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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: ML DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FLOYD ANTHONY RODGERS,
Patient #067265-9,

Plaintiff,

vs.

SUPERIOR COURT OF SAN DIEGO,

Defendants.

Case No.: 3:16-cv-02864-BEN-JMA

ORDER:

**(1) GRANTING MOTION TO
PROCEED IN FORMA PAUPERIS;
and**

**(2) DISMISSING CIVIL ACTION
FOR FAILING TO STATE A CLAIM
UPON WHICH RELIEF CAN BE
GRANTED PURSUANT TO
28 U.S.C. § 1915(e)(2)(B)(ii)**

Floyd Anthony Rodgers (“Plaintiff”), proceeding pro se, filed this civil rights complaint (“Compl.”) pursuant to 42 U.S.C. § 1983 while he was civilly detained at Atascadero State Hospital (“ASH”) in Atascadero, California.¹ (Doc. No. 1.) Plaintiff did not prepay the civil filing fee required by 28 U.S.C. § 1914(a); instead he filed a

¹ It appears Plaintiff is no longer civilly detained; on October 12, 2016, he filed a Notice of Change of Address indicating he has been released from custody and is now residing in Chula Vista, California. (Doc. No. 4.)

1 Motion to Proceed In Forma Pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a). (Doc.
2 No. 2.)

3 **I. Motion to Proceed IFP**

4 All parties instituting any civil action, suit or proceeding in a district court of the
5 United States, except an application for writ of habeas corpus, must pay a filing fee of
6 \$400.² See 28 U.S.C. § 1914(a). The action may proceed despite a plaintiff’s failure to
7 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.
8 § 1915(a). See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*
9 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

10 “Unlike other indigent litigants, prisoners proceeding IFP must pay the full amount
11 of filing fees in civil actions and appeals pursuant to the PLRA [Prison Litigation Reform
12 Act].” *Agyeman v. INS*, 296 F.3d 871, 886 (9th Cir. 2002). As defined by the PLRA, a
13 “prisoner” is “any person incarcerated or detained in any facility who is accused of,
14 convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or
15 the terms and conditions of parole, probation, pretrial release, or diversionary program.”
16 28 U.S.C. § 1915(h).

17 A “civil detainee” is not a “prisoner” within the meaning of the PLRA. *Andrews v.*
18 *King*, 398 F.3d 1113, 1122 (9th Cir 2005); *Agyeman*, 296 F.3d at 886 (holding that INS
19 detainee not also facing criminal charges is not a “prisoner” under § 1915); see also *Page*
20 *v. Torrey*, 201 F.3d 1136, 1140 (9th Cir. 2000) (person confined under California’s
21 Sexually Violent Predator Law, while a “a ‘prisoner’ within the meaning of the PLRA
22 when he served time for his conviction, . . . ceased being a ‘prisoner’ when he was
23 released from the custody of the Department of Corrections.”); *Mullen v. Surtshin*, 590 F.

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26 ² In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$50. See
27 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14 (eff.
28 June 1, 2016). The additional \$50 administrative fee does not apply to persons granted leave to proceed
IFP. *Id.*

1 Supp. 2d 1233, 1240 (N.D. Cal. 2008) (holding plaintiff “adjudicated NGI [not guilty by
2 reason of insanity] and committed to [Napa State Hospital] as a result of that
3 adjudication” was “not a prisoner as defined by the PLRA.”).

4 As alleged in his Complaint, Plaintiff was a civilly committed patient at ASH, and
5 not a “prisoner” as defined by 28 U.S.C. § 1915(h) when he filed this action. (Doc. No.
6 1.) Therefore, the filing fee provisions of 28 U.S.C. § 1915(b) do not apply. *Andrews*,
7 398 F.3d at 1122. Accordingly, the Court has reviewed Plaintiff’s affidavit of assets as it
8 would for any other non-prisoner litigant seeking IFP status, and finds it is sufficient to
9 show that he is unable to pay the fees or post securities required to maintain this action.
10 See S.D. CAL. CIVLR 3.2(d). Plaintiff’s Motion to Proceed IFP pursuant to 28 U.S.C. §
11 1915(a) is therefore **GRANTED**. (Doc. No. 2.)

12 **II. Screening Pursuant to 28 U.S.C. § 1915(e)(2)**

13 **A. Standard of Review**

14 A complaint filed by any person proceeding in forma pauperis is subject to sua
15 sponte dismissal if it is “frivolous, malicious, fail[s] to state a claim upon which relief
16 may be granted, or seek[s] monetary relief from a defendant immune from such relief.”
17 28 U.S.C. § 1915(e)(2)(B); *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (per
18 curiam) (holding that “the provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to
19 prisoners.”); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (“[S]ection
20 1915(e) not only permits, but requires a district court to dismiss an in forma pauperis
21 complaint that fails to state a claim.”).

