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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 TEDDY LEROY WILSON, Jr.,
12 CDCR #BC-5903,

13 Plaintiff,

14 vs.

15 DAVID CHANDROO, Ramona Deputy
16 Sheriff; CASEY THAYER, Ramona
17 Deputy Sheriff; DAVID WILLIAMS,
18 Ramona Deputy Sheriff,

19 Defendants.
20
21

Case No.: 3:16-cv-02815-MMA-WVG

ORDER:

**1) GRANTING RENEWED MOTION
TO PROCEED IN FORMA
PAUPERIS [Doc. No. 4]**

AND

**2) DIRECTING U.S. MARSHAL TO
EFFECT SERVICE OF COMPLAINT
AND SUMMONS PURSUANT TO
28 U.S.C. § 1915(d) AND
Fed. R. Civ. P. 4(c)(3)**

22 TEDDY LEROY WILSON, Jr., (“Plaintiff”), currently incarcerated at the
23 California Institution for Men (“CIM”) in Chino, California,¹ and proceeding *pro se*, has
24 filed a civil rights Complaint pursuant to 42 U.S.C. § 1983 (Doc. No. 1).
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27 ¹ Plaintiff was still a pretrial detainee at the San Diego Sheriff’s Department’s Vista
28 Detention Facility when he initiated this action; but he has since filed a Notice of Change
of Address to CIM (Doc. No. 5).

1 Plaintiff did not prepay the civil filing fee required by 28 U.S.C. § 1914(a) when
2 he filed his Complaint; instead, he filed a Motion to Proceed In Forma Pauperis (“IFP”)
3 pursuant to 28 U.S.C. § 1915(a) (Doc. No. 2).

4 On December 19, 2016, the Court denied Plaintiff’s IFP because he failed to attach
5 a certified copy of his trust account statements as required by 28 U.S.C. § 1915(a)(2), but
6 granted him an opportunity to correct that deficiency (Doc. No. 3). Plaintiff has since
7 filed a renewed Motion to Proceed IFP (Doc. No. 4).

8 **I. Renewed IFP Motion**

9 As Plaintiff now knows, all parties instituting any civil action, suit or proceeding in
10 a district court of the United States, except an application for writ of habeas corpus, must
11 pay a filing fee of \$400.² See 28 U.S.C. § 1914(a). The action may proceed despite a
12 plaintiff’s failure to prepay the entire fee only if he is granted leave to proceed IFP
13 pursuant to 28 U.S.C. § 1915(a). See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th
14 Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, a prisoner
15 who is granted leave to proceed IFP remains obligated to pay the entire fee in
16 “increments” or “installments,” *Bruce v. Samuels*, ___ S. Ct. ___, 136 S. Ct. 627, 629
17 (2016); *Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), and regardless of
18 whether his action is ultimately dismissed. See 28 U.S.C. § 1915(b)(1) & (2); *Taylor v.*
19 *Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

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

9 In support of his renewed IFP Motion, Plaintiff submitted a copy of his San Diego
10 Sheriff’s Department Trust Account Activity (ECF No. 4 at 6), together with a prison
11 certificate completed by an accounting official at the Vista Detention Facility attesting to
12 his trust account activity and balances for the six-months preceding the filing of his
13 Complaint. *See* Doc. No. 4 at 4; 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2; *Andrews*,
14 398 F.3d at 1119. These statements show that Plaintiff had an average monthly balance of
15 \$19.34, and average monthly deposits of \$59.17 to his account over the 6-month period
16 immediately preceding the filing of his Complaint, as well as an available balance of
17 \$116.01 at the time of filing. *See* Doc. No. 4 at 4. Based on this financial information, the
18 Court GRANTS Plaintiff’s Renewed Motion to Proceed IFP (Doc. No. 4), and assesses
19 his initial partial filing fee to be \$11.83 pursuant to 28 U.S.C. § 1915(b)(1).

20 However, the Court will direct the Secretary of the California Department of
21 Corrections and Rehabilitation (“CDCR”), or his designee, to collect this initial fee only
22 if sufficient funds are available in Plaintiff’s account at the time this Order is executed.
23 *See* 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event shall a prisoner be prohibited
24 from bringing a civil action or appealing a civil action or criminal judgment for the
25 reason that the prisoner has no assets and no means by which to pay the initial partial
26 filing fee.”); *Bruce*, 136 S. Ct. at 630; *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C.
27 § 1915(b)(4) acts as a “safety-valve” preventing dismissal of a prisoner’s IFP case based
28 solely on a “failure to pay ... due to the lack of funds available to him when payment is

1 ordered.”). The remaining balance of the \$350 total fee owed in this case must be
2 collected and forwarded to the Clerk of the Court pursuant to 28 U.S.C. § 1915(b)(1).

