

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

RICHARD PAUL RODDY, II,  
Booking #16113441,  
  
Plaintiff,  
  
vs.  
  
OFFICE OF DISTRICT ATTORNEY;  
COURT OF APPEAL, FOURTH  
DISTRICT; APPELLATE DEFENDERS,  
INC.; JUDGE ROBERT F. O'NEIL,  
  
Defendants.

Case No.: 3:17-cv-1964-LAB-PCL

**ORDER:**

- 1) GRANTING MOTION TO PROCEED IN FORMA PAUPERIS [ECF No. 4]; AND**
- 2) DISMISSING CIVIL ACTION FOR FAILURE TO STATE A CLAIM AND SEEKING MONETARY DAMAGES AGAINST IMMUNE DEFENDANTS PURSUANT TO 28 U.S.C. § 1915(e)(2) AND § 1915A(b)**

Richard Paul Roddy, II, (“Plaintiff”), currently incarcerated at the George Bailey Detention Facility (“GBDF”) in San Diego, California, and proceeding pro se, has filed a civil rights complaint pursuant to 42 U.S.C. § 1983 (ECF No. 1). Plaintiff has also filed a Motion to Proceed In Forma Pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a) (ECF No. 4).

1 **I. Motion to Proceed IFP**

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

13 Section 1915(a)(2) requires prisoners seeking leave to proceed IFP to submit a  
14 “certified copy of the trust fund account statement (or institutional equivalent) for . . . the  
15 6-month period immediately preceding the filing of the complaint.” 28 U.S.C.  
16 § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified  
17 trust account statement, the Court assesses an initial payment of 20% of (a) the average  
18 monthly deposits in the account for the past six months, or (b) the average monthly  
19 balance in the account for the past six months, whichever is greater, unless the prisoner  
20 has no assets. See 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having  
21 custody of the prisoner then collects subsequent payments, assessed at 20% of the  
22 preceding month’s income, in any month in which his account exceeds \$10, and forwards  
23 those payments to the Court until the entire filing fee is paid. See 28 U.S.C. § 1915(b)(2).

---

24  
25  
26 <sup>1</sup> 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. Dec. 1, 2014). The additional \$50 administrative fee does  
not apply to persons granted leave to proceed IFP. *Id.*

1 In support of his IFP Motion, Plaintiff has submitted a prison certificate authorized  
2 by a GBDF administrative lieutenant attesting to his trust account activity. *See* ECF No. 4  
3 at 4; 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2; *Andrews*, 398 F.3d at 1119. These  
4 statements show Plaintiff has had no monthly deposits to his account, has carried no  
5 balance over the six month period preceding the filing of his Complaint, and that his  
6 current available balance is zero. *See* 28 U.S.C. § 1915(b)(4) (providing that “[i]n no  
7 event shall a prisoner be prohibited from bringing a civil action or appealing a civil action  
8 or criminal judgment for the reason that the prisoner has no assets and no means by  
9 which to pay the initial partial filing fee.”); *Bruce*, 136 S. Ct. at 630; *Taylor*, 281 F.3d at  
10 850 (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve” preventing dismissal of  
11 a prisoner’s IFP case based solely on a “failure to pay . . . due to the lack of funds  
12 available to him when payment is ordered.”).

13 Therefore, the Court GRANTS Plaintiff’s Motion to Proceed IFP (ECF No. 4),  
14 declines to “exact” any initial filing fee because his trust account statement shows he “has  
15 no means to pay it,” *Bruce*, 136 S. Ct. at 629, and directs the Watch Commander at  
16 GBDF to instead collect the entire \$350 balance of the filing fees required by 28 U.S.C.  
17 § 1914 and forward them to the Clerk of the Court pursuant to the installment payment  
18 provisions set forth in 28 U.S.C. § 1915(b)(1).

