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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 ERIC C. CHATMAN,
12 CDCR #BD-5474,

13 Plaintiff,

14 vs.

15 CUSH ACURA; ADAM ROSSMAN,
16 Manager; ALLEN SWEETOW, General
17 Sales Manager; ACURA
18 CORPORATION; TERRY ELMANI

19 Defendants.
20
21

Case No.: 3:17-cv-01852-WQH-JLB

ORDER:

**1) GRANTING MOTION TO
PROCEED IN FORMA PAUPERIS
[ECF No. 12]**

AND

**2) DISMISSING CIVIL ACTION
FOR FAILING TO STATE A CLAIM
PURSUANT TO
28 U.S.C. § 1915(e)(2)(B)(ii)**

22 ERIC C. CHATMAN (“Plaintiff”), proceeding pro se and incarcerated at California
23 State Prison in Corcoran, California has filed this civil rights action pursuant to 42 U.S.C.
24 § 1983. (ECF No. 1).

25 Plaintiff did not prepay the \$400 civil filing fee required by 28 U.S.C. § 1914(a), but
26 instead, filed a certified copy of his inmate trust account statement which the Court liberally
27 construes as a Motion to Proceed In Forma Pauperis (“IFP”). (ECF No. 12). He has since
28 submitted six letters to the Court detailing the allegations raised in his Complaint. Those

1 letters have been accepted for filing in light of Plaintiff's pro se status, and despite Local
2 Rule 83.9, which clearly prohibits such ex parte communications. (ECF Nos. 4-11, 13-18).

3 **I. Motion to Proceed IFP**

4 All parties instituting any civil action, suit or proceeding in a district court of the
5 United States, except an application for writ of habeas corpus, must pay a filing fee of
6 \$400.¹ See 28 U.S.C. § 1914(a). The action may proceed despite a plaintiff's failure to
7 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.
8 § 1915(a). See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*
9 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, if the Plaintiff is a prisoner² at the
10 time of filing, even if he is granted leave to proceed IFP, he remains obligated to pay the
11 entire filing fee in "increments" or "installments," *Bruce v. Samuels*, __ U.S. __, 136 S.
12 Ct. 627, 629 (2016); *Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), and
13 regardless of whether his action is ultimately dismissed. See 28 U.S.C. § 1915(b)(1) & (2);
14 *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

15 Section 1915(a)(2) requires prisoners seeking leave to proceed IFP to submit a
16 "certified copy of the trust fund account statement (or institutional equivalent) for ... the 6-
17 month period immediately preceding the filing of the complaint." 28 U.S.C. § 1915(a)(2);
18 *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified trust account
19 statement, the Court assesses an initial payment of 20% of (a) the average monthly deposits
20 in the account for the past six months, or (b) the average monthly balance in the account
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22
23 ¹ In addition to the \$350 statutory fee, civil litigants must pay an additional administrative
24 fee of \$50. See 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court
25 Misc. Fee Schedule, § 14 (eff. June 1, 2016). The additional \$50 administrative fee does
not apply to persons granted leave to proceed IFP. *Id.*

26 ² For purposes of the IFP statute, a "prisoner" is "any person incarcerated or detained in
27 any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for,
28 violations of criminal law or the terms and conditions or parole, probation, pretrial
release, or diversionary program." 28 U.S.C. § 1915(h).

1 for the past six months, whichever is greater, unless the prisoner has no assets. *See* 28
2 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having custody of the prisoner
3 then collects subsequent payments, assessed at 20% of the preceding month’s income, in
4 any month in which his account exceeds \$10, and forwards those payments to the Court
5 until the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2); *Bruce*, 136 S. Ct. at 629.

6 In support of his IFP Motion, Plaintiff has also submitted a copy of his CDCR Inmate
7 Statement Report showing his available balance and trust account activity at CIM. *See* ECF
8 No. 12; 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2; *Andrews*, 398 F.3d at 1119. This
9 statement shows that while Plaintiff had \$50.33 deposited to his account over the 6-month
10 period immediately preceding the filing of his Complaint, he had an *available* balance of
11 zero at the time of filing. *See* ECF No. 12 at 2. Based on this accounting, the Court
12 GRANTS Plaintiff’s Motion to Proceed IFP, and will assess no initial partial filing fee
13 pursuant to 28 U.S.C. § 1915(b)(1). *See* 28 U.S.C. § 1915(b)(4) (providing that “[i]n no
14 event shall a prisoner be prohibited from bringing a civil action or appealing a civil action
15 or criminal judgment for the reason that the prisoner has no assets and no means by which
16 to pay the initial partial filing fee.”); *Bruce*, 136 S. Ct. at 630; *Taylor*, 281 F.3d at 850
17 (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve” preventing dismissal of a
18 prisoner’s IFP case based solely on a “failure to pay ... due to the lack of funds available to
19 him when payment is ordered.”). The Court will further direct the Secretary of the CDCR,
20 or his designee, to instead collect the entire \$350 balance of the filing fees required by 28
21 U.S.C. § 1914 and forward them to the Clerk of the Court pursuant to the installment
22 payment provisions set forth in 28 U.S.C. § 1915(b)(1).