22 All complaints must contain “a short and plain statement of the claim showing that
23 the pleader is entitled to relief.” FED. R. CIV. P. 8(a)(2). Detailed factual allegations are
24 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by
25 mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
26 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “Determining
27 whether a complaint states a plausible claim for relief [is] . . . a context-specific task that
28 requires the reviewing court to draw on its judicial experience and common sense.” *Id.*

1 The “mere possibility of misconduct” falls short of meeting this plausibility standard. *Id.*;
2 *see also Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).

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

10 However, while the court “ha[s] an obligation where the petitioner is pro se,
11 particularly in civil rights cases, to construe the pleadings liberally and to afford the
12 petitioner the benefit of any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir.
13 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)), it may not
14 “supply essential elements of claims that were not initially pled.” *Ivey v. Board of*
15 *Regents of the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

16 B. Plaintiff’s Complaint

17 Plaintiff alleges that he was criminally convicted of charges of “serious great
18 bodily injury” on November 22, 2002, in a San Diego Superior Court. (Compl. at 3.)
19 Plaintiff claims his sentence resulted in “double jeopardy,” as well as “cruel and unusual
20 punishment,” in violation of his constitutional rights. (*Id.*) Plaintiff was then housed in
21 the custody of the California Department of Corrections and Rehabilitation (“CDCR”) for
22 fifteen years. (*Id.*)

23 C. Statute of Limitations

24 Plaintiff’s claims arose when he was sentenced in 2002. (Doc. No. 1 at 1, 3-4.) “A
25 claim may be dismissed [for failing to state a claim] on the ground that it is barred by the
26 applicable statute of limitations only when ‘the running of the statute is apparent on the
27 face of the complaint.’” *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592
28 F.3d 954, 969 (9th Cir. 2010) (quoting *Huynh v. Chase Manhattan Bank*, 465 F.3d 992,

1 997 (9th Cir. 2006)). ““A complaint cannot be dismissed unless it appears beyond doubt
2 that the plaintiff can prove no set of facts that would establish the timeliness of the
3 claim.”” *Id.* (quoting *Supermail Cargo, Inc. v. U.S.*, 68 F.3d 1204, 1206 (9th Cir. 1995));
4 *see also Cervantes v. City of San Diego*, 5 F.3d 1273, 1276-77 (9th Cir. 1993) (where the
5 running of the statute of limitations is apparent on the face of a complaint, dismissal for
6 failure to state a claim is proper, so long as Plaintiff is provided an opportunity to amend
7 in order to allege facts which, if proved, might support tolling); *see also Tahoe-Sierra*
8 *Pres. Council, Inc. v. Tahoe Reg’l Planning Agency*, 216 F.3d 764, 788 (9th Cir. 2000)
9 (court may raise the defense of statute of limitations sua sponte); *Hughes v. Lott*, 350
10 F.3d 1157, 1163 (11th Cir. 2003) (upholding sua sponte dismissal under 28 U.S.C. §
11 1915(e)(2)(B) of prisoner’s time-barred complaint).

12 Because section 1983 contains no specific statute of limitation, federal courts apply
13 the forum state’s statute of limitations for personal injury actions. *Jones v. Blanas*, 393
14 F.3d 918, 927 (9th Cir. 2004); *Maldonado v. Harris*, 370 F.3d 945, 954 (9th Cir. 2004);
15 *Fink v. Shedler*, 192 F.3d 911, 914 (9th Cir. 1999). Before 2003, California’s statute of
16 limitations was one year. *Jones*, 393 F.3d at 927. Effective January 1, 2003, the
17 limitations period was extended to two years. *Id.* (citing CAL. CIV. PROC. CODE § 335.1).
18 The law of the forum state also governs tolling. *Wallace v. Kato*, 549 U.S. 384, 394
19 (2007) (citing *Hardin v. Straub*, 490 U.S. 536, 538-39 (1989)); *Jones*, 393 F.3d at 927
20 (noting that in actions where the federal court borrows the state statute of limitation, the
21 federal court also borrows all applicable provisions for tolling the limitations period
22 found in state law).

