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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 CESAR ROJAS,
12 CDCR #BA-4157,

13 Plaintiff,

14 vs.

15 COUNTY OF SAN DIEGO,
16

17 Defendant.
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Case No.: 3:17-cv-01825-WQH-WVG

ORDER:

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

AND

**2) DISMISSING COMPLAINT FOR
FAILING TO STATE A CLAIM
PURSUANT TO
28 U.S.C. § 1915(e)(2)(B)(ii)
AND § 1915A(b)(1)**

22 CESAR ROJAS (“Plaintiff”), currently incarcerated at Richard J. Donovan
23 Correctional Facility (“RJD”) in San Diego, California, and proceeding pro se, has filed a
24 civil rights Complaint pursuant to 42 U.S.C. § 1983 (ECF No. 1).¹
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27 ¹ Plaintiff was incarcerated at Mule Creek State Prison in Ione, California, when he filed
28 his Complaint on September 6, 2017, *see* ECF No. 1 at 1, but on October 20, 2017, he filed
a Notice of Change of Address noting his subsequent transfer to RJD. *See* ECF No. 3.

1 Plaintiff claims the County of San Diego violated his rights to due process and to be
2 free from cruel and unusual punishment by “prolonging” his detention in County Jail, based
3 on acts of perjury during what appear to be three separate San Diego Superior Court
4 criminal proceedings held in 2011, 2013-2014, and again in 2015-2016. (*Id.* at 1, 3.) He
5 seeks \$164,056.83 in general damages and \$266,324.97 in punitive damages. (*Id.* at 11-
6 12.)

7 Plaintiff has not paid the civil filing fee required by 28 U.S.C. § 1914(a); instead he
8 filed a Motion to Proceed In Forma Pauperis pursuant to 28 U.S.C. § 1915(a) (ECF No. 2).

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

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

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

8 In support of his IFP Motion, Plaintiff has submitted a copy of his CDCR Inmate
9 Statement Report. *See* ECF No. 2 at 6-7; 28 U.S.C. § 1915(a)(2); S.D. Cal. CivLR 3.2;
10 *Andrews*, 398 F.3d at 1119. While Plaintiff claims he received \$100 to \$200 a month in
11 JPay for a culinary assignment at Mule Creek State Prison, *see* ECF No. 2 at 2, his trust
12 account statements show he had a zero available balance at the time of filing. *Id.* at 6. *See*
13 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event shall a prisoner be prohibited from
14 bringing a civil action or appealing a civil action or criminal judgment for the reason that
15 the prisoner has no assets and no means by which to pay the initial partial filing fee.”);
16 *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve”
17 preventing dismissal of a prisoner’s IFP case based solely on a “failure to pay . . . due to
18 the lack of funds available to him when payment is ordered.”).

19 Therefore, the Court GRANTS Plaintiff’s Motion to Proceed IFP (ECF No. 2) and
20 assesses no initial partial filing fee per 28 U.S.C. § 1915(b)(1). However, the entire \$350
21 balance of the filing fees mandated will be collected by the California Department of
22 Corrections and Rehabilitation (“CDCR”) and forwarded to the Clerk of the Court pursuant
23 to the installment payment provisions set forth in 28 U.S.C. § 1915(b)(1).

24 **II. Screening Pursuant to 28 U.S.C. § 1915(e)(2)(B) & 1915A**

25 **A. Standard of Review**

26 Because Plaintiff is a prisoner and is proceeding IFP, his complaint requires a pre-
27 answer screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b). Under these statutes,
28 the Court must sua sponte dismiss a prisoner’s IFP complaint, or any portion of it, which

1 is frivolous, malicious, fails to state a claim, or seeks damages from defendants who are
2 immune. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (discussing
3 28 U.S.C. § 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010)
4 (discussing 28 U.S.C. § 1915A(b)). “The purpose of [screening] is ‘to ensure that the
5 targets of frivolous or malicious suits need not bear the expense of responding.’”
6 *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir. 2014) (quoting *Wheeler v. Wexford*
7 *Health Sources, Inc.*, 689 F.3d 680, 681 (7th Cir. 2012)). A complaint is “frivolous” if it
8 “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 324
9 (1989).