23 **II. Sua Sponte Screening pursuant to 28 U.S.C. § 1915(e)(2)**

24 **A. Standard of Review**

25 If a prisoner’s complaint “seeks redress from a governmental entity or officer or
26 employee of a governmental entity,” the Court “shall review” the pleading “as soon as
27 practicable after docketing,” and “dismiss the complaint, or any portion of the complaint,
28 if [it] . . . is frivolous, malicious, or fails to state a claim upon which relief may be granted.”

1 28 U.S.C. § 1915A(a), (b)(1); *Nordstrom v. Ryan*, 762 F.3d 903, 907 n.1 (9th Cir. 2014).
2 In this case, Plaintiff seeks to sue a car manufacturer, one of its dealerships, and a sales
3 manager for events occurring during his employment there in 1996 through 1998. *See* ECF
4 No. 1 at 1-5. Plaintiff does not seek redress from or name any governmental actors or
5 entities as Defendants. *Id.* at 1-2. Therefore, § 1915A(a)'s screening provisions do not
6 apply. *See Chavez v. Robinson*, 817 F.3d 1162, 1168 (9th Cir. 2016) ("Section 1915A
7 mandates early review ... for all complaints 'in which a prisoner seeks relief from a
8 governmental entity...") (quoting § 1915A(a)).

9 Because Plaintiff is proceeding IFP, however, his Complaint *is* still subject to a sua
10 sponte review, and mandatory dismissal, if it is "frivolous, malicious, fail[s] to state a claim
11 upon which relief may be granted, or seek[s] monetary relief from a defendant immune
12 from such relief," regardless of whether he seeks redress from a "governmental entity." *See*
13 28 U.S.C. § 1915(e)(2)(B); *Coleman v. Tollefson*, 135 S. Ct. 1759, 1763 (2015) (pursuant
14 to 28 U.S.C. § 1915(e)(2) "the court shall dismiss the case at any time if the court
15 determines that—(A) the allegation of poverty is untrue; or (B) the action or appeal—(i) is
16 frivolous or malicious; [or] (ii) fails to state a claim on which relief may be granted.");
17 *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) ("[S]ection 1915(e) not only
18 permits, but requires a district court to dismiss an in forma pauperis complaint that fails to
19 state a claim.").

20 "The standard for determining whether a plaintiff has failed to state a claim upon
21 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of
22 Civil Procedure 12(b)(6) standard for failure to state a claim." *Watison v. Carter*, 668 F.3d
23 1108, 1112 (9th Cir. 2012). To survive a motion to dismiss, the complaint must contain "a
24 short and plain statement of the claim showing that the pleader is entitled to relief." FED.
25 R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but "[t]hreadbare recitals
26 of the elements of a cause of action, supported by mere conclusory statements, do not
27 suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*,
28 550 U.S. 544, 555 (2007)). "Determining whether a complaint states a plausible claim for

1 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
2 experience and common sense.” *Id.* at 679. The “mere possibility of misconduct” falls
3 short of meeting this plausibility standard. *Id.*; *see also Moss v. U.S. Secret Service*, 572
4 F.3d 962, 969 (9th Cir. 2009).

5 “When there are well-pleaded factual allegations, a court should assume their
6 veracity, and then determine whether they plausibly give rise to an entitlement to relief.”
7 *Iqbal*, 556 U.S. at 679; *see also Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000)
8 (“[W]hen determining whether a complaint states a claim, a court must accept as true all
9 allegations of material fact and must construe those facts in the light most favorable to the
10 plaintiff.”).

11 However, while the court has an obligation “where the petitioner is pro se,
12 particularly in civil rights cases, to construe the pleadings liberally and to afford the
13 petitioner the benefit of any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir.
14 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)), it may not “supply
15 essential elements of claims that were not initially pled.” *Ivey v. Bd of Regents of the Univ.*
16 *of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

17 B. Plaintiff’s Allegations

18 Plaintiff alleges that while he was employed at Cush Acura, a car dealership, Adam
19 Rossman, an Acura sales manager, and Allen Sweetow, the general sales manager, forced
20 him to steal a car. *See* ECF No. 1 at 3. Plaintiff seeks millions of dollars in general and
21 punitive damages from Cush Acura, the individually named Defendants, and the Acura
22 Corporation. *Id.* at 5.

