN;
17 K. SPENCE; and MICHAEL SANTOS,

18 Defendants.
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Case No.: 3:16-cv-2715-JLS-WVG

**ORDER (1) GRANTING MOTION
TO PROCEED *IN FORMA
PAUPERIS* (ECF No. 2); AND (2)
GRANTING MOTION FOR AND
DIRECTING U.S. MARSHAL TO
EFFECT SERVICE OF SUMMONS
AND COMPLAINT PURSUANT
TO 28 U.S.C. § 1915(d) AND
Fed. R. Civ. P. 4(c)(3)
(ECF No. 4)**

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24 Charles E. Griffin, II (“Plaintiff”), proceeding pro se, is currently incarcerated at the
25 California Medical Facility in Vacaville, California, and has filed a civil rights Complaint
26 pursuant to 42 U.S.C. § 1983. (ECF No. 1.)

27 Plaintiff alleges several medical and correctional officials at Richard J. Donovan
28 Correctional Facility in San Diego, California, violated his First, Eighth, and Fourteenth

1 Amendment rights while he was incarcerated there in March through May 2015. (*See*
2 *generally* Compl.)

3 Plaintiff did not prepay the civil filing fee required by 28 U.S.C. § 1914(a) at the
4 time of filing, but instead has filed a Motion to Proceed *In Forma Pauperis* (“IFP”)
5 pursuant to 28 U.S.C. § 1915(a), (ECF No. 2), as well as a Motion requesting the issuance
6 of summons an U.S. Marshal Service pursuant to 28 U.S.C. § 1915(d) and FED. R. CIV. P.
7 4(c)(3), (ECF No. 4).

8 **I. IFP Motion**

9 All parties instituting any civil action, suit or proceeding in a district court of the
10 United States, except an application for writ of habeas corpus, must pay a filing fee of
11 \$400.¹ *See* 28 U.S.C. § 1914(a). The action may proceed despite a plaintiff’s failure to
12 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.
13 § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*
14 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, a prisoner who is granted leave to
15 proceed IFP remains obligated to pay the entire fee in “increments” or “installments,”
16 *Bruce v. Samuels*, ___ U.S. ___, 136 S. Ct. 627, 629 (2016); *Williams v. Paramo*, 775 F.3d
17 1182, 1185 (9th Cir. 2015), and regardless of whether his action is ultimately dismissed.
18 *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

19 Section 1915(a)(2) requires prisoners seeking leave to proceed IFP to submit a
20 “certified copy of the trust fund account statement (or institutional equivalent) for . . . the
21 6-month period immediately preceding the filing of the complaint.” 28 U.S.C.
22 § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified
23 trust account statement, the Court assesses an initial payment of 20% of (a) the average
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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. June 1, 2016)). The additional \$50 administrative fee does
not apply to persons granted leave to proceed IFP. *Id.*

1 monthly deposits in the account for the past six months, or (b) the average monthly balance
2 in the account for the past six months, whichever is greater, unless the prisoner has no
3 assets. *See* 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having custody
4 of the prisoner then collects subsequent payments, assessed at 20% of the preceding
5 month’s income in any month in which his account exceeds \$10, and forwards those
6 payments to the Court until the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2); *Bruce*,
7 136 S. Ct. at 629.

8 In support of his IFP Motion, Plaintiff has submitted copies of his California
9 Department of Corrections and Rehabilitation (“CDCR”) Inmate Statement Report and a
10 prison certificate authorized by a California Health Care Facility (“CHCF”) official
11 attesting to his trust account activity at the time of filing. (*See* ECF No. 2 at 4-7); 28 U.S.C.
12 § 1915(a)(2); S.D. Cal. Civ. L.R. 3.2; *Andrews*, 398 F.3d at 1119. These statements show
13 that Plaintiff’s current available balance is zero, and that over the six month period
14 preceding the filing of his Complaint he had no monthly deposits to his account and has
15 carried no balance. (ECF No. 2 at 4, 6); *see* 28 U.S.C. § 1915(b)(4) (providing that “[i]n
16 no event shall a prisoner be prohibited from bringing a civil action or appealing a civil
17 action or criminal judgment for the reason that the prisoner has no assets and no means by
18 which to pay the initial partial filing fee”); *Bruce*, 136 S. Ct. at 630; *Taylor*, 281 F.3d at
19 850 (concluding that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve” preventing dismissal
20 of a prisoner’s IFP case based solely on a “failure to pay . . . due to the lack of funds
21 available to him when payment is ordered”).

