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

BY: *MYN* DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

THOMAS GOOLSBY,  
Booking # 16178866,  
  
Plaintiff,  
  
vs.  
  
COUNTY OF SAN DIEGO, et al.  
  
Defendants.

Case No.: 3:17-cv-0564-WQH-NLS

**ORDER:**

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

**AND**

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

Plaintiff Thomas Goolsby is a state inmate who was temporarily housed in the San Diego Central Jail (“SDCJ”) at the time he initiated this action.<sup>1</sup> Plaintiff filed a Complaint pursuant to 42 U.S.C. § 1983 and a request for leave to proceed in forma pauperis (“IFP”). (ECF Nos. 1,2). Because Plaintiff’s Motion to Proceed IFP complies

<sup>1</sup> Plaintiff filed a notice of change of address on June 12, 2017. (ECF No. 3).

1 with 28 U.S.C. § 1915(a)(2), the Court grants him leave to proceed without full  
2 prepayment of the civil filing fees required by 28 U.S.C. §1914(a) and dismisses some of  
3 the claims in his Complaint for failing to state a claim pursuant to 28 U.S.C. § 1915(e)(2)  
4 and § 1915A(b).

### 5 Background

6 Plaintiff claims that he has been placed in solitary confinement without due  
7 process in addition to being subjected to constant cell illumination and deprived of  
8 outdoor exercise in violation of his Eighth Amendment rights. (See ECF No. 1 at 16-17.)  
9 He seeks injunctive relief along with \$100,000 in compensatory damages and \$250,000  
10 in punitive damages from each named Defendant. (Id. at 18.)

### 11 Discussion

#### 12 **A. Plaintiff's IFP Motion**

13 All parties instituting any civil action, suit, or proceeding in a district court of the  
14 United States, except an application for writ of habeas corpus, must pay a filing fee of  
15 \$400.<sup>2</sup> See 28 U.S.C. § 1914(a). The action may proceed despite a plaintiff's failure to  
16 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.  
17 § 1915(a). See Andrews v. Cervantes, 493 F.3d 1047, 1051 (9th Cir. 2007); Rodriguez v.  
18 Cook, 169 F.3d 1176, 1177 (9th Cir. 1999). However, a prisoner who is granted leave to  
19 proceed IFP remains obligated to pay the entire fee in "increments" or "installments,"  
20 Bruce v. Samuels, 136 S. Ct. 627, 629 (2016); Williams v. Paramo, 775 F.3d 1182, 1185  
21 (9th Cir. 2015), and regardless of whether his action is ultimately dismissed. See 28  
22 U.S.C. § 1915(b)(1) & (2); Taylor v. Delatoore, 281 F.3d 844, 847 (9th Cir. 2002).

23 Section 1915(a)(2) requires prisoners seeking leave to proceed IFP to submit a  
24 "certified copy of the trust fund account statement (or institutional equivalent) for . . . the  
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26  
27 <sup>2</sup> In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$50. See  
28 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14 (eff.  
Dec. 1, 2014)). The additional \$50 administrative fee does not apply to persons granted leave to proceed  
IFP. Id.

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

11 In support of his IFP motion, Plaintiff has submitted a copy of his San Diego  
12 Central Jail prison certificate. ECF No. 2 at 5; see 28 U.S.C. § 1915(a)(2); S.D. CAL.  
13 CIVLR 3.2; Andrews, 398 F.3d at 1119. This certificate shows that while he has had  
14 monthly deposits to his account preceding the filing of his Complaint, his current  
15 available balance is \$0.51 (ECF No. 2 at 5), and it appears Plaintiff is unable to pay any  
16 initial fee at this time. See 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event shall a  
17 prisoner be prohibited from bringing a civil action or appealing a civil action or criminal  
18 judgment for the reason that the prisoner has no assets and no means by which to pay [a]  
19 initial partial filing fee”); Bruce, 136 S. Ct. at 630; Taylor, 281 F.3d at 850 (finding that  
20 28 U.S.C. § 1915(b)(4) acts as a “safety-valve” preventing dismissal of a prisoner’s IFP  
21 case based solely on a “failure to pay . . . due to the lack of funds available to him when  
22 payment is ordered”).

23 Therefore, the Court grants Plaintiff leave to proceed IFP, declines to “exact” any  
24 initial filing fee because his trust account statement shows he “has no means to pay it,”  
25 Bruce, 136 S. Ct. at 629, and directs the Watch Commander at the San Diego Central Jail  
26 to 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).

