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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 EZRA JOHN ADAMS,
12 CDCR #H-27409,

13 Plaintiff,

14 vs.

15 LEROY GARCIA, Ramona Sheriff's
16 Department,

17 Defendant.
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Case No.: 3:17-cv-00433-MMA-AGS

ORDER:

**1) GRANTING MOTION TO
PROCEED IN FORMA PAUPERIS
[Doc. No. 9]**

AND

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

22 EZRA JOHN ADAMS ("Plaintiff"), proceeding pro se and currently incarcerated
23 at the California Health Care Facility ("CHCF") in Stockton, California, filed this civil
24 action pursuant to 42 U.S.C. § 1983 in the Northern District of California in December
25 2016 (Doc. No. 1).

26 Because Plaintiff's Complaint raises claims regarding to property that was seized
27 during his 1988 arrest and subsequent criminal prosecution in San Diego Superior Court,
28 and because the sole Defendant is alleged to have been employed by the San Diego

1 County Sheriff’s Department, United States Magistrate Judge Nandor J. Vadas found the
2 case was filed in the improper venue, and transferred it to the Southern District of
3 California pursuant to 28 U.S.C. § 1391(b) and § 1406(a) (Doc. No. 11). Judge Vadas did
4 not rule on Plaintiff’s pending Motion to Proceed In Forma Pauperis (Doc. No. 9) prior to
5 transfer; nor did he conduct a preliminary screening of Plaintiff’s Complaint pursuant to
6 28 U.S.C. § 1915(e)(2) and § 1915A.

7 **I. Motion to Proceed In Forma Pauperis**

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

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

7 In support of his IFP Motion, Plaintiff has submitted a copy of his CDCR Inmate
8 Statement Report as well as a prison certificate certified by a trust account official at
9 CHCF. *See* Doc. No. 9 at 5-8; 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2; *Andrews*,
10 398 F.3d at 1119. These statements show that while Plaintiff sustained an average
11 monthly balance of \$11.67, he had no monthly deposits to his account over the 6-month
12 period immediately preceding the filing of his Complaint, he had an available balance of
13 zero at the time of filing. *See* Doc. No. 9 at 5, 7. Thus, the Court assesses Plaintiff's
14 initial partial filing fee to be \$2.33 pursuant to 28 U.S.C. § 1915(b)(1), but acknowledges
15 he may be unable to pay even that minimal initial fee at this time. *See* 28 U.S.C.
16 § 1915(b)(4) (providing that “[i]n no event shall a prisoner be prohibited from bringing a
17 civil action or appealing a civil action or criminal judgment for the reason that the
18 prisoner has no assets and no means by which to pay the initial partial filing fee.”);
19 *Bruce*, 136 S. Ct. at 630; *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4)
20 acts as a “safety-valve” preventing dismissal of a prisoner's IFP case based solely on a
21 “failure to pay ... due to the lack of funds available to him when payment is ordered.”).

22 Therefore, the Court **GRANTS** Plaintiff's Motion to Proceed IFP (Doc No. 9),
23 declines to exact any initial filing fee because his prison certificate indicates he may have
24 “no means to pay it,” *Bruce*, 136 S. Ct. at 629, and directs the Secretary of the California
25 Department of Corrections and Rehabilitation (“CDCR”), or his designee, to instead
26 collect the entire \$350 balance of the filing fees required by 28 U.S.C. § 1914 and
27 forward them to the Clerk of the Court pursuant to the installment payment provisions set
28 forth in 28 U.S.C. § 1915(b)(1). *See id.*

1 **II. Sua Sponte Screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A**

2 A. Standard of Review

3 Because Plaintiff is a prisoner and is proceeding IFP, his Complaint requires a pre-
4 answer screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b). Under these
5 statutes, the Court must sua sponte dismiss a prisoner’s IFP complaint, or any portion of
6 it, which is frivolous, malicious, fails to state a claim, or seeks damages from defendants
7 who are immune. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)
8 (discussing 28 U.S.C. § 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir.
9 2010) (discussing 28 U.S.C. § 1915A(b)). “The purpose of [screening] is ‘to ensure that
10 the 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) (citations 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
15 F.3d 1108, 1112 (9th Cir. 2012); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th
16 Cir. 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 elements of
22 a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556
23 U.S. at 678. “Determining whether a complaint states a plausible claim for relief [is] ... a
24 context-specific task that requires the reviewing court to draw on its judicial experience
25 and common sense.” *Id.* The “mere possibility of misconduct” or “unadorned, the
26 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 contends that Defendant Leroy Garcia, a Sheriff employed by the County
3 of San Diego, conducted an “illegal” search and seizure of his personal property without
4 a warrant, participated in his “false arrest,” fabricated and/or “orchestrated” false,
5 defamatory, and misleading evidence against him, and “vandalized” his property in
6 Ramona, California, while acting “under color of authority” “on or about November 15,
7 1988.” (Doc. No. 1 at 3, 5-7.) Plaintiff seeks “five million dollars in new money,” to
8 “reverse the conviction,” and asks to be “immediately discharged and returned from
9 custody.” (*Id.* at 3-4; Doc. No. 1-1 at 7.)

