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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY JDT DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Case No.: 3:17-cv-01454-BEN-BGS

11	ARTHUR LEE SMART	
12	V-55495,	
13		Plaintiff,
14	v.	
15	E. ORTIZ; J. BENAVIDEZ; R. DIZON;	
16	P. BRACAMONTE,	
17		Defendants.

ORDER:

- 1) **GRANTING PLAINTIFF'S MOTION TO PROCEED *IN FORMA PAUPERIS* PURSUANT TO 28 U.S.C. § 1915(a); 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)**

21 Arthur Lee Smart ("Plaintiff"), currently incarcerated at California State Prison -
 22 LAC located in Lancaster, California, and proceeding pro se, has filed a civil rights
 23 complaint ("Compl.") pursuant to 42 U.S.C. § 1983 (ECF No. 1). Plaintiff did not prepay
 24 the civil filing fee required by 28 U.S.C. § 1914(a); instead, he has filed a Motion to
 25 Proceed *In Forma Pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a) (ECF No. 2).

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1 *Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Rhodes v.*
2 *Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing 28 U.S.C. § 1915A(b)).

3 All complaints must contain “a short and plain statement of the claim showing that
4 the pleader is entitled to relief.” Fed.R.Civ.P. 8(a)(2). Detailed factual allegations are
5 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by
6 mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
7 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “Determining
8 whether a complaint states a plausible claim for relief [is] . . . a context-specific task that
9 requires the reviewing court to draw on its judicial experience and common sense.” *Id.*
10 The “mere possibility of misconduct” falls short of meeting this plausibility standard.
11 *Id.*; see also *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).

12 “When there are well-pleaded factual allegations, a court should assume their
13 veracity, and then determine whether they plausibly give rise to an entitlement to relief.”
14 *Iqbal*, 556 U.S. at 679; see also *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000)
15 (“[W]hen determining whether a complaint states a claim, a court must accept as true all
16 allegations of material fact and must construe those facts in the light most favorable to
17 the plaintiff.”); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (noting that §
18 1915(e)(2) “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”).

19 However, while the court “ha[s] an obligation where the petitioner is pro se,
20 particularly in civil rights cases, to construe the pleadings liberally and to afford the
21 petitioner the benefit of any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir.
22 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)), it may not
23 “supply essential elements of claims that were not initially pled.” *Ivey v. Board of*
24 *Regents of the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

25 As currently pleaded, the Court finds the allegations in Plaintiff’s Complaint are
26 sufficient to survive the sua sponte screening required by 28 U.S.C. §§ 1915(e)(2) and
27 1915A(b). Accordingly, the Court will direct the U.S. Marshal to effect service on

1 Plaintiff's behalf. *See* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and
2 serve all process, and perform all duties in [IFP] cases."); Fed.R.Civ.P. 4(c)(3) ("[T]he
3 court may order that service be made by a United States marshal or deputy marshal . . . if
4 the plaintiff is authorized to proceed *in forma pauperis* under 28 U.S.C. § 1915.").

5 **III. Conclusion and Order**

6 Good cause appearing, **IT IS HEREBY ORDERED** that:

7 1. Plaintiff's Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a) (ECF No.
8 2) is **GRANTED**.

9 2. The Secretary of the CDCR, or his designee, shall collect from Plaintiff's
10 prison trust account the \$350 filing fee owed in this case by collecting monthly payments
11 from the account in an amount equal to twenty percent (20%) of the preceding month's
12 income and forward payments to the Clerk of the Court each time the amount in the
13 account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2). **ALL PAYMENTS**
14 **SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER ASSIGNED**
15 **TO THIS ACTION.**

16 3. The Clerk of the Court is directed to serve a copy of this Order on Scott
17 Kernan, Secretary, California Department of Corrections and Rehabilitation, P.O. Box
18 942883, Sacramento, California, 94283-0001.

19 **IT IS FURTHER ORDERED** that:

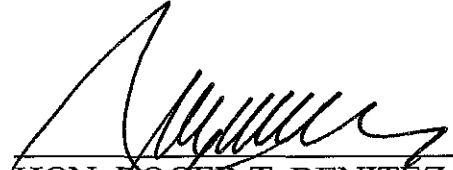
20 4. The Clerk is **DIRECTED** to issue a summons as to Plaintiff's Complaint
21 (ECF No. 1) upon Defendants and forward it to Plaintiff along with blank U.S. Marshal
22 Form 285s for each named Defendant. In addition, the Clerk is directed provide Plaintiff
23 with a certified copy of this Order and a certified copy of his Complaint (ECF No. 1) and
24 the summons so that he may serve each named Defendant. Upon receipt of this "IFP
25 Package," Plaintiff is directed to complete the Form 285s as completely and accurately as
26 possible, and to return them to the United States Marshal according to the instructions
27 provided by the Clerk in the letter accompanying his IFP package.

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

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

13 7. Plaintiff must serve upon the Defendants or, if appearance has been entered
14 by counsel, upon Defendants' counsel, a copy of every further pleading or other
15 document submitted for consideration by the Court. Plaintiff must include with the
16 original paper to be filed with the Clerk of the Court, a certificate stating the manner in
17 which a true and correct copy of the document was served on the Defendants, or counsel
18 for Defendants, and the date of that service. Any paper received by the Court which has
19 not been properly filed with the Clerk, or which fails to include a Certificate of Service,
20 may be disregarded.

21
22 DATED: August 9, 2017



HON. ROGER T. BENITEZ
United States District Judge