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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ABRAHAM STAPLETON,
CDCR #P-18824,

Plaintiff,

vs.

E. CRUZ; MENDOZA; DANIEL A.
PARAMO; JOHN DOE;
STATE OF CALIFORNIA,

Defendants.

Case No.: 3:18-cv-00733-LAB-JLB

ORDER:

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

**2) DISMISSING DEFENDANT
STATE OF CALIFORNIA
PURSUANT TO
28 U.S.C. § 1915(e)(2)(B) AND
28 U.S.C. § 1915A(b)(1)**

AND

**3) DIRECTING U.S. MARSHAL TO
EFFECT SERVICE UPON
DEFENDANTS CRUZ, MENDOZA,
AND PARAMO PURSUANT
TO 28 U.S.C. § 1915(d) AND
Fed. R. Civ. P. 4(c)(3)**

ABRAHAM STAPLETON (“Plaintiff”), proceeding pro se and while incarcerated at Richard J. Donovan Correctional Facility (“RJD”) in San Diego, California, has filed a

1 civil rights Complaint pursuant to 42 U.S.C. § 1983 (ECF No. 1), and a Motion to
2 Proceed In Forma Pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a) (ECF No. 2).

3 Background

4 Plaintiff, who is white, claims three RJD Correctional Officers (“C/Os”) (Cruz,
5 Mendoza, and Doe) violated his Eighth Amendment rights on September 2, 2016, by
6 failing to protect him from and during a racially-motivated attack by three Hispanic
7 inmates. *See* Compl., ECF No. 1 at 13-20. Plaintiff further claims RJD’s Warden
8 (Paramo) “knew his C/O’s actions were inappropriate,” conspired with them, and
9 “regularly participated and directed inmates to assault other inmates” who filed CDCR
10 602 Inmate Appeals “against his officers.” *Id.* at 16-17. Plaintiff claims to have suffered
11 permanent damage to his right eye as a result of the September 2, 2016 incident, *id.* at 15,
12 and seeks \$500,000 in compensatory and \$1 million in punitive damages. *Id.* at 20.

13 Discussion

14 **A. IFP Motion**

15 All parties instituting any civil action, suit or proceeding in a district court of the
16 United States, except an application for writ of habeas corpus, must pay a filing fee of
17 \$400.¹ *See* 28 U.S.C. § 1914(a). The action may proceed despite a plaintiff’s failure to
18 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.
19 § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*
20 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, a prisoner who is granted leave to
21 proceed IFP remains obligated to pay the entire fee in “increments” or “installments,”
22 *Bruce v. Samuels*, ___ U.S. ___, 136 S. Ct. 627, 629 (2016); *Williams v. Paramo*, 775 F.3d
23 1182, 1185 (9th Cir. 2015), and regardless of whether his action is ultimately dismissed.

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25
26 ¹ 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, 2016). The additional \$50 administrative fee does
not apply to persons granted leave to proceed IFP. *Id.*

1 See 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir.
2 2002).

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

15 In support of his IFP Motion, Plaintiff has submitted two prison certificates
16 authorized by RJD accounting officials attesting to his trust account activity. See ECF
17 Nos. 3, 6; 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2; *Andrews*, 398 F.3d at 1119.
18 These certificates show Plaintiff had average monthly deposits of \$5.87 to his account,
19 carried an average monthly balance of \$5.94 over the six month period preceding the
20 filing of his Complaint, and had only \$.03 on the books at the time of filing. See ECF
21 Nos. 3, 6.

22 Based on this accounting, the Court assesses Plaintiff’s initial partial filing fee to
23 be \$1.18, but notes he may be “unable to pay” any initial partial filing fee pursuant to 28
24 U.S.C. § 1915(a)(1) and (b)(1) at this time. See 28 U.S.C. § 1915(b)(4) (providing that
25 “[i]n no event shall a prisoner be prohibited from bringing a civil action or appealing a
26 civil action or criminal judgment for the reason that the prisoner has no assets and no
27 means by which to pay the initial partial filing fee.”); *Bruce*, 136 S. Ct. at 630; *Taylor*,
28 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve” preventing

1 dismissal of a prisoner’s IFP case based solely on a “failure to pay ... due to the lack of
2 funds available to him when payment is ordered.”).

