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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 ELLIOT SCOTT GRIZZLE,
12 Booking #16149034,

13 Plaintiff,

14 vs.

15 COUNTY OF SAN DIEGO, et al.

16 Defendants.
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Case No.: 17cv813-JLS (PCL)

**ORDER (1) GRANTING MOTION TO
PROCEED *IN FORMA PAUPERIS*
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)**

(ECF No. 2)

22 Plaintiff Elliot Scott Grizzle, a pretrial detainee in the San Diego County Jail
23 (“SDCJ”), is proceeding pro se and has filed a civil rights Complaint pursuant to 42 U.S.C.
24 § 1983 (ECF No. 1).

25 Plaintiff did not prepay the \$400 civil filing fee required to commence a civil action
26 pursuant to 28 U.S.C. § 1914(a); instead, he has filed a Motion to Proceed *In Forma*
27 *Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) (ECF No. 2).

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1 **I. Factual Allegations**

2 Plaintiff claims the County of San Diego, San Diego Sheriff William Gore, and a
3 host of San Diego Sheriff’s Department lieutenants and deputies violated his Fourteenth
4 Amendments rights by housing and keeping him in solitary confinement from August 3,
5 2016, as soon as he was taken into their custody, until the filing of his Complaint on April
6 24, 2017. (ECF No. 1 at 1, 11–16.) Plaintiff claims he has been in solitary for more than
7 eight months, during which he has been subject to twenty-four hours of cell illumination,
8 deprived of sleep and yard time, housed with mentally ill inmates, and confined in
9 unsanitary conditions. (*Id.* at 11–13.) He contends he has never been given any notice
10 explaining the justifications for his placement, never been provided a hearing, and had his
11 written grievances and oral protests ignored. (*Id.* at 11, 13–16.) Plaintiff seeks injunctive
12 and declaratory relief, as well as compensatory and punitive damages. (*Id.* at 8.)

13 **II. Motion to Proceed IFP**

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

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27 ¹ 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.
June 1, 2016)). The additional \$50 administrative fee does not apply to persons granted leave to proceed
IFP. *Id.*

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

12 In support of his IFP Motion, Plaintiff has submitted a Prison Certificate authorized
13 by a SDCJ administrative sergeant attesting to his balances and deposits over the six-month
14 period preceding the filing of his Complaint. *See* ECF No. 3 at 1; 28 U.S.C. § 1915(a)(2);
15 S.D. Cal. Civ. L.R. 3.2; *Andrews*, 398 F.3d at 1119. This certificate shows that Plaintiff
16 has had a monthly average deposit of \$152.94 and has carried an average monthly balance
17 of \$8.55 in his account for the 6-month period preceding the filing of his Complaint. His
18 available balance at the time of filing was \$51.31. *See* ECF No. 3 at 1.

19 Based on this financial information, the Court GRANTS Plaintiff’s Motion to
20 Proceed IFP (ECF No. 2), and assesses his initial partial filing fee to be \$30.58 pursuant to
21 28 U.S.C. § 1915(b)(1). However, the Court will direct the Watch Commander of the
22 SDCJ, or his designee, to collect this initial fee only if sufficient funds are available in
23 Plaintiff’s account at the time this Order is executed. *See* 28 U.S.C. § 1915(b)(4) (providing
24 that “[i]n no event shall a prisoner be prohibited from bringing a civil action or appealing
25 a civil action or criminal judgment for the reason that the prisoner has no assets and no
26 means by which to pay the initial partial filing fee”); *Bruce*, 136 S. Ct. at 630; *Taylor*, 281
27 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve” preventing
28 dismissal of a prisoner’s IFP case based solely on a “failure to pay . . . due to the lack of

1 funds available to him when payment is ordered”). The remaining balance of the \$350 total
2 fee owed in this case must be collected and forwarded to the Clerk of the Court pursuant
3 to 28 U.S.C. § 1915(b)(1).