10 C. Statute of Limitations

11 Plaintiff’s claims first arose “on or about November 15, 1988.” (Doc. No. 1 at 2, 3,
12 5) “A claim may be dismissed [for failing to state a claim] on the ground that it is barred
13 by the applicable statute of limitations only when ‘the running of the statute is apparent
14 on the face of the complaint.’” *Von Saher v. Norton Simon Museum of Art at Pasadena*,
15 592 F.3d 954, 969 (9th Cir. 2010) (quoting *Huynh v. Chase Manhattan Bank*, 465 F.3d
16 992, 997 (9th Cir. 2006)). “A complaint cannot be dismissed unless it appears beyond
17 doubt that the plaintiff can prove no set of facts that would establish the timeliness of the
18 claim.” *Id.* (quoting *Supermail Cargo, Inc. v. U.S.*, 68 F.3d 1204, 1206 (9th Cir. 1995));
19 *see also Cervantes v. City of San Diego*, 5 F.3d 1273, 1276-77 (9th Cir. 1993) (where the
20 running of the statute of limitations is apparent on the face of a complaint, dismissal for
21 failure to state a claim is proper, so long as Plaintiff is provided an opportunity to amend
22 in order to allege facts which, if proved, might support tolling); *see also Tahoe-Sierra*
23 *Pres. Council, Inc. v. Tahoe Reg’l Planning Agency*, 216 F.3d 764, 788 (9th Cir. 2000)
24 (court may raise the defense of statute of limitations sua sponte).

25 Because section 1983 contains no specific statute of limitation, federal courts apply
26 the forum state’s statute of limitations for personal injury actions. *Jones v. Blanas*, 393
27 F.3d 918, 927 (9th Cir. 2004); *Maldonado v. Harris*, 370 F.3d 945, 954 (9th Cir. 2004);
28 *Fink v. Shedler*, 192 F.3d 911, 914 (9th Cir. 1999). Before 2003, California’s statute of

1 limitations was one year. *Jones*, 393 F.3d at 927. Effective January 1, 2003, the
2 limitations period was extended to two years. *Id.* (citing CAL. CIV. PROC. CODE § 335.1).
3 The law of the forum state also governs tolling. *Wallace v. Kato*, 549 U.S. 384, 394
4 (2007) (citing *Hardin v. Straub*, 490 U.S. 536, 538-39 (1989)); *Jones*, 393 F.3d at 927
5 (where the federal court borrows the state statute of limitation, the federal court also
6 borrows all applicable provisions for tolling the limitations period found in state law).

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

14 Unlike the length of the limitations period, however, “the accrual date of a § 1983
15 cause of action is a question of federal law that is not resolved by reference to state law.”
16 *Wallace*, 549 U.S. at 388; *Hardin*, 490 U.S. at 543-44 (federal law governs when a
17 § 1983 cause of action accrues). “Under the traditional rule of accrual ... the tort cause of
18 action accrues, and the statute of limitation begins to run, when the wrongful act or
19 omission results in damages.” *Wallace*, 549 U.S. at 391. Put another way, “[u]nder
20 federal law, a claim accrues when the plaintiff knows or has reason to know of the injury
21 which is the basis of the action.” *Maldonado*, 370 F.3d at 955; *TwoRivers v. Lewis*, 174
22 F.3d 987, 991 (9th Cir. 1999).

23 In this case, the “wrongful acts” alleged to have caused Plaintiff harm occurred
24 more than 28 years before Plaintiff filed his Complaint in this action, and far outside
25 California’s statute of limitations—even including all presumed periods of tolling
26 provided by statute, or pending the exhaustion of any administrative remedies. *Wallace*,
27 591 U.S. at 391; *see also Maldonado*, 370 F.3d at 955; CAL. CODE CIV. PROC. § 335.1
28 (tolling statute of limitations “for a maximum of 2 years” during a prisoner’s

1 incarceration); *Jones*, 393 F.3d at 927; *Brown v. Valoff*, 422 F.3d 926, 943 (9th Cir. 2005)
2 (finding that “the applicable statute of limitations must be tolled while a prisoner
3 completes the mandatory exhaustion process” Defendant Garcia falsely arrested him,
4 fabricated false and misleading evidence against him, searched his motor home, and
5 seized various items of his personal property, including fishing equipment, household
6 furnishings, a movie camera, guns, bows and arrows, rare hunting knives, a sword, tools,
7 diving and camping equipment, clothing, and other “odds and ends,” following his arrest
8 in November 1988. (Doc. No. 1-1 at 3-7.) Therefore, Plaintiff had “reason to know” of
9 his injury more than two decades ago, yet did not file this case until December 19,
10 2016—well after the limitations period elapsed. *See Maldonado*, 370 F.3d at 955.