22 Therefore, the Court grants Plaintiff’s Motion to Proceed IFP, declines to “exact”
23 any initial filing fee because his trust account statement shows he “has no means to pay it,”
24 *Bruce*, 136 S. Ct. at 629, and directs the Secretary of the CDCR to collect the entire \$350
25 balance of the filing fees required by 28 U.S.C. § 1914 and forward them to the Clerk of
26 the Court pursuant to the installment payment provisions set forth in 28 U.S.C.
27 § 1915(b)(1).

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

2 **A. Standard of Review**

3 Because Plaintiff is a prisoner proceeding IFP, his complaint requires a pre-answer
4 screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b). Under these statutes, the
5 Court must *sua sponte* dismiss a prisoner’s IFP complaint, or any portion of it, which is
6 frivolous, malicious, fails to state a claim, or seeks damages from defendants who are
7 immune. *See Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc) (discussing
8 28 U.S.C. § 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010)
9 (discussing 28 U.S.C. § 1915A(b)). “The purpose of [screening] is ‘to ensure that the
10 targets of frivolous or malicious suits need not bear the expense of responding.’”
11 *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir. 2014) (internal citation omitted).

12 “The standard for determining whether a plaintiff has failed to state a claim upon
13 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of
14 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668 F.3d
15 1108, 1112 (9th Cir. 2012); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir.
16 2012) (noting that screening pursuant to § 1915A “incorporates the familiar standard
17 applied in the context of failure to state a claim under Federal Rule of Civil Procedure
18 12(b)(6)”). Rule 12(b)(6) requires a complaint “contain sufficient factual matter, accepted
19 as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S.
20 662, 678 (2009) (internal quotation marks omitted); *Wilhelm*, 680 F.3d at 1121.

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

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1 **B. Plaintiff's Allegations**

2 Plaintiff claims Defendants Zurbano, Steadman, Roggelin, Spence, and Santos, all
3 medical and correctional officials at RJD, conspired and retaliated against him for filing
4 administrative appeals and “CDC-7362s” related to his medical care. (ECF No. 1 at 31–
5 34.) Specifically, Plaintiff claims he was denied pain medication previously prescribed,
6 falsely charged with disciplinary violations, placed in administrative segregation, and
7 “given another (3) three year parole denial,” in order to “stop, freeze, [and] chill” him from
8 exercising his right to petition for redress. (*Id.* at 11–31.)

9 Based on these allegations, the Court finds Plaintiff’s Complaint sufficient to
10 survive the “low threshold” for proceeding past the *sua sponte* screening required by 28
11 U.S.C. §§ 1915(e)(2) and 1915A(b). *See Wilhelm v. Rotman*, 680 F.3d 1113, 1123 (9th Cir.
12 2012; *Iqbal*, 556 U.S. at 678; *Estelle v. Gamble*, 429 U.S. 97, 105-06 (1976) (noting that
13 prison officials are liable if they act with deliberate indifference to a prisoner’s serious
14 medical needs); *id.* at 104 (noting that deliberate indifference “is manifested by prison
15 [officials] intentionally denying or delaying access to medical care,” or “intentionally
16 interfering with the treatment once prescribed” by a physician); *Rhodes v. Robinson*, 408
17 F.3d 559, 567–68 (9th Cir. 2005) (explaining that First Amendment retaliation claim
18 requires prisoner to allege: “(1) . . . a state actor took some adverse action against [him] (2)
19 because of (3) that prisoner’s protected conduct, and that such action (4) chilled the
20 inmate’s exercise of his First Amendment rights, and (5) the action did not reasonably
21 advance a legitimate correctional goal”).