10 “The standard for determining whether a plaintiff has failed to state a claim upon
11 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of
12 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668 F.3d
13 1108, 1112 (9th Cir. 2012); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir.
14 2012) (noting that screening pursuant to § 1915A “incorporates the familiar standard
15 applied in the context of failure to state a claim under Federal Rule of Civil Procedure
16 12(b)(6)”). Rule 12(b)(6) requires a complaint to “contain sufficient factual matter,
17 accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*,
18 556 U.S. 662, 678 (2009) (internal quotation marks omitted).

19 Detailed factual allegations are not required, but “[t]hreadbare recitals of the
20 elements of a cause of action, supported by mere conclusory statements, do not suffice.”
21 *Iqbal*, 556 U.S. at 678. “Determining whether a complaint states a plausible claim for relief
22 [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
23 experience and common sense.” *Id.* The “mere possibility of misconduct” or “unadorned,
24 the defendant-unlawfully-harmed me accusation[s]” fall short of meeting this plausibility
25 standard. *Id.*; *see also Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).

26 B. Plaintiff’s Allegations

27 Plaintiff’s factual allegations are sparse. He claims that “from 12/03/2011 to
28 6/27/2013[,] [he] suffered from a prolonged detention in San Diego County Jail” pursuant

1 to “PC 4502 possession of a deadly weapon.” *See* ECF No. 1 at 3. Plaintiff next claims
2 “perjury was committed” on “10/16/2013 to 10/?/14” in the “same Superior Division
3 Court” when it was alleged he had “3 prison priors.” *Id.* Finally, Plaintiff contends a
4 burglary case for which he was arrested on “6/10/15-6/22/16” was also based on perjury
5 and “false documents” alleging he had committed 2 assaults while on parole. (*Id.*)

6 C. 42 U.S.C. § 1983

7 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
8 elements: (1) that a right secured by the Constitution or laws of the United States was
9 violated, and (2) that the alleged violation was committed by a person acting under the
10 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Naffe v. Frye*, 789 F.3d 1030,
11 1035-36 (9th Cir. 2015).

12 D. Discussion

13 Plaintiff’s Complaint fails to state a claim upon which § 1983 relief can be granted
14 because he has failed to allege facts sufficient to support a plausible claim of municipal
15 liability on behalf of the County of San Diego, and because he seeks monetary damages
16 based on criminal convictions which he does not further allege have already been
17 invalidated. *See* 28 U.S.C. § 1915(e)(2)(B)(ii); § 1915A(b)(1); *Lopez*, 203 F.3d at 1126-
18 27; *Rhodes*, 621 F.3d at 1004.

19 First, while the County of San Diego may be considered a “person” properly subject
20 to suit under § 1983, *see Monell v. Dept. of Social Services*, 436 U.S. 658, 691 (1978);
21 *Mendiola-Martinez v. Arpaio*, 836 F.3d 1239, 1247 (9th Cir. 2016), local governments are
22 responsible only for “their own illegal acts.” *Pembaur v. Cincinnati*, 475 U.S. 469, 479
23 (1986) (citing *Monell*, 436 U.S. at 665-83). They are not vicariously liable under § 1983
24 for their employees’ actions. *Monell*, 436 U.S. at 691 (“A municipality cannot be held
25 liable solely because it employs a tortfeasor.”); *Board of Comm’rs of Bryan Cty. v. Brown*,
26 520 U.S. 397, 403 (1997) (collecting cases); *Miranda v. Clark County, Nevada*, 279 F.3d
27 1102, 1109-10 (9th Cir. 2002) (“[R]espondeat superior and vicarious liability are not
28 cognizable theories of recovery against a municipality.”).

1 Therefore, Plaintiffs who seek to impose liability on local governments under § 1983
2 must allege that “action pursuant to official municipal policy” caused their injury. *Monell*,
3 436 U.S., at 691, 694; *Connick v. Thompson*, 563 U.S. 51, 60–61 (2011). To state a claim
4 under *Monell*, a plaintiff must allege: “(1) that he possessed a constitutional right of which
5 he was deprived; (2) that the municipality had a policy; (3) that this policy ‘amounts to
6 deliberate indifference’ to the plaintiff’s constitutional right; and (4) that the policy is the
7 ‘moving force behind the constitutional violation.’” *Oviatt By & Through Waugh v.*
8 *Pearce*, 954 F.2d 1470, 1474 (9th Cir.1992) (quoting *City of Canton v. Harris*, 489 U.S.
9 378, 389-91(1989)). A policy is “a deliberate choice to follow a course of action ... made
10 from among various alternatives by the official or officials responsible for establishing
11 final policy with respect to the subject matter in question.” *Id.* at 1477 (quoting *Pembaur*,
12 475 U.S. at 481); *Holguin v. City of San Diego*, 135 F. Supp. 3d 1151, 1163 (S.D. Cal.
13 2015).

