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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 JERAMIAH HANCE,
12 CDCR #V-46563,

13 Plaintiff,

14 vs.

15 L. ROMERO;
16 VALDOVINOS,

17 Defendants.
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Case No.: 3:16-cv-03027-GPC-PCL

ORDER:

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

AND

**2) 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)**

22 JERAMIAH HANCE (“Plaintiff”), currently incarcerated at Richard J. Donovan
23 Correctional Facility (“RJD”) in San Diego, California, and proceeding pro se, has filed a
24 civil rights Complaint pursuant to 42 U.S.C. § 1983 (ECF No. 1).

25 Plaintiff did not prepay the civil filing fee required by 28 U.S.C. § 1914(a) when he
26 filed his Complaint; instead, he later filed a Motion to Proceed In Forma Pauperis (“IFP”)
27 pursuant to 28 U.S.C. § 1915(a) (ECF 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 \$400.¹ 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*, ___ U.S. ___, 136 S. Ct. 627, 629 (2016); *Williams v. Paramo*, 775 F.3d
10 1182, 1185 (9th Cir. 2015), and regardless of whether his action is dismissed. See 28 U.S.C.
11 § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

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

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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 In support of his IFP Motion, Plaintiff has submitted a copy of his CDCR Inmate
2 Statement Report, as well as a Prison Certificate signed by a senior RJD accounting officer
3 attesting as to his account activity for the 6-month period preceding the filing of his
4 Complaint. *See* ECF No. 2 at 2-4; 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2; *Andrews*,
5 398 F.3d at 1119. These documents show that while Plaintiff had average monthly deposits
6 of approximately \$9.02 to his account, he carried no monthly balance and had an available
7 balance of zero at the time of filing. (ECF No. 2 at 3-4.) Thus, the Court assesses Plaintiff’s
8 initial partial filing fee to be \$1.80 pursuant to 28 U.S.C. § 1915(b)(1), but acknowledges
9 he may be unable to pay even that small initial fee at this time. *See* 28 U.S.C. § 1915(b)(4)
10 (providing that “[i]n no event shall a prisoner be prohibited from bringing a civil action or
11 appealing a civil action or criminal judgment for the reason that the prisoner has no assets
12 and no means by which to pay the initial partial filing fee.”); *Bruce*, 136 S. Ct. at 630;
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 No. 2),
17 declines to exact the initial \$1.80 initial filing fee because his prison certificate indicates
18 he may have “no means to pay it,” *Bruce*, 136 S. Ct. at 629, and directs the Secretary of
19 the California Department of Corrections and Rehabilitation (“CDCR”), or his designee,
20 to instead collect the entire \$350 balance of the filing fees required by 28 U.S.C. § 1914
21 and forward them to the Clerk of the Court pursuant to the installment payment provisions
22 set forth in 28 U.S.C. § 1915(b)(1). *See id.*

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

24 **A. Standard of Review**

25 Because Plaintiff is a prisoner proceeding IFP, his complaint requires a pre-answer
26 screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b). Under these statutes, the
27 Court must sua sponte dismiss a prisoner’s IFP complaint, or any portion of it, which is
28 frivolous, malicious, fails to state a claim, or seeks damages from defendants who are

1 immune. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (discussing
2 28 U.S.C. § 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010)
3 (discussing 28 U.S.C. § 1915A(b)). “The purpose of [screening] is ‘to ensure that the
4 targets of frivolous or malicious suits need not bear the expense of responding.’”
5 *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir. 2014) (internal citation omitted).

6 “The standard for determining whether a plaintiff has failed to state a claim upon
7 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of
8 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668 F.3d
9 1108, 1112 (9th Cir. 2012); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir.
10 2012) (noting that screening pursuant to § 1915A “incorporates the familiar standard
11 applied in the context of failure to state a claim under Federal Rule of Civil Procedure
12 12(b)(6)”). Rule 12(b)(6) requires a complaint “contain sufficient factual matter, accepted
13 as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S.
14 662, 678 (2009) (internal quotation marks omitted); *Wilhelm*, 680 F.3d at 1121.