23 Under California law, the statute of limitations for prisoners serving less than a life
24 sentence is tolled for two years. CAL. CIV. PROC. CODE § 352.1(a); *Johnson v. California*,
25 207 F.3d 650, 654 (9th Cir. 2000), *overruled on other grounds*, 543 U.S. 499 (2005).
26 Accordingly, the effective statute of limitations for most California prisoners is three
27 years for claims accruing before January 1, 2003 (one year limitations period plus two
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1 year statutory tolling), and four years for claims accruing thereafter (two year limitations
2 period plus two years statutory tolling).

3 Unlike the length of the limitations period, however, “the accrual date of a § 1983
4 cause of action is a question of federal law that is not resolved by reference to state law.”
5 *Wallace*, 549 U.S. at 388; *Hardin*, 490 U.S. at 543-44 (federal law governs when a
6 § 1983 cause of action accrues). “Under the traditional rule of accrual ... the tort cause of
7 action accrues, and the statute of limitation begins to run, when the wrongful act or
8 omission results in damages.” *Wallace*, 549 U.S. at 391. Put another way, “[u]nder
9 federal law, a claim accrues when the plaintiff knows or has reason to know of the injury
10 which is the basis of the action.” *Maldonado*, 370 F.3d at 955; *TwoRivers v. Lewis*, 174
11 F.3d 987, 991 (9th Cir. 1999).

12 In this case, the “wrongful act” which is alleged to have caused Plaintiff harm
13 occurred almost fifteen years before Plaintiff filed his Complaint in this action, and far
14 outside California’s statute of limitations, even including all presumed periods of tolling
15 provided by statute, or pending the exhaustion of any administrative remedies. *Wallace*,
16 591 U.S. at 391; *see also Maldonado*, 370 F.3d at 955; CAL. CODE CIV. PROC. § 335.1
17 (tolling statute of limitations “for a maximum of 2 years” during a prisoner’s
18 incarceration); *Jones*, 393 F.3d at 927; *Brown v. Valoff*, 422 F.3d 926, 943 (9th Cir. 2005)
19 (finding that “the applicable statute of limitations must be tolled while a prisoner
20 completes the mandatory exhaustion process” required by 42 U.S.C. § 1997e(a)).³

21 Specifically, Plaintiff claims he was denied his constitutional rights when he was
22 sentenced in 2002. (*See Compl.* at 1, 3-4.) Therefore, he had “reason to know” the basis
23 of his cause of action in 2002, but did not file this case until November 21, 2016— more
24 than a decade after the limitations period elapsed. *See Maldonado*, 370 F.3d at 955.

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28 ³ In fact, Plaintiff concedes that he did not exhaust available administrative remedies prior to filing suit.
(Doc. No. 1 at 6.)

1 Plaintiff's claims could be considered timely if, in his Complaint, he alleges facts
2 sufficient to show the limitations period may be equitably tolled. *See Cervantes*, 5 F.3d
3 at 1276-77. Generally, federal courts also apply the forum state's law regarding equitable
4 tolling. *Fink*, 192 F.3d at 914; *Bacon v. City of Los Angeles*, 843 F.2d 372, 374 (9th
5 Cir.1988). Under California law, Plaintiff must meet three conditions to equitably toll the
6 statute of limitations: (1) he must have diligently pursued his claim; (2) his situation must
7 be the product of forces beyond his control; and (3) Defendants must not be prejudiced
8 by the application of equitable tolling. *See Hull v. Central Pathology Serv. Med. Clinic*,
9 28 Cal. App. 4th 1328, 1335 (Cal. Ct. App. 1994); *Addison v. State of California*, 21
10 Cal.3d 313, 316-17 (Cal. 1978); *Fink*, 192 F.3d at 916.

11 The Court finds Plaintiff's Complaint lacks any factual allegations that, if proven,
12 would support any plausible claim for equitable tolling. *See Cervantes*, 5 F.3d at 1277;
13 *Iqbal*, 556 U.S. at 679. Accordingly, the Court finds Plaintiff's claims are barred by the
14 statute of limitations, and his entire Complaint must be dismissed for failing to state a
15 claim upon which section 1983 relief may be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(ii);
16 *Barren*, 152 F.3d at 1194.

17 D. Criminal Proceedings

18 To the extent that Plaintiff seeks damages based on an allegedly unconstitutional
19 criminal conviction and sentence, he may not pursue those claims in a civil rights action
20 pursuant to 42 U.S.C. § 1983 without first showing that his conviction has already been
21 invalidated. *See Heck v. Humphry*, 512 U.S. 477, 486-87 (1994).