23 C. 42 U.S.C. § 1983

24 Section 1983 is a “vehicle by which plaintiffs can bring federal constitutional and
25 statutory challenges to actions by state and local officials.” *Anderson v. Warner*, 451 F.3d
26 1063, 1067 (9th Cir. 2006). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege
27 two essential elements: (1) that a right secured by the Constitution or laws of the United
28 States was violated, and (2) that the alleged violation was committed by a person acting

1 under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Naffe v. Frye*, 789 F.3d
2 1030, 1035-36 (9th Cir. 2015).

3 First, none of the named Defendants are alleged to have to be a “person[s] acting
4 under color of state law.” *See West*, 487 U.S. at 48; *Sutton v. Providence St. Joseph Med.*
5 *Ctr.*, 192 F.3d 826, 835 (9th Cir. 1999) (concluding that the party charged with a
6 constitutional deprivation under § 1983 must be a person who may fairly be said to be a
7 governmental actor). “A civil rights plaintiff suing a private individual under § 1983 must
8 demonstrate that the private individual acted under color of state law; plaintiffs do not
9 enjoy Fourteenth Amendment protections against ‘private conduct abridging individual
10 rights.’” *Franklin v. Fox*, 312 F.3d 423, 444 (9th Cir. 2002) (quoting *Burton v. Wilmington*
11 *Parking Auth.*, 365 U.S. 715, 722 (1961)). Section 1983 liability attaches only to
12 individuals “who carry a badge of authority of a State and represent it in some capacity.”
13 *Monroe v. Pape*, 365 U.S. 167, 172 (1961), *overruled in part by Monell v. Dep’t of Soc.*
14 *Servs.*, 436 U.S. 658 (1978).

15 The Constitution protects individual rights only from government action and not
16 from private action; it is only when the government is responsible for the specific conduct
17 alleged that individual constitutional rights are implicated. *Single Moms, Inc. v. Mont.*
18 *Power Co.*, 331 F.3d 743, 746-47 (9th Cir. 2003). Generally, private parties do not act
19 under color of state law. *See Price v. Hawai’i*, 939 F.2d 702, 707-08 (9th Cir. 1991).
20 Section “1983 excludes from its reach merely private conduct, no matter how
21 discriminatory or wrong.” *Sutton*, 192 F.3d at 835 (citing *Am. Mfrs. Mut. Ins. Co. v.*
22 *Sullivan*, 526 U.S. 40, 50 (1999) (citation and internal quotation marks omitted)); *see also*
23 *Ouzts v. Md. Nat’l Ins. Co.*, 505 F.2d 547, 551 (9th Cir. 1974) (a purely private actor may
24 be liable for his misconduct in state court, but his conduct is not actionable under section
25 1983, regardless of how egregious).

26 In order for private conduct to constitute governmental action, “something more”
27 must be alleged. *Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922, 939 (1982) (“Action by
28 a private party pursuant to [§ 1983], without something more, [i]s not sufficient to justify

1 a characterization of that party as a ‘state actor.’”). Courts have used four different factors
2 or tests to identify what constitutes “something more”: (1) public function, (2) joint action,
3 (3) governmental compulsion or coercion, and (4) governmental nexus. *See id.*; *Johnson v.*
4 *Knowles*, 113 F.3d 1114, 1118 (9th Cir. 1997); *Parks Sch. of Bus., Inc. v. Symington*, 51
5 F.3d 1480, 1486 (9th Cir. 1995); *Gorenc v. Salt River Project Agric. Improvement and*
6 *Power Dist.*, 869 F.2d 503, 506 (9th Cir. 1989).

7 As currently pleaded, Plaintiff’s Complaint fails to allege facts sufficient to plausibly
8 show that Cush Acura, Adam Rossman, Allen Sweetow, Acura Corporation, or Terry
9 Elmani performed any public function traditionally reserved to the state, acted as willful
10 participants in joint action with government agents, were compelled or coerced by, or had
11 any connection whatsoever with, the state when they allegedly engaged in a plot to force
12 Plaintiff to steal a car. *See Iqbal*, 556 U.S. at 678; *Lugar*, 457 U.S. at 939.