1 **B. Legal Standards for Screening Complaint Pursuant to 28 U.S.C.**  
2 **§§ 1915(e)(2)(B) and 1915A(b)**

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) (citation 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  
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 **C. 42 U.S.C. § 1983**

2 Title 42 U.S.C. § 1983 provides a cause of action for the “deprivation of any rights,  
3 privileges, or immunities secured by the Constitution and laws” of the United States.  
4 Wyatt v. Cole, 504 U.S. 158, 161 (1992). To state a claim under § 1983, a plaintiff must  
5 allege two essential elements: (1) that a right secured by the Constitution or laws of the  
6 United States was violated, and (2) that the alleged violation was committed by a person  
7 acting under color of state law. West v. Atkins, 487 U.S. 42, 48 (1988); Long v. Cty. of  
8 Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006).

9 **1. “Under Color of State Law”**

10 All the Defendants named in Plaintiff’s complaint are alleged to have acted in their  
11 individual and official capacities as employees of the San Diego County Sheriff’s  
12 Department at the time of his alleged injuries. (ECF No. 1 at 2-3). “[G]enerally, a public  
13 employee acts under color of state law while acting in his official capacity or while  
14 exercising his responsibilities pursuant to state law.” West, 487 U.S. at 50. Therefore, the  
15 Court need only determine whether Plaintiff has “plead[ed] factual content that allows the  
16 court to draw the reasonable inference” that each defendant he seeks to hold liable,  
17 “through the official’s own individual actions, has violated the Constitution.” Iqbal, 556  
18 U.S. at 676, 678.

19 **2. Fourteenth Amendment due process claims**

20 Plaintiff claims that upon his arrival from a California state prison, he was  
21 immediately placed in solitary confinement. (ECF No. 1 at 10). Plaintiff alleges he  
22 asked for the basis of this classification because he was previously housed in the “general  
23 population.” (Id.) However, Defendants allegedly refused to provide him with the basis  
24 of this decision or allow him to attend a classification hearing. (Id.)

25 The Due Process Clause protects prisoners against deprivation or restraint of “a  
26 protected liberty interest” and “atypical and significant hardship on the inmate in relation  
27 to the ordinary incidents of prison life.” Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir.  
28 2003) (quoting Sandin v. Conner, 515 U.S. 472, 484 (1995)) (internal quotation marks

1 omitted). Although the level of the hardship must be determined in a case-by-case  
2 determination, courts look to:

3 1) whether the challenged condition “mirrored those conditions imposed upon  
4 inmates in administrative segregation and protective custody,” and thus  
5 comported with the prison’s discretionary authority; 2) the duration of the  
6 condition, and the degree of restraint imposed; and 3) whether the state’s  
action will invariably affect the duration of the prisoner’s sentence.

7 Id. at 861 (quoting Sandin, 515 U.S. at 486-87). Only if an inmate has alleged facts  
8 sufficient to show a protected liberty interest does the court next consider “whether the  
9 procedures used to deprive that liberty satisfied Due Process.” Id. at 860.

10 As currently pleaded, Plaintiff’s Complaint fails to allege facts which show that the  
11 placement in solitary confinement subjected him to any “atypical and significant hardship  
12 in relation to the ordinary incidents of prison life.” Id.; Sandin, 515 U.S. at 584. Plaintiff  
13 does not compare the conditions of his confinement before or after his solitary  
14 confinement placement. Nor does he allege the degree of restraint it imposed. See id. at  
15 861 (quoting Sandin, 515 U.S. at 486-87).

16 Moreover, Plaintiff’s pleading contains no “factual content that allows the court to  
17 draw the reasonable inference,” Iqbal, 556 U.S. at 678, that Defendants’ actions  
18 “presented a dramatic departure from the basic conditions of [Plaintiff’s] indeterminate  
19 sentence,” or caused him to suffer an “atypical” or “significant hardship.” Sandin, 515  
20 U.S. at 584-85; see also Keenan v. Hall, 83 F.3d 1083, 1088-89 (9th Cir. 1996), amended  
21 by 135 F.3d 1318 (9th Cir. 1998).

22 Therefore, the Court finds that Plaintiff’s Fourteenth Amendment due process  
23 claims must be dismissed for failing to state a claim upon which relief may be granted.