3 Accordingly, the Court GRANTS Plaintiff’s Motion to Proceed IFP (ECF No. 2),
4 declines to exact the \$1.18 assessed initial filing fee because his prison certificate shows
5 he “has no means to pay it,” *Bruce*, 136 S. Ct. at 629, and directs the Secretary of the
6 California Department of Corrections and Rehabilitation (“CDCR”), or his designee, to
7 collect the entire \$350 balance of the filing fees required by 28 U.S.C. § 1914 and to
8 forward them to the Clerk of the Court pursuant to the installment payment provisions set
9 forth in 28 U.S.C. § 1915(b)(1). *See id.*

10 **B. Screening of Complaint pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A**

11 Because Plaintiff is a prisoner and is proceeding IFP, his Complaint requires a pre-
12 answer screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b).

13 1. Standard of Review

14 Under these statutes, the Court must sua sponte dismiss a prisoner’s IFP complaint,
15 or any portion of it, which is frivolous, malicious, fails to state a claim, or seeks damages
16 from defendants who are immune. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir.
17 2000) (en banc) (discussing 28 U.S.C. § 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002,
18 1004 (9th Cir. 2010) (discussing 28 U.S.C. § 1915A(b)). “The purpose of [screening] is
19 ‘to ensure that the targets of frivolous or malicious suits need not bear the expense of
20 responding.’” *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir. 2014) (quoting
21 *Wheeler v. Wexford Health Sources, Inc.*, 689 F.3d 680, 681 (7th Cir. 2012)).

22 “The standard for determining whether a plaintiff has failed to state a claim upon
23 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of
24 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668
25 F.3d 1108, 1112 (9th Cir. 2012); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th
26 Cir. 2012) (noting that screening pursuant to § 1915A “incorporates the familiar standard
27 applied in the context of failure to state a claim under Federal Rule of Civil Procedure
28 12(b)(6)”). Rule 12(b)(6) requires a complaint “contain sufficient factual matter, accepted

1 as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S.
2 662, 678 (2009) (internal quotation marks omitted); *Wilhelm*, 680 F.3d at 1121.

3 Detailed factual allegations are not required, but “[t]hreadbare recitals of the
4 elements of a cause of action, supported by mere conclusory statements, do not suffice.”
5 *Iqbal*, 556 U.S. at 678. “Determining whether a complaint states a plausible claim for
6 relief [is] ... a context-specific task that requires the reviewing court to draw on its
7 judicial experience and common sense.” *Id.* The “mere possibility of misconduct” or
8 “unadorned, the defendant-unlawfully-harmed me accusation[s]” fall short of meeting
9 this plausibility standard. *Id.*; *see also Moss v. U.S. Secret Service*, 572 F.3d 962, 969
10 (9th Cir. 2009).

11 2. 42 U.S.C. § 1983

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

21 3. Improper Defendant

22 As an initial matter, the Court finds that to the extent Plaintiff includes the “State
23 of California” as a Defendant in the caption of his Complaint, his claims must be
24 dismissed sua sponte pursuant to both 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b).

25 The Eleventh Amendment bars suits against a state, absent the state’s affirmative
26 waiver of its immunity or congressional abrogation of that immunity. *Krainski v. Nev. ex*
27 *rel. Bd. of Regents of Nev. Sys. of Higher Educ.*, 616 F.3d 963, 967 (9th Cir. 2010) (“The
28 Eleventh Amendment bars suits against the State or its agencies for all types of relief,

1 absent unequivocal consent by the state.”) (internal citations omitted). The Ninth Circuit
2 has recognized that “[t]he State of California has not waived its Eleventh Amendment
3 immunity with respect to claims brought under § 1983 in federal court, and the Supreme
4 Court has held that § 1983 was not intended to abrogate a State’s Eleventh Amendment
5 immunity.” *Brown v. California Dep’t of Corrections*, 554 F.3d 747, 752 (9th Cir. 2009);
6 *see also Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 67, 71 (1989) (“We cannot
7 conclude that § 1983 was intended to disregard the well-established immunity of a State
8 from being sued without its consent. [...] We hold that neither a State nor its officials
9 acting in their official capacities are ‘persons’ under § 1983.”); *see also Hogue v.*
10 *California*, No. 1:17-CV-00942 DAD EPG PC, 2018 WL 1605736, at *2 (E.D. Cal. Apr.
11 3, 2018) (sua sponte dismissing prisoner’s § 1983 claims against the State of California
12 based on sovereign immunity pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A).

13 Accordingly, the Court dismisses the State of California as a party to this action
14 sua sponte pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b) as barred by the
15 Eleventh Amendment. *Lopez*, 203 F.3d at 1126-27; *Rhodes*, 621 F.3d at 1004.