4 **III. Screening pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)**

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

15 “The standard for determining whether a plaintiff has failed to state a claim upon
16 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of
17 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668 F.3d
18 1108, 1112 (9th Cir. 2012); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir.
19 2012) (noting that screening pursuant to § 1915A “incorporates the familiar standard
20 applied in the context of failure to state a claim under Federal Rule of Civil Procedure
21 12(b)(6)”). Rule 12(b)(6) requires a complaint “contain sufficient factual matter, accepted
22 as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S.
23 662, 678 (2009) (internal quotation marks omitted); *Wilhelm*, 680 F.3d at 1121.

24 Detailed factual allegations are not required, but “[t]hreadbare recitals of the
25 elements of a cause of action, supported by mere conclusory statements, do not suffice.”
26 *Iqbal*, 556 U.S. at 678. “Determining whether a complaint states a plausible claim for relief
27 [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
28 experience and common sense.” *Id.* The “mere possibility of misconduct” or “unadorned,

1 the defendant-unlawfully-harmed me accusation[s]” fall short of meeting this plausibility
2 standard. *Id.*; *see also Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).

3 As currently pled, the Court finds that Plaintiff’s Complaint contains factual
4 allegations sufficient to survive the “low threshold” for proceeding past the *sua sponte*
5 screening required by 28 U.S.C. §§ 1915(e)(2) and 1915A(b), because it alleges Fourteenth
6 Amendment due process claims which are plausible on its face.² *See Wilhelm*, 680 F.3d at
7 1123; *Iqbal*, 556 U.S. at 678; *Bell v. Wolfish*, 441 U.S. 520, 535 (1979) (Due Process Clause
8 of the Fourteenth Amendment prevents punishment of a pretrial detainee prior to an
9 adjudication of guilt); *Castro v. Cty. of L.A.*, 833 F.3d 1060, 1068 (9th Cir. 2016), *cert.*
10 *denied*, 137 S. Ct. 831 (2017); *Valdez v. Rosenbaum*, 302 F.3d 1039, 1045 (9th Cir. 2002).
11 Disciplinary segregation as punishment for violation of jail rules and regulations cannot be
12 imposed without due process, *i.e.*, without complying with the procedural requirements of
13 *Wolff v. McDonnell*, 418 U.S. 539 (1974). *See Mitchell v. Dupnik*, 75 F.3d 517, 523–26
14 (9th Cir. 1996); *see also Stevenson v. Jones*, ___ F. Supp. 3d ___, 2017 WL 2335373, at *8
15 (N.D. Cal. May 30, 2017).

16 Accordingly, the Court will direct the U.S. Marshal to effect service upon the named
17 Defendants on Plaintiff’s behalf.³ *See* 28 U.S.C. § 1915(d) (“The officers of the court shall
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20 ² Plaintiff is cautioned that “the sua sponte screening and dismissal procedure is cumulative of, and not a
21 substitute for, any subsequent Rule 12(b)(6) motion that [any individual defendant] may choose to bring.”
Teahan v. Wilhelm, 481 F. Supp. 2d 1115, 1119 (S.D. Cal. 2007).

22 ³ Plaintiff must, of course, identify the Defendants he references only as “John Doe 1-25, Jail Staff” whose
23 names are presently unknown (ECF No. 1 at 3), by their true names and substitute those individual persons
24 in place of each unnamed Doe by amending his Complaint to identify each of those parties before the
25 United States Marshal will directed to execute service upon any of them. *See Aviles v. Village of Bedford*
Park, 160 F.R.D. 565, 567 (N.D. Ill. 1995) (“Doe defendants must be identified and served within [90]
26 days of the commencement of the action against them.”); Fed. R. Civ. P. 15(c)(1)(C) & 4(m). Generally,
27 Doe pleading is disfavored. *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980). It is in most instances
28 impossible for the United States Marshal to serve a party identified only as a Doe. *See Walker v. Sumner*,
14 F.3d 1415, 1422 (9th Cir. 1994) (in order to properly effect service under Rule 4 in an IFP case, the
plaintiff is required to “furnish the information necessary to identify the defendant”). However, this Court
will not dismiss Plaintiff’s claims against the Doe Defendants at this time because where the identity of
an alleged party is not known prior to filing of an action, Ninth Circuit authority permits Plaintiff the

