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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JAMI JOHNSON,
CDCR #H-20376,

Plaintiff,

vs.

D. PAMPLIN; G. VALDOVINAS; A.
MASSIA; M. MORALES; J. HEDDY; O.
MORALES; M. ACUNA; J. WILBORN;
W. SMITH

Defendants.

Case No.: 3:17-cv-0560-BAS-BLM

ORDER:

**1) GRANTING MOTION TO
PROCEED IN FORMA PAUPERIS
[ECF No. 3]**

AND

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

Jami Johnson (“Plaintiff”), currently incarcerated at California State Prison, located in Corcoran, California, and proceeding *pro se*, has filed a civil-rights complaint pursuant to 42 U.S.C. § 1983 (ECF No. 1).

Plaintiff claims Defendants, all correctional officials at Richard J. Donovan Correctional Facility (“RJD”) in San Diego, California, used excessive force against him and retaliated against him while he was incarcerated there in 2016.

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1 Plaintiff did not pay the \$400 civil filing fee required to commence a civil action
2 pursuant to 28 U.S.C. § 1914(a) but instead has filed a Motion to Proceed *In Forma*
3 *Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a). (ECF No. 3.)

4 **I. Motion to Proceed IFP**

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

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

5 In support of his IFP Motion, Plaintiff has submitted a copy of his CDCR Inmate
6 Statement Report as well as a prison certificate certified by an Accountant Specialist at
7 Corcoran. *See* ECF No. 3 at 4-7; 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2; *Andrews*,
8 398 F.3d at 1119. These statements show that while Plaintiff had an average monthly
9 balance of \$91.47 and average monthly deposits of \$121.10 to his account over the 6-
10 month period immediately preceding the filing of his Complaint, he had an available
11 balance of \$2.01 at the time of filing. *See* ECF No. 3 at 7. Thus, the Court assesses
12 Plaintiff's initial partial filing fee to be \$24.22 pursuant to 28 U.S.C. § 1915(b)(1), but
13 acknowledges he may be unable to pay any initial fee at this time. *See* 28 U.S.C.
14 § 1915(b)(4) (providing that "[i]n no event shall a prisoner be prohibited from bringing a
15 civil action or appealing a civil action or criminal judgment for the reason that the
16 prisoner has no assets and no means by which to pay the initial partial filing fee.");
17 *Bruce*, 136 S. Ct. at 630; *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4)
18 acts as a "safety-valve" preventing dismissal of a prisoner's IFP case based solely on a
19 "failure to pay . . . due to the lack of funds available to him when payment is ordered.").

20 Therefore, the Court GRANTS Plaintiff's Motion to Proceed IFP (ECF No. 3),
21 declines to exact the initial \$24.22 initial filing fee because his prison certificate indicates
22 he may have "no means to pay it," *Bruce*, 136 S. Ct. at 629, and directs the Secretary of
23 the California Department of Corrections and Rehabilitation ("CDCR"), or his designee,
24 to instead collect the entire \$350 balance of the filing fees required by 28 U.S.C. § 1914
25 and forward them to the Clerk of the Court pursuant to the installment payment
26 provisions set forth in 28 U.S.C. § 1915(b)(1). *See id.*

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1 **III. Screening of Complaint per 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)**

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

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
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
24 relief [is] ... a context-specific task that requires the reviewing court to draw on its
25 judicial experience and common sense.” *Id.* The “mere possibility of misconduct” or
26 “unadorned, the defendant-unlawfully-harmed me accusation[s]” fall short of meeting
27 this plausibility standard. *Id.*; *see also Moss v. U.S. Secret Service*, 572 F.3d 962, 969
28 (9th Cir. 2009).

1 As currently pleaded, the Court finds Plaintiff’s Complaint contains allegations
2 sufficient to survive the “low threshold” for proceeding past the *sua sponte* screening
3 required by 28 U.S.C. §§ 1915(e)(2) and 1915A(b).² See *Wilhelm*, 680 F.3d at 1123;
4 *Hudson v. McMillian*, 503 U.S. 1, 6-7 (1992) (When prison officials stand accused of
5 using excessive force in violation of the Eighth Amendment, the core judicial inquiry is
6 “whether force was applied in a good-faith effort to maintain or restore discipline, or
7 maliciously and sadistically to cause harm.”); *Rhodes v. Robinson*, 408 F.3d 559, 567-68
8 (9th Cir. 2005) (First Amendment retaliation claim requires prisoner to allege: “(1) . . . a
9 state actor took some adverse action against [him] (2) because of (3) that prisoner’s
10 protected conduct, and that such action (4) chilled the inmate’s exercise of his First
11 Amendment rights, and (5) the action did not reasonably advance a legitimate
12 correctional goal.”).

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

18 **IV. Conclusion and Orders**

19 Good cause appearing, the Court:

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

22 2. **DIRECTS** the Secretary of the CDCR, or his designee, to collect from
23 Plaintiff’s prison trust account the \$350 filing fee owed in this case by garnishing
24 monthly payments from his account in an amount equal to twenty percent (20%) of the
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27 ² Plaintiff is cautioned that “the sua sponte screening and dismissal procedure is cumulative
28 of, and not a substitute for, any subsequent Rule 12(b)(6) motion that [a defendant] may
choose to bring.” *Teahan v. Wilhelm*, 481 F. Supp. 2d 1115, 1119 (S.D. Cal. 2007).

1 preceding month's income and forwarding those payments to the Clerk of the Court each
2 time the amount in the account exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2). ALL
3 PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER
4 ASSIGNED TO 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
8 No. 1) and forward it to Plaintiff along with a blank U.S. Marshal Form 285 for
9 Defendants. In addition, the Clerk will provide Plaintiff with a certified copy of this
10 Order, a certified copy of his Complaint and the summons so that he may serve these
11 Defendants. Upon receipt of this "IFP Package," Plaintiff must complete the Form 285s
12 as completely and accurately as possible, *include an address where each Defendant may*
13 *be found*, and return them to the United States Marshal according to the instructions the
14 Clerk provides in the letter accompanying his IFP package;

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

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

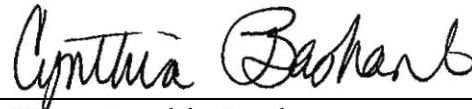
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1 7. **ORDERS** Plaintiff, after service has been effected by the U.S. Marshal, to
2 serve upon Defendants, or, if appearance has been entered by counsel, upon Defendants'
3 counsel, a copy of every further pleading, motion, or other document submitted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

10 **IT IS SO ORDERED.**

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12 Dated: April 17, 2017



Hon. Cynthia Bashant
United States District Judge