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

4 A. Standard of Review

5 Because Plaintiff is a prisoner and is proceeding IFP, his Complaint also requires a
6 pre-answer screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b). Under these
7 statutes, the Court must sua sponte dismiss a prisoner’s IFP complaint, or any portion of
8 it, which is frivolous, malicious, fails to state a claim, or seeks damages from defendants
9 who are immune. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)
10 (discussing 28 U.S.C. § 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir.
11 2010) (discussing 28 U.S.C. § 1915A(b)). “The purpose of [screening] is ‘to ensure that
12 the targets of frivolous or malicious suits need not bear the expense of responding.’”
13 *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir. 2014) (quoting *Wheeler v. Wexford*
14 *Health Sources, Inc.*, 689 F.3d 680, 681 (7th Cir. 2012)).

15 “The standard for determining whether a plaintiff has failed to state a claim upon
16 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of
17 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668
18 F.3d 1108, 1112 (9th Cir. 2012); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th
19 Cir. 2012) (noting that screening pursuant to § 1915A “incorporates the familiar standard
20 applied in the context of failure to state a claim under Federal Rule of Civil Procedure
21 12(b)(6)”). Rule 12(b)(6) requires a complaint “contain sufficient factual matter, accepted
22 as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S.
23 662, 678 (2009) (internal quotation marks omitted); *Wilhelm*, 680 F.3d at 1121.

24 Detailed factual allegations are not required, but “[t]hreadbare recitals of the
25 elements of a cause of action, supported by mere conclusory statements, do not suffice.”
26 *Iqbal*, 556 U.S. at 678. “Determining whether a complaint states a plausible claim for
27 relief [is] ... a context-specific task that requires the reviewing court to draw on its
28 judicial experience and common sense.” *Id.*

1 The “mere possibility of misconduct” or “unadorned, the defendant-unlawfully-
2 harmed me accusation[s]” fall short of meeting this plausibility standard. *Id.*; *see also*
3 *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).

4 B. Plaintiff’s Allegations

5 Plaintiff’s claims three Ramona Deputy Sheriffs used excessive force while
6 effecting his arrest in the early morning of September 3, 2016, at a baseball park near his
7 home, and while he was suffering from an episode of paranoid schizophrenia, an illness
8 he has suffered since childhood. (Doc. No. 1 at 4.) Plaintiff claims Defendants
9 “approached” him “out of nowhere,” while investigating reports of a “suspicious person
10 casing cars in the parking lot.” (*Id.* at 5.) Plaintiff was “self-medicating” at the time,
11 “panicked, turned around and fled.” (*Id.*)

12 Specifically, Plaintiff claims Deputy Chandroo “ran up behind him, and shoved
13 him forward causing pain to his back[,] shoulders, and neck,” “shoved [his] face in the
14 dirt,” and struck him in the face and head. (*Id.* at 5-6). Plaintiff further claims Deputy
15 Thayer “arrived” and “started delivering knee strikes to [his] stomach,” struck him in the
16 head and face, pinned his legs behind his back and “bounced” on them, (*id.* at 6), and that
17 Deputy Williams did the same. (*Id.* at 7.) Plaintiff claims he thought he would be “beaten
18 to death,” lost “momentary consciousness,” and was ultimately transported to the hospital
19 in a neck brace. (*Id.* at 7.) He seeks injunctive relief preventing “harassment” by the
20 Defendants, and \$2,250,000 in general and punitive damages. (*Id.* at 11.)