14 As currently pleaded, however, Plaintiff’s Complaint fails to state a claim under 28
15 U.S.C. §§ 1915(e)(2) and § 1915A(b) because he has failed to allege any facts which
16 “might plausibly suggest” that the County of San Diego was responsible for “prolonging”
17 his detention from 2011-2013, or for suborning perjury during the course of any criminal
18 prosecutions, *see* ECF No. 1 at 3, that it did so pursuant to a municipal custom, policy, or
19 practice implemented or promulgated with deliberate indifference to his constitutional
20 rights, or that any custom, policy, or practice was the “moving force” or cause of any injury
21 he claims to have suffered. *See Hernandez v. County of Tulare*, 666 F.3d 631, 637 (9th Cir.
22 2012) (applying *Iqbal*’s pleading standards to *Monell* claims); *Brown*, 520 U.S. at 404 (“[I]t
23 is not enough for a § 1983 plaintiff merely to identify conduct properly attributable to the
24 municipality . . . [t]he plaintiff must also demonstrate that, through its deliberate conduct,
25 the municipality was the ‘moving force’ behind the injury alleged. That is, a plaintiff must
26 show that the municipal action was taken with the requisite degree of culpability and must
27 demonstrate a causal link between the municipal action and the deprivation of federal
28 rights.”).

1 Second, to the extent Plaintiff seeks damages against the County based on his
2 prolonged detention and current term of incarceration, *see* ECF No. 1 at 3, 7, he may not
3 pursue those claims in a civil rights action pursuant to 42 U.S.C. § 1983, without first
4 showing his conviction has already been invalidated. *See Heck v. Humphrey*, 512 U.S. 477,
5 486-87 (1994).

6 In *Heck*, the Supreme Court held:

7 in order to recover damages for allegedly unconstitutional
8 conviction or imprisonment, or for other harm caused by actions
9 whose unlawfulness would render a conviction or sentence
10 invalid, a § 1983 plaintiff must prove that the conviction or
11 sentence has been reversed on direct appeal, expunged by
12 executive order, declared invalid by a state tribunal authorized to
13 make such determination, or called into question by a federal
14 court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A
claim for damages bearing that relationship to a conviction or
sentence that has not been so invalidated is not cognizable under
§ 1983.

15 *Id.* at 486-87.

16 “Suits challenging the validity of the prisoner’s continued incarceration lie within
17 ‘the heart of habeas corpus,’ whereas ‘a § 1983 action is a proper remedy for a state prisoner
18 who is making a constitutional challenge to the conditions of his prison life, but not to the
19 fact or length of his custody.’” *Ramirez v. Galaza*, 334 F.3d 850, 856 (9th Cir. 2003),
20 *quoting Preiser v. Rodriguez*, 411 U.S. 475, 489-99 (1973) (holding that a writ of habeas
21 corpus is “explicitly and historically designed” to provide a state prisoner with the
22 “exclusive” means to “attack the validity of his confinement” in federal court).

23 Because Plaintiff seeks damages based on what he claims was false evidence,
24 “verbal lie[s],” and perjured testimony, *see* ECF No. 1 at 3, his claims amount to an attack
25 on the validity of his underlying criminal conviction, and may not proceed pursuant to
26 § 1983, unless that conviction has already been invalidated. *Heck*, 512 U.S. at 486-87;
27 *Ramirez*, 334 F.3d at 855-56 (“Absent such a showing, ‘[e]ven a prisoner who has fully
28 exhausted available state remedies has no cause of action under § 1983.’”), *quoting Heck*,

1 512 U.S. at 489. While Plaintiff identifies no specific acts of misconduct taken by the
2 County itself, or any individual person employed by the County during the course of his
3 criminal proceedings, except to point to a “false document” and unspecified acts of perjury,
4 *see* ECF No. 1 at 3, *Iqbal*, 556 U.S. at 677 (noting that “[a]bsent vicarious liability, each
5 Government official, his or her title notwithstanding, is only liable for his or her own
6 misconduct”), the Court will presume he intends to sue the County for having wrongfully
7 convicted him³ in violation of the Eighth Amendment and “due process.” *See* ECF No. 1
8 at 3.