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

22 B. Plaintiff’s Allegations

23 Plaintiff claims Defendants Romero and Valdovinos, both Correctional Officers at
24 RJD, violated his First, Eighth, and Fourteenth Amendment rights in December 2016, by
25 refusing to provide him access to breathing treatment after he was exposed to pepper spray,
26 conducting a retaliatory cell search, using excessive force against him, and forcing him to
27 strip in the presence of female staff, all despite his compliance with direct orders. (ECF
28 No. 1 at 8-15.)

1 Based on these allegations, the Court finds Plaintiff’s Complaint sufficient to
2 survive the “low threshold” for proceeding past the sua sponte screening required by 28
3 U.S.C. §§ 1915(e)(2) and 1915A(b). *See Wilhelm v. Rotman*, 680 F.3d 1113, 1123 (9th Cir.
4 2012; *Iqbal*, 556 U.S. at 678; *Hudson v. McMillian*, 503 U.S. 1, 6-7 (1992) (When prison
5 officials stand accused of using excessive force in violation of the Eighth Amendment, the
6 core judicial inquiry is “... whether force was applied in a good-faith effort to maintain or
7 restore discipline, or maliciously and sadistically to cause harm.”); *Estelle v. Gamble*, 429
8 U.S. 97, 105-06 (1976) (prison officials are liable if they act with deliberate indifference to
9 a prisoner’s serious medical needs); *id.* at 104 (deliberate indifference “is manifested by
10 prison [officials] intentionally denying or delaying access to medical care.”); *Rhodes v.*
11 *Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005) (First Amendment retaliation claim
12 requires prisoner to allege: “(1) ... a state actor took some adverse action against [him] (2)
13 because of (3) that prisoner’s protected conduct, and that such action (4) chilled the
14 inmate’s exercise of his First Amendment rights, and (5) the action did not reasonably
15 advance a legitimate correctional goal.”).

16 Therefore, the Court will direct the U.S. Marshal to effect service of summons
17 Plaintiff’s Complaint on his behalf. *See* 28 U.S.C. § 1915(d) (“The officers of the court
18 shall issue and serve all process, and perform all duties in [IFP] cases.”); FED. R. CIV. P.
19 4(c)(3) (“[T]he court may order that service be made by a United States marshal or deputy
20 marshal . . . if the plaintiff is authorized to proceed in forma pauperis under 28 U.S.C.
21 § 1915.”).

22 **III. Conclusion and Order**

23 For the reasons explained, the Court:

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

26 2. **DIRECTS** the Secretary of the CDCR, or his designee, to collect from
27 Plaintiff’s prison trust account the \$350 filing fee owed in this case by garnishing monthly
28 payments from his account in an amount equal to twenty percent (20%) of the preceding

1 month's income and forwarding those payments to the Clerk of the Court each time the
2 amount in the account exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2). ALL PAYMENTS
3 MUST BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER ASSIGNED TO
4 THIS ACTION.

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

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

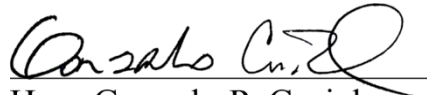
16 5. **ORDERS** the U.S. Marshal to serve a copy of the Complaint and summons
17 upon Defendants ROMERO and VALDOVINOS as directed by Plaintiff on the USM Form
18 285s provided to him. All costs of that service will be advanced by the United States. *See*
19 *28 U.S.C. § 1915(d); FED. R. CIV. P. 4(c)(3).*

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

1 7. **ORDERS** Plaintiff, after service has been effected by the U.S. Marshal, to
2 serve upon Defendants ROMERO and VALDOVINOS, or if appearance has been entered
3 by counsel, upon Defendants' counsel, a copy of every further pleading, motion, or other
4 document submitted for the Court's consideration pursuant to FED. R. CIV. P. 5(b). Plaintiff
5 must include with every original document he seeks to file with the Clerk of the Court, a
6 certificate stating the manner in which a true and correct copy of that document has been
7 was served on Defendants or their counsel, and the date of that service. *See* S.D. CAL.
8 CivLR 5.2. Any document received by the Court which has not been properly filed with
9 the Clerk or which fails to include a Certificate of Service upon the Defendants, or their
10 counsel, may be disregarded.

11 **IT IS SO ORDERED.**

12 Dated: February 21, 2017


13 Hon. Gonzalo P. Curiel
14 United States District Judge
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