21 Based on these allegations, the Court finds Plaintiff’s Complaint sufficient to
22 survive the “low threshold” for proceeding past the sua sponte screening required by 28
23 U.S.C. §§ 1915(e)(2) and 1915A(b). *See Wilhelm v. Rotman*, 680 F.3d 1113, 1123 (9th
24 Cir. 2012; *Iqbal*, 556 U.S. at 678; *Scott v. Harris*, 550 U.S. 372, 381 (2007) (noting that a
25 claim of “excessive force in the course of making [a] ... ‘seizure’ of [the] person ... [is]
26 properly analyzed under the Fourth Amendment’s ‘objective reasonableness’ standard.”)
27 (quoting *Graham v. Connor*, 490 U.S. 386, 388 (1989)). The Fourth Amendment
28 reasonableness analysis “requires balancing the ‘nature and quality of the intrusion’ on a

1 person's liberty with the 'countervailing governmental interest at stake' to determine
2 whether the use of force was objectively reasonable under the circumstances." *Smith v.*
3 *City of Hemet*, 394 F.3d 689, 700 (9th Cir. 2005) (quoting *Graham*, 490 U.S. at 396)).

4 Therefore, the Court will direct the U.S. Marshal to effect service of summons
5 Plaintiff's Complaint on his behalf. *See* 28 U.S.C. § 1915(d) ("The officers of the court
6 shall issue and serve all process, and perform all duties in [IFP] cases."); FED. R. CIV. P.
7 4(c)(3) ("[T]he court may order that service be made by a United States marshal or
8 deputy marshal . . . if the plaintiff is authorized to proceed in forma pauperis under 28
9 U.S.C. § 1915.").

10 **III. Conclusion and Order**

11 For the reasons explained, the Court:

12 1. **GRANTS** Plaintiff's Renewed Motion to Proceed IFP pursuant to 28 U.S.C.
13 § 1915(a) (Doc. No. 4).

14 2. **ORDERS** the Secretary of the CDCR, or his designee, to collect from
15 Plaintiff's trust account the \$11.83 initial filing fee assessed, if those funds are available
16 at the time this Order is executed, and to forward whatever balance remains of the full
17 \$350 owed in monthly payments in an amount equal to twenty percent (20%) of the
18 preceding month's income to the Clerk of the Court each time the amount in Plaintiff's
19 account exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2). **ALL PAYMENTS MUST BE**
20 **CLEARLY IDENTIFIED BY THE NAME AND NUMBER ASSIGNED TO THIS**
21 **ACTION.**

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

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1 4. **DIRECTS** the Clerk to issue a summons as to Plaintiff's Complaint (Doc.
2 No. 1) and forward it to Plaintiff along with a blank U.S. Marshal Form 285 for each
3 Defendant. In addition, the Clerk will provide Plaintiff with a certified copy of this Order,
4 certified copies of his Complaint, and the summons so that he may serve Defendants.
5 Upon receipt of this "IFP Package," Plaintiff must complete the USM Form 285s as
6 completely and accurately as possible, *include an address where each named Defendant*
7 *may be found and/or subject to service*, and return them to the United States Marshal
8 according to the instructions the Clerk provides in the letter accompanying his IFP
9 package.

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

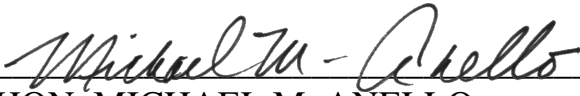
14 6. **ORDERS** Defendants, once they have been served, to reply to Plaintiff's
15 Complaint within the time provided by the applicable provisions of Federal Rule of Civil
16 Procedure 12(a). *See* 42 U.S.C. § 1997e(g)(2) (while a defendant may occasionally be
17 permitted to "waive the right to reply to any action brought by a prisoner confined in any
18 jail, prison, or other correctional facility under section 1983," once the Court has
19 conducted its sua sponte screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b),
20 and thus, has made a preliminary determination based on the face on the pleading alone
21 that Plaintiff has a "reasonable opportunity to prevail on the merits," defendant is
22 required to respond).

23 7. **ORDERS** Plaintiff, after service has been effected by the U.S. Marshal, to
24 serve upon Defendants, or if appearance has been entered by counsel, upon Defendants'
25 counsel, a copy of every further pleading, motion, or other document submitted for the
26 Court's consideration pursuant to FED. R. CIV. P. 5(b). Plaintiff must include with every
27 original document he seeks to file with the Clerk of the Court, a certificate stating the
28 manner in which a true and correct copy of that document has been was served on

1 Defendants or their counsel, and the date of that service. *See* S.D. CAL. CIVLR 5.2. Any
2 document received by the Court which has not been properly filed with the Clerk or
3 which fails to include a Certificate of Service upon the Defendants, or their counsel, may
4 be disregarded.

5 **IT IS SO ORDERED.**

6 DATE: April 25, 2017

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9 HON. MICHAEL M. ANELLO
10 United States District Judge
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