1 issue and serve all process, and perform all duties in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3)
2 (“[T]he court may order that service be made by a United States marshal or deputy marshal
3 . . . if the plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. § 1915.”).

4 **IV. Conclusion and Order**

5 For the reasons explained, the Court:

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

8 2. **ORDERS** the Watch Commander of the SDCJ, or his designee, to collect
9 from Plaintiff’s trust account the \$30.58 initial filing fee assessed, if those funds are
10 available at the time this Order is executed, and to forward whatever balance remains of
11 the full \$350 owed in monthly payments in an amount equal to twenty percent (20%) of
12 the preceding month’s income to the Clerk of the Court each time the amount in Plaintiff’s
13 account exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2). **ALL PAYMENTS MUST BE**
14 **CLEARLY IDENTIFIED BY THE NAME AND NUMBER ASSIGNED TO THIS**
15 **ACTION.**

16 3. **DIRECTS** the Clerk of the Court to serve a copy of this Order on Watch
17 Commander, San Diego Central Jail, 1173 Front Street, San Diego, California, 92101.

18 4. **DIRECTS** the Clerk to issue a summons as to Plaintiff’s Complaint (ECF No.
19 1) and forward it to Plaintiff along with a blank U.S. Marshal Form 285 for each named
20 Defendant. In addition, the Clerk will provide Plaintiff with a certified copy of this Order,
21 a certified copy of his Complaint and the summons so that he may serve these Defendants.
22 Upon receipt of this “IFP Package,” Plaintiff must complete the Form 285s as completely
23 and accurately as possible, *include an address where each named Defendant may be found*
24 *and/or subject to service*, and return them to the United States Marshal according to the
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27 opportunity to pursue appropriate discovery to identify the unknown Does, unless it is clear that discovery
28 would not uncover their identity, or his Complaint should be dismissed for other reasons. *See Wakefield*
v. Thompson, 177 F.3d 1160, 1163 (9th Cir. 1999) (citing *Gillespie*, 629 F.2d at 642).

1 instructions the Clerk provides in the letter accompanying his IFP package.

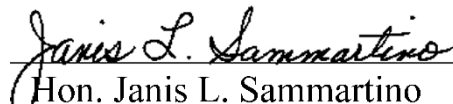
2 5. **ORDERS** the U.S. Marshal to serve a copy of the Complaint and summons
3 upon the named Defendants as directed by Plaintiff on the USM Form 285s provided to
4 him. All costs of that service will be advanced by the United States. *See* 28 U.S.C.
5 § 1915(d); Fed. R. Civ. P. 4(c)(3);

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

15 7. **ORDERS** Plaintiff, after service has been effected by the U.S. Marshal, to
16 serve upon Defendants, or, if appearance has been entered by counsel, upon Defendants'
17 counsel, a copy of every further pleading, motion, or other document submitted for the
18 Court's consideration pursuant to Fed. R. Civ. P. 5(b). Plaintiff must include with every
19 original document he seeks to file with the Clerk of the Court, a certificate stating the
20 manner in which a true and correct copy of that document has been was served on
21 Defendants or their counsel, and the date of that service. *See* S.D. Cal. Civ. L.R. 5.2. Any
22 document received by the Court which has not been properly filed with the Clerk or which
23 fails to include a Certificate of Service upon Defendants may be disregarded.

24 **IT IS SO ORDERED.**

25 Dated: July 31, 2017

26 
27 Hon. Janis L. Sammartino
28 United States District Judge