22 In *Heck*, the Supreme Court held:

23 in order to recover damages for allegedly unconstitutional
24 conviction or imprisonment, or for other harm caused by
25 actions whose unlawfulness would render a conviction or
26 sentence invalid, a § 1983 plaintiff must prove that the
27 conviction or sentence has been reversed on direct appeal,
28 expunged by executive order, declared invalid by a state
tribunal authorized to make such determination, or called into
question by a federal court's issuance of a writ of habeas

1 corpus, 28 U.S.C. § 2254. A claim for damages bearing that
2 relationship to a conviction or sentence that has not been so
3 invalidated is not cognizable under § 1983.

4 *Id.* at 486-87.

5 “Suits challenging the validity of the prisoner’s continued incarceration lie within
6 ‘the heart of habeas corpus,’ whereas ‘a § 1983 action is a proper remedy for a state
7 prisoner who is making a constitutional challenge to the conditions of his prison life, but
8 not to the fact or length of his custody.’” *Ramirez v. Galaza*, 334 F.3d 850, 856 (9th Cir.
9 2003), *quoting Preiser v. Rodriguez*, 411 U.S. 475, 489-99 (1973) (holding that a writ of
10 habeas corpus is “explicitly and historically designed” to provide a state prisoner with the
11 “exclusive” means to “attack the validity of his confinement” in federal court).

12 Plaintiff’s claims amount to an attack on the validity of his underlying criminal
13 conviction and sentence, and may not proceed pursuant to § 1983, unless his conviction
14 has already been invalidated. *Heck*, 512 U.S. at 486-87; *Ramirez*, 334 F.3d at 855-56
15 (“Absent such a showing, [e]ven a prisoner who has fully exhausted available state
16 remedies has no cause of action under § 1983.”), *quoting Heck*, 512 U.S. at 489. Such
17 claims “necessarily imply the invalidity” of his conviction and continued incarceration.
18 *Heck*, 512 U.S. at 487. The Court takes judicial notice that Plaintiff has challenged,
19 unsuccessfully, his criminal conviction and sentence on more than one occasion by way
20 of petitions for writ of habeas corpus pursuant to 28 U.S.C. § 2254: *Rodgers v. San*
21 *Diego County, et al.*, S.D. Cal. Civil Case No. 3:05-cv001814-BEN-BLM; *Rodgers v.*
22 *Kernan, et al.*, S.D. Cal. Civil Case No. 3:06-cv-01384-L-POR. Both of those petitions
23 have been dismissed.

24 E. Immune Defendants

25 While Plaintiff names the “Superior Court of San Diego” as a Defendant, the Court
26 will construe this as a claim against the unnamed judicial officer who imposed Plaintiff’s
27 criminal sentence following his conviction. However, these claims are legally frivolous,
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1 for “[j]udges are absolutely immune from damage liability for acts performed in their
2 official capacities.” *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986).

3 **III. Conclusion and Order**

4 Good cause appearing, the Court:

5 1. **GRANTS** Plaintiff’s Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a)
6 (Doc. No. 2); and

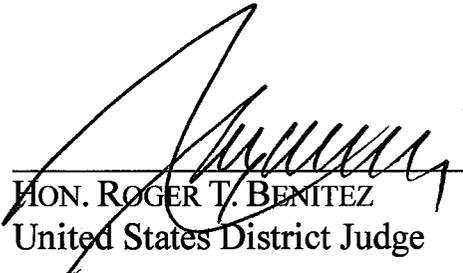
7 2. **DISMISSES** Plaintiff’s Complaint for failing to state a claim and as
8 frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b). Because the
9 Court finds further amendment futile, leave to amend is **DENIED**. *See Cahill v. Liberty*
10 *Mut. Ins. Co.*, 80 F.3d 336, 339 (9th Cir. 1996) (denial of a leave to amend is not an
11 abuse of discretion where further amendment would be futile).

12 3. The Court further **CERTIFIES** that an IFP appeal from this Order of
13 dismissal would not be taken “in good faith” pursuant to 28 U.S.C. § 1915(a)(3). *See*
14 *Coppedge v. United States*, 369 U.S. 438, 445 (1962); *Gardner v. Pogue*, 558 F.2d 548,
15 550 (9th Cir. 1977) (indigent appellant is permitted to proceed IFP on appeal only if
16 appeal would not be frivolous).

17 The Clerk shall enter judgment and close the file.

18 **IT IS SO ORDERED.**

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20 Dated: 2/28, 2017

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22 HON. ROGER T. BENITEZ
23 United States District Judge
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