9 However, such claims “necessarily imply the invalidity” of his conviction and
10 continued incarceration. *Heck*, 512 U.S. at 487. In other words, were Plaintiff to succeed
11 in showing that he was wrongfully convicted based on false evidence or perjured
12 testimony, an award of damages would “necessarily imply the invalidity” of his conviction
13 and/or sentence. *Id.*; *see also Guerrero v. Gates*, 442 F.3d 697, 701 (9th Cir. 2006) (finding
14 § 1983 action stemming from allegations of wrongful arrest, malicious prosecution, and a
15 general conspiracy of “bad behavior” among officials in connection with the plaintiff’s
16 arrest, prosecution, and incarceration were barred by *Heck*).

17 Thus, for both these reasons, the Court finds that Plaintiff’s Complaint must be
18 dismissed sua sponte for failing to state a claim upon which § 1983 relief pursuant to 28
19 U.S.C. § 1915(e)(2)(B)(ii) and § 1915A(b)(1). *See Lopez*, 203 F.3d at 1126-27; *Rhodes*,
20 621 F.3d at 1004.

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26 ³ The Court notes that “while California statutory law gives a county some authority to
27 oversee a district attorney’s conduct, it expressly excludes conduct related to the
28 investigation and prosecution of crimes, giving that authority instead to the [State] Attorney
General.” *Weiner v. San Diego Cty.*, 210 F.3d 1025, 1030 (9th Cir. 2000) (citing CAL.
GOV’T CODE §§ 26303 & 12550).

1 **III. Conclusion and Orders**

2 Accordingly, the Court:

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

5 2. **DIRECTS** the Secretary of the CDCR, or his designee, to collect from
6 Plaintiff's prison trust account the \$350 filing fee owed in this case by garnishing monthly
7 payments from his account in an amount equal to twenty percent (20%) of the preceding
8 month's income and forwarding those payments to the Clerk of the Court each time the
9 amount in the account exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2). **ALL PAYMENTS**
10 **MUST BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER ASSIGNED TO**
11 **THIS ACTION;**

12 3. **DIRECTS** the Clerk of the Court to serve a copy of this Order on Scott
13 Kernan, Secretary, CDCR, P.O. Box 942883, Sacramento, California, 94283-0001;

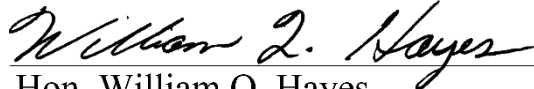
14 4. **DISMISSES** Plaintiff's Complaint for failing to state a claim upon which
15 relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and § 1915A(b)(1), and
16 **GRANTS** him forty-five (45) days leave from the date of this Order in which to file an
17 Amended Complaint which cures all the deficiencies of pleading noted, if he can.
18 Plaintiff's Amended Complaint must be complete by itself without reference to his original
19 pleading. Defendants not named and any claim not re-alleged in his Amended Complaint
20 will be considered waived. *See* S.D. Cal. CivLR 15.1; *Hal Roach Studios, Inc. v. Richard*
21 *Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) ("[A]n amended pleading
22 supersedes the original."); *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012)
23 (noting that claims dismissed with leave to amend which are not re-alleged in an amended
24 pleading may be "considered waived if not repld.").

25 If Plaintiff fails to file an Amended Complaint within the time provided, the Court
26 will enter a final Order dismissing this civil action based both on Plaintiff's failure to state
27 a claim upon which relief can be granted pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and
28 1915A(b)(1), and his failure to prosecute in compliance with a court order requiring

1 amendment. *See Lira v. Herrera*, 427 F.3d 1164, 1169 (9th Cir. 2005) (“If a plaintiff does
2 not take advantage of the opportunity to fix his complaint, a district court may convert the
3 dismissal of the complaint into dismissal of the entire action.”).

4 **IT IS SO ORDERED.**

5 Dated: November 21, 2017


Hon. William Q. Hayes

United States District Court