11 Finally, Plaintiff’s claims could be considered timely if, in his Complaint, he
12 alleged facts sufficient to show the limitations period may be equitably tolled. *See*
13 *Cervantes*, 5 F.3d at 1276-77. Generally, federal courts also apply the forum state’s law
14 regarding equitable tolling. *Fink*, 192 F.3d at 914; *Bacon v. City of Los Angeles*, 843 F.2d
15 372, 374 (9th Cir.1988). Under California law, however, Plaintiff must meet three
16 conditions to equitably toll the statute of limitations: (1) he must have diligently pursued
17 his claim; (2) his situation must be the product of forces beyond his control; and (3)
18 Defendants must not be prejudiced by the application of equitable tolling. *See Hull v.*
19 *Central Pathology Serv. Med. Clinic*, 28 Cal. App. 4th 1328, 1335 (Cal. Ct. App. 1994);
20 *Addison v. State of California*, 21 Cal.3d 313, 316-17 (Cal. 1978); *Fink*, 192 F.3d at 916.

21 As currently pleaded, however, the Court finds Plaintiff has failed to plead any
22 facts which, if proved, would support any plausible claim for equitable tolling. *See*
23 *Cervantes*, 5 F.3d at 1277; *Iqbal*, 556 U.S. at 679. Accordingly, the Court finds Plaintiff’s
24 claims against Defendant Garcia are barred by the statute of limitations, and his entire
25 Complaint must be dismissed for failing to state a claim upon which section 1983 relief
26 may be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(ii); 1915A(b)(1); *Lopez*, 203 F.3d at
27 1126-27; *Rhodes*, 621 F.3d at 1004.

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1 D. Validity of Conviction

2 Plaintiff also seeks to “reverse his conviction” in San Diego Superior Court
3 Criminal Case No. CR101501, and to be “released from custody” as a result of Defendant
4 Garcia’s actions. (Doc. No. 1 at 3-4; Doc. No. 1-2 at 2.) Thus, even if his claims were
5 timely, he cannot proceed pursuant to 42 U.S.C. § 1983, for “[s]uits challenging the
6 validity of [a] prisoner’s continued incarceration lie within ‘the heart of habeas corpus.’”
7 *Ramirez v. Galaza*, 334 F.3d 850, 856 (9th Cir. 2003), *quoting Preiser*, 411 U.S. at 489-
8 99 (holding that a writ of habeas corpus is “explicitly and historically designed” to
9 provide a state prisoner with the “exclusive” means to “attack the validity of his
10 confinement” in federal court). “[A] § 1983 action is a proper remedy for a state prisoner
11 who is making a constitutional challenge to the conditions of his prison life, but not to the
12 fact or length of his custody.” *Id.*; *see also Nettles v. Grounds*, 830 F.3d 922, 928 (9th
13 Cir. 2016) (en banc) (“[C]laims ... which would ... result[] in immediate release if
14 successful, f[a]ll within the core of habeas corpus and therefore [must] be brought, if at
15 all, in habeas.”) (citing *Preiser*, 411 U.S. at 487), *cert. denied*, 137 S. Ct. 635 (No. 16-
16 6556) (Jan. 9, 2017).

17 E. Leave to Amend

18 Finally, while the Court would typically grant Plaintiff leave to amend in light of
19 his pro se status, it concludes that doing so under the circumstances presented by his
20 pleadings would be futile. *See Lopez*, 203 F.3d at 1127; *Schmier v. U.S. Court of Appeals*
21 *for the Ninth Circuit*, 279 F.3d 817, 824 (9th Cir. 2002) (recognizing “[f]utility of
22 amendment” as a proper basis for dismissal without leave to amend).

23 Amendment is futile because even if Plaintiff could somehow allege facts to show
24 his claims against Defendant Garcia were timely, and further amend his pleading in such
25 a way so as to seek only damages and allege constitutional violations that would not
26 “necessarily” imply the invalidity of his conviction, or “affect the duration of time to be
27 served,” he still could not proceed pursuant to 42 U.S.C. § 1983 because previous
28 attempts at invalidating his conviction have all proven unavailing. *See Nettles*, 830 F.3d

1 at 928-29 (noting that plaintiff may not bring a § 1983 action that “necessarily require[s]
2 [him] to prove the unlawfulness of his conviction” unless he can “first ... prove that the
3 conviction ... was eliminated, including ‘by a federal court’s issuance of a writ of habeas
4 corpus.’”) (quoting *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994)).