## 19 **II. Screening Pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)**

### 20 **A. Standard of Review**

21 Because Plaintiff is a prisoner and is proceeding IFP, his Complaint requires a pre-  
22 answer screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b). Under these  
23 statutes, the Court must sua sponte dismiss a prisoner’s IFP complaint, or any portion of  
24 it, which is frivolous, malicious, fails to state a claim, or seeks damages from defendants  
25 who are immune. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)  
26 (discussing 28 U.S.C. § 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir.  
27 2010) (discussing 28 U.S.C. § 1915A(b)). “The purpose of [screening] is ‘to ensure that  
28 the targets of frivolous or malicious suits need not bear the expense of responding.’”

1 *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir. 2014) (quoting *Wheeler v. Wexford*  
2 *Health Sources, Inc.*, 689 F.3d 680, 681 (7th Cir. 2012)).

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

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

## 20 **B. Plaintiff’s Allegations**

21 Plaintiff alleges San Diego Deputy District Attorneys Christina Eastman,  
22 Jacqueline Vasquez and Christopher Moon “refuse[d] to give Plaintiff discovery.”  
23 (Compl. at 2.) He further alleges that Defendant, San Diego Superior Court Judge Robert  
24 F. O’Neil, “refused to acknowledge that Prosecutors’ office” had refused to give Plaintiff  
25 discovery. (*Id.*) Plaintiff claims that both the Appellate Defenders and the Court of  
26 Appeals also refused to acknowledge the alleged denial of discovery. (*Id.*) Plaintiff  
27 requests \$50,000 in compensatory and punitive damages. (*Id.* at 5.)

28 ///

1           **C.    42 U.S.C. § 1983**

2           “Section 1983 creates a private right of action against individuals who, acting  
3 under color of state law, violate federal constitutional or statutory rights.” *Devereaux v.*  
4 *Abbey*, 263 F.3d 1070, 1074 (9th Cir. 2001). Section 1983 “is not itself a source of  
5 substantive rights, but merely provides a method for vindicating federal rights elsewhere  
6 conferred.” *Graham v. Connor*, 490 U.S. 386, 393-94 (1989) (internal quotation marks  
7 and citations omitted). “To establish § 1983 liability, a plaintiff must show both (1)  
8 deprivation of a right secured by the Constitution and laws of the United States, and (2)  
9 that the deprivation was committed by a person acting under color of state law.” *Tsao v.*  
10 *Desert Palace, Inc.*, 698 F.3d 1128, 1138 (9th Cir. 2012).

11           **D.    Criminal Proceedings**

12           First, to the extent that Plaintiff is alleging that the actions of the Defendants  
13 resulted in his criminal conviction, he may not pursue those claims in a civil rights action  
14 pursuant to 42 U.S.C. § 1983, without first showing those convictions have already been  
15 invalidated. *See Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994).

16           In *Heck*, the Supreme Court held:

17                   in order to recover damages for allegedly unconstitutional  
18 conviction or imprisonment, or for other harm caused by actions  
19 whose unlawfulness would render a conviction or sentence  
20 invalid, a § 1983 plaintiff must prove that the conviction or  
21 sentence has been reversed on direct appeal, expunged by  
22 executive order, declared invalid by a state tribunal authorized to  
23 make such determination, or called into question by a federal  
24 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.

25 *Id.* at 486-87.

26           “Suits challenging the validity of the prisoner’s continued incarceration lie within  
27 ‘the heart of habeas corpus,’ whereas ‘a § 1983 action is a proper remedy for a state  
28 prisoner who is making a constitutional challenge to the conditions of his prison life, but

1 not to the fact or length of his custody.” *Ramirez v. Galaza*, 334 F.3d 850, 856 (9th Cir.  
2 2003), *quoting Preiser v. Rodriguez*, 411 U.S. 475, 489-99 (1973) (holding that a writ of  
3 habeas corpus is “explicitly and historically designed” to provide a state prisoner with the  
4 “exclusive” means to “attack the validity of his confinement” in federal court).

