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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 ELBERT LEE VAUGHT
12 H-56089,

13 Plaintiff,

14 v.

15 SCOTT KERNAN,

16 Defendant.
17

Case No.: 3:18-cv-00300-CAB-JMA

ORDER:

1) **GRANTING PLAINTIFF’S
MOTION TO PROCEED *IN FORMA
PAUPERIS* PURSUANT TO 28 U.S.C.
§ 1915(a) (ECF No. 2)**

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)**

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23 ELBERT LEE VAUGHT (“Plaintiff”), currently incarcerated at Richard J.
24 Donovan Correctional Facility located in San Diego, California, and proceeding pro se,
25 has filed a civil rights complaint pursuant to 42 U.S.C. § 1983 (ECF No. 1). Plaintiff did
26 not prepay the civil filing fee required by 28 U.S.C. § 1914(a); instead, he has filed a
27 Motion to Proceed In Forma Pauperis (“IFP”) (**ECF No. 2**).

1 **I. Plaintiff’s 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. See
4 28 U.S.C. § 1914(a).¹ An action may proceed despite a plaintiff’s failure to prepay the
5 entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). See
6 *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, if the plaintiff is a
7 prisoner and he is granted leave to proceed IFP, he remains obligated to pay the full
8 entire fee in “increments,” see *Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015),
9 regardless of whether his action is ultimately dismissed. See 28 U.S.C. § 1915(b)(1) &
10 (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

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

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26 ¹ In addition to the \$350 statutory fee, all parties filing civil actions on or after May 1, 2013, must pay
27 an additional administrative fee of \$50. See 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees,
District Court Misc. Fee Schedule) (eff. May 1, 2013). However, the additional \$50 administrative fee is
waived if the plaintiff is granted leave to proceed IFP. *Id.*

1 In support of his IFP Motion, Plaintiff has submitted a certified copy of his trust
2 account statement pursuant to 28 U.S.C. § 1915(a)(2) and S.D. Cal. CivLR 3.2. *Andrews*,
3 398 F.3d at 1119. The Court has reviewed Plaintiff’s trust account activity, as well as the
4 attached prison certificate verifying his available balances. Plaintiff’s statements show an
5 average monthly balance of **22.55**, average monthly deposits of **12.54**, and an available
6 balance of **9.61** in his account at the time of filing. Based on this financial information,
7 the Court GRANTS Plaintiff’s Motion to Proceed IFP (**ECF No. 2**) and assesses an
8 initial partial filing fee of **4.51** pursuant to 28 U.S.C. § 1915(b)(1).

9 However, the Court will direct the Secretary of the California Department of
10 Corrections and Rehabilitation (“CDCR”), or his designee, to collect this initial fee only
11 if sufficient funds in Plaintiff’s account are available at the time this Order is executed.
12 *See* 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event shall a prisoner be prohibited
13 from bringing a civil action or appealing a civil action or criminal judgment for the
14 reason that the prisoner has no assets and no means by which to pay the initial partial
15 filing fee.”); *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4) acts as a
16 “safety-valve” preventing dismissal of a prisoner’s IFP case based solely on a “failure to
17 pay ... due to the lack of funds available to him when payment is ordered.”). The
18 remaining balance of the \$350 total fee owed in this case must be collected and
19 forwarded to the Clerk of the Court pursuant to the installment payment provisions set
20 out in 28 U.S.C. § 1915(b)(1).

21 **II. Initial Screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A**

22 Notwithstanding Plaintiff’s IFP status or the payment of any partial filing fees, the
23 PLRA also requires the Court to review complaints filed by all persons proceeding IFP
24 and by those, like Plaintiff, who are “incarcerated or detained in any facility [and]
25 accused of, sentenced for, or adjudicated delinquent for, violations of criminal law or the
26 terms or conditions of parole, probation, pretrial release, or diversionary program,” “as
27 soon as practicable after docketing.” *See* 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under

1 these statutes, the Court must sua sponte dismiss any complaint, or any portion of a
2 complaint, which is frivolous, malicious, fails to state a claim, or seeks damages from
3 defendants who are immune. See 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b); *Lopez v.*
4 *Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Rhodes v.*
5 *Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing 28 U.S.C. § 1915A(b)).