### 24 **3. Individual Causation**

25 The Court also finds that dismissal of Defendants Price and Mesa is warranted at  
26 this stage. “The inquiry into causation must be individualized and focus on the duties and  
27 responsibilities of each individual defendant whose acts or omissions are alleged to have  
28 caused a constitutional deprivation.” Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988),

1 (citing Rizzo v. Goode, 423 U.S. 362, 370-71 (1976)); Berg v. Kincheloe, 794 F.2d 457,  
2 460 (9th Cir. 1986); Estate of Brooks v. United States, 197 F.3d 1245, 1248 (9th Cir.  
3 1999) (“Causation is, of course, a required element of a § 1983 claim.”) A person  
4 deprives another “of a constitutional right, within the meaning of section 1983, if he does  
5 an affirmative act, participates in another’s affirmative acts, or omits to perform an act  
6 which he is legally required to do that causes the deprivation of which [the plaintiff  
7 complains].” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Plaintiff has not  
8 stated a claim against Defendants Price and Mesa because he has failed to allege facts  
9 regarding what actions were taken or not taken by these Defendants which caused the  
10 alleged constitutional violations.

11 The Court finds that Defendants Price and Mesa must be dismissed from this  
12 action because Plaintiff has failed to state a claim against either of these Defendants.

#### 13 **4. Leave to Amend**

14 A pro se litigant must be given leave to amend his or her complaint to state a claim  
15 unless it is absolutely clear the deficiencies of the complaint cannot be cured by  
16 amendment. See Lopez, 203 F.3d at 1130 (noting leave to amend should be granted when  
17 a complaint is dismissed under 28 U.S.C. § 1915(e) “if it appears at all possible that the  
18 plaintiff can correct the defect”). Therefore, while the Court finds Plaintiff has alleged  
19 Eighth Amendment claims that survive the sua sponte screening process, Plaintiff’s  
20 Complaint fails to state a Fourteenth Amendment claim upon which relief can be granted.

21 However, the Court will provide Plaintiff the opportunity to notify the Court as to  
22 whether he intends to proceed with his Eighth Amendment claims only or file an  
23 amended complaint fixing all the pleading deficiencies discussed in this Order.

24 Plaintiff is cautioned, however, that should he choose to file an amended  
25 complaint, it must be complete by itself and it must comply with Federal Rule of Civil  
26 Procedure 8(a). Any claim not re-alleged will be considered waived. See S.D. Cal.  
27 CivLR 15.1; Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc., 896 F.2d 1542, 1546  
28 (9th Cir. 1989) (“[A]n amended pleading supersedes the original.”); Lacey, 693 F.3d at

1 928 (noting that claims dismissed with leave to amend which are not re-alleged in an  
2 amended pleading may be “considered waived if not replied.”).

3 **Conclusion**

4 For all the reasons explained the Court:

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

7 2. **DIRECTS** the Watch Commander of SDCJ or his designee, to collect from  
8 Plaintiff’s trust account the \$350 filing fee owed in this case by garnishing monthly  
9 payments from his account in an amount equal to twenty percent (20%) of the preceding  
10 month’s income and forwarding those payments to the Clerk of the Court each time the  
11 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 the Watch  
15 Commander, San Diego Central Jail, 1173 Front Street, San Diego, California, 92158.

16 4. **DISMISSES** Plaintiff’s claims against Defendants Price and Mesa and  
17 Plaintiff’s Fourteenth Amendment claims for failing to state a claim pursuant to 28  
18 U.S.C. § 1915(e)(2) and § 1915A(b).

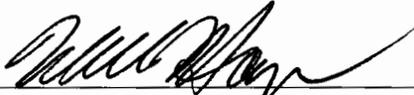
19 5. **GRANTS** Plaintiff forty-five (45) days leave from the date of this Order in  
20 which to either: (1) Notify the Court of the intention to proceed with the Eighth  
21 Amendment claims only; or (2) File an Amended Complaint which cures all the  
22 deficiencies of pleading noted. Plaintiff’s Amended Complaint must be complete in itself  
23 without reference to his original pleading. Defendants not named and any claims not re-  
24 alleged in the Amended Complaint will be considered waived. *See* S.D. CAL. CIVLR  
25 15.1; Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc., 896 F.2d 1542, 1546 (9th  
26 Cir. 1989) (“[A]n amended pleading supersedes the original.”); Lacey, 693 F.3d at 928  
27 (noting that claims dismissed with leave to amend which are not re-alleged in an  
28 amended pleading may be “considered waived if not replied.”).

1           6.     The Clerk of Court is directed to mail Plaintiff a court approved form civil  
2 rights complaint.

3                   **IT IS SO ORDERED.**

4  
5 Dated:

*6/26/17*

  
\_\_\_\_\_  
Hon. William Q. Hayes  
United States District Judge

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