13 Second, Plaintiff has not alleged the violation of any “right secured by the
14 Constitution or laws of the United States.” *See West*, 487 U.S. at 48 (citing 42 U.S.C. §
15 1983). Plaintiff may not rely on § 1983 as an independent, substantive claim. *See Cholla*
16 *v. Cholla Ready Mix, Inc. v. Civish*, 382 F.3d 969, 978 (9th Cir. 2004). “[O]ne cannot go
17 into court and claim a ‘violation of § 1983’ — for § 1983 by itself does not protect anyone
18 against anything.” *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 617 (1979).
19 “Section 1983 does not create any substantive rights; rather it is the vehicle whereby
20 plaintiffs can challenge actions by governmental officials.” *Henderson v. City of Simi*
21 *Valley*, 305 F.3d 1052, 1056 (9th Cir. 2002). Plaintiff’s § 1983 suit fails if he does not
22 allege a plausible violation of his federal constitutional or statutory rights. *Cholla*, 382 F.3d
23 at 978; *Iqbal*, 556 U.S. at 676 (“[A] [§1983] plaintiff must plead that each Government-
24 official defendant, through the official’s own individual actions, has violated the
25 Constitution.”).

26 Finally, to the extent Plaintiff seeks to bring state charges based on Defendants’
27 alleged acts of criminal wrongdoing, § 1983 offers him no recourse. *See Campbell v. Burt*,
28 141 F.3d 927, 930 (9th Cir. 1998) (violations of state law alone do not support a claim of

1 liability under § 1983); *Alexandre v. Phibbs*, 116 F.3d 482 (9th Cir. 1997) (unpub.) (section
2 1983 claims may not be predicated upon the violation of criminal statutes); *see also*
3 *Buckheit v. Dennis*, 713 F. Supp. 2d 910, 919 (N.D. Cal. 2010) (citing *Doe v. Connecticut*
4 *Dept. Of Child & Youth Services*, 911 F.2d 868, 869 (2nd Cir. 1990) (“A violation of state
5 law neither gives plaintiffs a § 1983 claim nor deprives defendants of the defense of
6 qualified immunity to a proper § 1983 claim.”)); *Ward v. City of Barstow, et al.*, 2017 WL
7 4877389, at *16 (C.D. Cal. June 23, 2017) (finding alleged violation of the California Penal
8 Code “cannot form the basis of a federal claim under § 1983” as a matter of law), *report*
9 *and recommendation adopted sub nom. Ward v. City of Barstow*, 2017 WL 4877239 (C.D.
10 Cal. Oct. 27, 2017).

11 Thus, for all these reasons, the Court finds Plaintiff’s Complaint fails to state a claim
12 upon which relief can be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(ii); *Lopez*, 203 F.3d at
13 1130.

14 **III. Conclusion and Order**

15 For all the reasons discussed, the Court:

16 1. **GRANTS** Plaintiff’s Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a)
17 (ECF No. 12).

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

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

27 4. **DISMISSES** Plaintiff’s Complaint for failure to state a claim upon which
28 § 1983 relief can granted pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii), and **DENIES** leave

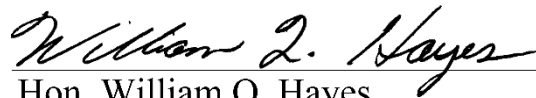
1 to amend as futile. *See Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir. 2015) (leave to
2 amend is not required if it is “absolutely clear that the deficiencies of the complaint could
3 not be cured by amendment.”) (internal citations omitted).

4 5. **CERTIFIES** that an IFP appeal from this Order would be frivolous, and
5 therefore not taken in good faith pursuant to 28 U.S.C. § 1915(a)(3). *See Coppedge v.*
6 *United States*, 369 U.S. 438, 445 (1962); *Gardner v. Pogue*, 558 F.2d 548, 550 (9th Cir.
7 1977) (indigent appellant is permitted to proceed IFP on appeal only if appeal would not
8 be frivolous); and

9 6. **DIRECTS** the Clerk of Court to close the file.³

10 **IT IS SO ORDERED.**

11 Dated: November 21, 2017

12 
13 Hon. William Q. Hayes
14 United States District Court

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26 ³ While the Court has previously accepted Plaintiff’s letters for filing despite his failure to
27 comply with the Court’s Local Rules, he is hereby cautioned that S.D. Cal. Local Civil
28 Rule 83.9 provides that “attorneys or parties to any action must refrain from writing letters
to the judge,” and that “[p]ro se litigants must follow the same rules of procedure that
govern other litigants.” *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987).