5 A court may take judicial notice of its own records, *see Molus v. Swan*, Civil Case
6 No. 3:05-cv-00452–MMA-WMc, 2009 WL 160937, *2 (S.D. Cal. Jan. 22, 2009) (citing
7 *United States v. Author Services*, 804 F.2d 1520, 1523 (9th Cir. 1986)); *Gerritsen v.*
8 *Warner Bros. Entm’t Inc.*, 112 F. Supp. 3d 1011, 1034 (C.D. Cal. 2015), and “may take
9 notice of proceedings in other courts, both within and without the federal judicial system,
10 if those proceedings have a direct relation to matters at issue.” *Bias v. Moynihan*, 508
11 F.3d 1212, 1225 (9th Cir. 2007) (quoting *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803
12 n.2 (9th Cir. 2002)); *see also United States ex rel. Robinson Rancheria Citizens Council*
13 *v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

14 Thus, the Court takes judicial notice of *Adams v. Evans, et al.*, Civil Case No.
15 3:09-cv-01123-BEN-RBB (S. D. Cal. 2009), a habeas corpus petition filed by Plaintiff
16 pursuant to 28 U.S.C. § 2254 in 2009, and seeking to challenge the constitutional validity
17 of the same state court conviction at issue in this case: San Diego Superior Court Case
18 No. CR101501. This petition too, filed approximately 20 years after Plaintiff was
19 convicted, was dismissed as untimely. *See id.* Doc. Nos. 1, 12, 13. The Court also takes
20 judicial notice of docket proceedings before the California Court of Appeals, District 4,
21 Div.1, in *In re Ezra John Adams*, D053086, in which Plaintiff filed a *state* habeas petition
22 challenging his conviction in CR101501. This petition too was denied. *See*
23 [http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=41&doc_id=1369135](http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=41&doc_id=1369135&doc_no=D053086)
24 [http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=41&doc_id=1369135](http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=41&doc_id=1369135&doc_no=D053086)
&doc_no=D053086 (last visited June 21, 2017).

25 Therefore, because these collateral proceedings show Plaintiff cannot amend his
26 pleading in this case to allege the additional facts required to show either that his claims
27 are timely, or that the underlying conviction which forms the basis of his § 1983 suit has
28 already been invalidated, the Court finds amendment would be futile. *See Lopez*, 203

1 F.3d at 1127; *Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir. 2015) (noting that leave
2 to amend is not required if it is “absolutely clear that the deficiencies of the complaint
3 could not be cured by amendment.”) (internal citations omitted).

4 **III. Conclusion and Order**

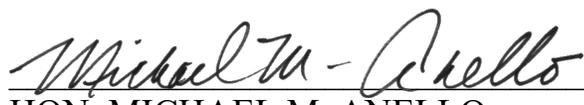
5 For all the reasons discussed, the Court:

- 6 1) **GRANTS** Plaintiff’s Motion to Proceed IFP (Doc. No. 9);
7 2) **DIRECTS** the Secretary of the CDCR, or his designee, to collect from
8 Plaintiff’s prison trust account the \$350 filing fee owed in this case by garnishing
9 monthly payments from his account in an amount equal to twenty percent (20%) of the
10 preceding month’s income and forwarding those payments to the Clerk of the Court each
11 time the amount in the account exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2). ALL
12 PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER
13 ASSIGNED TO THIS ACTION;
14 3) **DIRECTS** the Clerk of the Court to serve a copy of this Order on Scott
15 Kernan, Secretary, CDCR, P.O. Box 942883, Sacramento, California, 94283-0001;
16 4) **DISMISSES** this civil action without leave to amend based on Plaintiff’s
17 failure to state a claim upon which relief can be granted and pursuant to 28 U.S.C.
18 §§ 1915(e)(2) and 1915A(b)(1); and
19 5) **CERTIFIES** that an IFP appeal from this Order would be not taken in good
20 faith pursuant to 28 U.S.C. § 1915(a)(3). *See Coppedge v. United States*, 369 U.S. 438,
21 445 (1962); *Gardner v. Pogue*, 558 F.2d 548, 550 (9th Cir. 1977) (indigent appellant is
22 permitted to proceed IFP on appeal only if appeal would not be frivolous).

23 The Clerk of Court is instructed to enter judgment accordingly and close the case.

24 **IT IS SO ORDERED.**

25 DATE: June 23, 2017

26 
27 HON. MICHAEL M. ANELLO
28 United States District Judge