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

15 “When there are well-pleaded factual allegations, a court should assume their
16 veracity, and then determine whether they plausibly give rise to an entitlement to relief.”
17 *Iqbal*, 556 U.S. at 679; *see also Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000)
18 (“[W]hen determining whether a complaint states a claim, a court must accept as true all
19 allegations of material fact and must construe those facts in the light most favorable to
20 the plaintiff.”); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (noting that §
21 1915(e)(2) “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”).

22 However, while the court “ha[s] an obligation where the petitioner is pro se,
23 particularly in civil rights cases, to construe the pleadings liberally and to afford the
24 petitioner the benefit of any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir.
25 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)), it may not
26 “supply essential elements of claims that were not initially pled.” *Ivey v. Board of*
27 *Regents of the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

1 As currently pled, the Court finds Plaintiff's Complaint contains allegations which
2 are sufficient to survive the sua sponte screening required by 28 U.S.C. §§ 1915(e)(2) and
3 1915A(b).² Accordingly, the Court will direct the U.S. Marshal to effect service on
4 Plaintiff's behalf. *See* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and
5 serve all process, and perform all duties in [IFP] cases."); Fed.R.Civ.P. 4(c)(3) ("[T]he
6 court may order that service be made by a United States marshal or deputy marshal ... if
7 the plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. § 1915.").

8 **II. Conclusion and Order**

9 Good cause appearing, the Court:

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

12 2. **DIRECTS** the Secretary of the CDCR, or his designee, to collect the **4.51**
13 initial filing fee assessed by this Order from Plaintiff's prison trust account, and forward
14 the remaining **345.49** balance of the full fee owed by collecting monthly payments from
15 Plaintiff's account in an amount equal to twenty percent (20%) of the preceding month's
16 income to the Clerk of the Court each time the amount in Plaintiff's account exceeds \$10
17 pursuant to 28 U.S.C. § 1915(b)(2). **ALL PAYMENTS MUST BE CLEARLY**
18 **IDENTIFIED BY THE NAME AND NUMBER ASSIGNED TO THIS ACTION.**

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

21 4. **DIRECTS** the Clerk to issue a summons as to Plaintiff's Complaint (ECF
22 No. 1) upon Defendants and forward it to Plaintiff along with blank U.S. Marshal Form
23 285. In addition, the Clerk will provide Plaintiff with a certified copy of this Order,
24 certified copies of his Complaint (ECF No. 1), and the summons so that he may serve
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26 ² Plaintiff is cautioned that "the sua sponte screening and dismissal procedure is cumulative of, and not
27 a substitute for, any subsequent Rule 12(b)(6) motion that [a defendant] may choose to bring." *Teahan*
v. Wilhelm, 481 F. Supp. 2d 1115, 1119 (S.D. Cal. 2007).

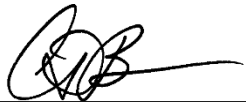
1 Defendants. Upon receipt of this “IFP Package,” Plaintiff must complete the Form 285 as
2 completely and accurately as possible, and return it to the United States Marshal
3 according to the instructions the Clerk provides in the letter accompanying his IFP
4 package.

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

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

16 7. **ORDERS** Plaintiff to serve upon Defendants or, if an appearance has been
17 entered by counsel, upon Defendants’ counsel, a copy of every further pleading or other
18 document he wishes the Court to consider. Plaintiff must include with the original paper
19 to be filed with the Clerk of the Court, a certificate stating the manner in which a true and
20 correct copy of the document was served on Defendants, or counsel for Defendants, and
21 the date of that service. Any paper received by the Court which has not been properly
22 filed with the Clerk, or which fails to include a Certificate of Service, may be
23 disregarded.

24 Dated: March 22, 2018

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26 _____
27 Hon. Cathy Ann Bencivengo
United States District Judge