22 Therefore, the Court **GRANTS** Plaintiff’s Motion for Issuance and Service of
23 Summons (ECF No. 4) and **ORDERS** the U.S. Marshal to effect service on Plaintiff’s
24 behalf. *See* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process,
25 and perform all duties in [IFP] cases.”); FED. R. CIV. P. 4(c)(3) (“[T]he court may order
26 that service be made by a United States marshal or deputy marshal . . . if the plaintiff is
27 authorized to proceed in forma pauperis under 28 U.S.C. § 1915.”).

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1 **III. Conclusion and Order**

2 For the reasons explained, the Court:

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

5 2. **DIRECTS** the Secretary of the CDCR, or his designee, to collect from Plaintiff’s
6 prison trust account the \$350 filing fee owed in this case by garnishing monthly payments
7 from his account in an amount equal to twenty percent (20%) of the preceding month’s
8 income and forwarding those payments to the Clerk of the Court each time the amount in
9 the account exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2). **ALL PAYMENTS MUST**
10 **BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER ASSIGNED TO THIS**
11 **ACTION;**

12 3. **DIRECTS** the Clerk of the Court to serve a copy of this Order on Scott Kernan,
13 Secretary, CDCR, P.O. Box 942883, Sacramento, California, 94283-0001;

14 4. **GRANTS** Plaintiff’s Motion for Service of Summons (ECF No. 4) and
15 **DIRECTS** the Clerk to issue a summons as to Plaintiff’s Complaint (ECF No. 1) and
16 forward it to Plaintiff along with a blank U.S. Marshal (“USM”) Form 285 for each named
17 Defendant. In addition, the Clerk will provide Plaintiff with a certified copy of this Order,
18 a certified copy of his Complaint, and the summons so that he may serve the Defendants.
19 Upon receipt of this “IFP Package,” Plaintiff must complete the Form 285s as completely
20 and accurately as possible, *include an address where each named Defendant may be found*
21 *and/or subject to service*, and return them to the United States Marshal according to the
22 instructions the Clerk provides in the letter accompanying his IFP package;

23 5. **ORDERS** the U.S. Marshal to serve a copy of the Complaint and summons upon
24 Defendants as directed by Plaintiff on the USM Form 285s provided to him. All costs of
25 that service will be advanced by the United States. *See* 28 U.S.C. § 1915(d); FED. R. CIV.
26 P. 4(c)(3);

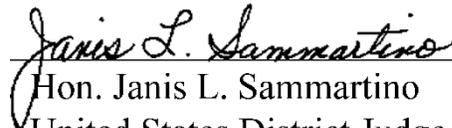
27 6. **ORDERS** Defendants, once they have been served, to reply to Plaintiff’s
28 Complaint within the time provided by the applicable provisions of Federal Rule of Civil

1 Procedure 12(a). *See* 42 U.S.C. § 1997e(g)(2) (explaining that while a defendant may
2 occasionally be permitted to “waive the right to reply to any action brought by a prisoner
3 confined in any jail, prison, or other correctional facility under section 1983,” once the
4 Court has conducted its *sua sponte* screening pursuant to 28 U.S.C. § 1915(e)(2) and §
5 1915A(b), and thus, has made a preliminary determination based on the face on the
6 pleading alone that Plaintiff has a “reasonable opportunity to prevail on the merits,”
7 defendant is required to respond); and

8 7. **ORDERS** Plaintiff, after service has been effected by the U.S. Marshal, to
9 serve upon each Defendant, or if appearance has been entered by counsel, upon
10 Defendants’ counsel, a copy of every further pleading, motion, or other document
11 submitted for the Court’s consideration pursuant to FED. R. CIV. P. 5(b). Plaintiff must
12 include with every original document he seeks to file with the Clerk of the Court a
13 certificate stating the manner in which a true and correct copy of that document has been
14 was served on Defendants or their counsel, and the date of that service. *See* S.D. Cal. Civ.
15 L.R. 5.2. Any document received by the Court which has not been properly filed with the
16 Clerk or which fails to include a Certificate of Service upon the Defendants, or their
17 counsel, may be disregarded.

18 **IT IS SO ORDERED.**

19 Dated: February 27, 2017


20 Hon. Janis L. Sammartino
21 United States District Judge
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