5 Because Plaintiff seeks damages based on his criminal conviction, his claims  
6 amount to an attack on the validity of his underlying criminal conviction, and may not  
7 proceed pursuant to § 1983, unless his conviction has already been invalidated. *Heck*, 512  
8 U.S. at 486-87; *Ramirez*, 334 F.3d at 855-56 (“Absent such a showing, ‘[e]ven a prisoner  
9 who has fully exhausted available state remedies has no cause of action under § 1983.”),  
10 *quoting Heck*, 512 U.S. at 489.

#### 11 **E. Judicial and Prosecutorial Immunity**

12 Second, to the extent Plaintiff seeks damages against Judge O’Neil and any Justice  
13 with the California Court of Appeals, for either presiding over his criminal proceedings  
14 or denying him relief in his appeal, his claims are legally frivolous, for “[j]udges are  
15 absolutely immune from damage liability for acts performed in their official capacities.”  
16 *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986). As prosecutors Eastman,  
17 Vasquez, and Moon are likewise entitled to absolute prosecutorial immunity. *Id.* at 1076  
18 (“Where a prosecutor acts as an advocate ‘in initiating a prosecution and in presenting the  
19 state’s case,’ absolute immunity applies.” (quoting *Imbler v. Pachtman*, 424 U.S. 409,  
20 431 (1976)); *see also Lacey v. Maricopa Cnty.*, 693 F.3d 896, 912 (9th Cir. 2012)  
21 (“Prosecutors performing their official prosecutorial functions are entitled to absolute  
22 immunity against constitutional torts.”).

23 Thus, for all these reasons, the Court finds Plaintiff’s Complaint fails to state a  
24 claim upon which § 1983 relief may be granted and for seeking monetary relief against  
25 immune defendants, and that it therefore must be DISMISSED pursuant to 28 U.S.C.  
26 § 1915(e)(2) and § 1915A(b). *See Lopez*, 203 F.3d at 1126-27; *Wilhelm*, 680 F.3d at  
27 1121.

28 ///

1 **IV. Conclusion and Order**

2 For all the reasons explained the Court:

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

5 2. **DIRECTS** the Watch Commander of GBDF, or his designee, to collect from  
6 Plaintiff’s 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**  
10 **PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER**  
11 **ASSIGNED TO THIS ACTION.**

12 3. **DIRECTS** the Clerk of the Court to serve a copy of this Order on the Watch  
13 Commander, George Bailey Detention Facility, 446 Alta Road, Ste. 5300, San Diego,  
14 California, 92158.

15 4. **DISMISSES** Plaintiff’s Complaint (ECF No. 1) for failing to state a claim  
16 upon which § 1983 relief can be granted and for seeking monetary damages against  
17 immune defendants pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A.

18 5. **GRANTS** him thirty (30) days leave from the date of this Order in which to  
19 file an Amended Complaint which cures all the deficiencies of pleading noted. Plaintiff’s  
20 Amended Complaint must be complete by itself without reference to his original  
21 pleading, and must comply with S.D. CAL. CIVLR 8.2(a).

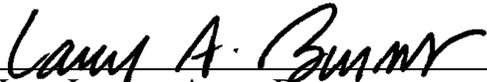
22 Defendants not named and any claim not re-alleged in his Amended Complaint  
23 will be considered waived. *See* S.D. CAL. CIVLR 15.1; *Hal Roach Studios, Inc. v. Richard*  
24 *Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (“[A]n amended pleading  
25 supersedes the original.”); *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012)  
26 (noting that claims dismissed with leave to amend which are not re-alleged in an  
27 amended pleading may be “considered waived if not repled.”).

28 ///

1           6.     The Clerk of Court is directed to mail Plaintiff a court approved blank civil  
2 rights form for his use in amending.

3                   **IT IS SO ORDERED.**

4  
5 Dated: November 28, 2017

6                                     
7                                   \_\_\_\_\_  
8                                   HON. LARRY ALAN BURNS  
9                                   United States District Judge

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28