16 4. Eighth Amendment – Individual Defendants

17 As for Plaintiff’s Eighth Amendment failure to protect allegations against the
18 remaining Defendants, however, the Court finds they are sufficiently pleaded to surpass
19 the “low threshold” set by of 28 U.S.C. §§ 1915(e)(2) and 1915A(b). *Wilhelm* 680 F.3d at
20 1123; *Robins v. Meecham*, 60 F.3d 1436, 1442 (9th Cir. 1995) (an officer’s failure to
21 intervene and protect can violate a prisoner’s Eighth Amendment rights); *United States v.*
22 *Williams*, 842 F.3d 1143, 1153 (9th Cir. 2016) (the Eighth Amendment “requires that
23 prison officials ‘must take reasonable measures to guarantee the safety of the inmates.’”)
24 (quoting *Farmer v. Brennan*, 511 U.S. 825, 833, 847 (1994) (“[P]rison officials have a
25 duty [under the Eighth Amendment] ... to protect prisoners from violence at the hands of
26 other prisoners[,]” and therefore, “may be held liable ... if [they] know[] that inmates
27 face a substantial risk of serious harm and disregard[] that risk by failing to take
28 reasonable measures to abate it.”).

1 amount in the account exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2). ALL
2 PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER
3 ASSIGNED TO THIS ACTION.

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

6 4. **DISMISSES** Defendant State of California sua sponte and **DIRECTS** the
7 Clerk to terminate the State of California as a party to this action pursuant to 28 U.S.C.
8 § 1915(e)(2)(B)(ii) and § 1915A(b)(1).

9 5. **DIRECTS** the Clerk to issue a summons as to Plaintiff's Complaint (ECF
10 No. 1) upon Defendants Cruz, Mendoza, and Paramo and forward it to Plaintiff along
11 with a blank U.S. Marshal Form 285 for each of these Defendants. In addition, the Clerk
12 will provide Plaintiff with a certified copy of this Order, a certified copy of his
13 Complaint, and the summons so that he may serve them upon these Defendants. Upon
14 receipt of this "IFP Package," Plaintiff must complete the Form 285s as completely and
15 accurately as possible, *include an address where each Defendant may be served, see S.D.*
16 *CAL. CIVLR 4.1.c*, and return them to the United States Marshal according to the
17 instructions the Clerk provides in the letter accompanying his IFP package.

18 6. **ORDERS** the U.S. Marshal to serve a copy of the Complaint and summons
19 upon Defendants Cruz, Mendoza, and Paramo as directed by Plaintiff on the USM Form
20 285s provided to him. All costs of that service will be advanced by the United States. *See*
21 *28 U.S.C. § 1915(d); FED. R. CIV. P. 4(c)(3).*

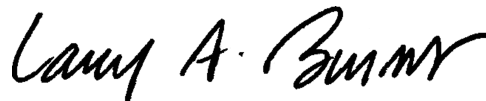
22 7. **ORDERS** Defendants Cruz, Mendoza, and Paramo, once served, to reply to
23 Plaintiff's Complaint within the time provided by the applicable provisions of Federal
24 Rule of Civil Procedure 12(a). *See 42 U.S.C. § 1997e(g)(2)* (while a defendant may
25 occasionally be permitted to "waive the right to reply to any action brought by a prisoner
26 confined in any jail, prison, or other correctional facility under section 1983," once the
27 Court has conducted its sua sponte screening pursuant to 28 U.S.C. § 1915(e)(2) and
28 § 1915A(b), and thus, has made a preliminary determination based on the face on the

1 pleading alone that Plaintiff has a “reasonable opportunity to prevail on the merits,”
2 defendant is required to respond).

3 8. **ORDERS** Plaintiff, after service has been effected by the U.S. Marshal, to
4 serve upon Defendants Cruz, Mendoza, and Paramo, or, if appearance has been entered
5 by counsel, upon Defendants’ counsel, a copy of every further pleading, motion, or other
6 document submitted for the Court’s consideration pursuant to FED. R. CIV. P. 5(b).
7 Plaintiff must include with every original document he seeks to file with the Clerk of the
8 Court, a certificate stating the manner in which a true and correct copy of that document
9 has been was served on Defendants or their counsel, and the date of that service. *See* S.D.
10 CAL. CIVLR 5.2. Any document received by the Court which has not been properly filed
11 with the Clerk, or which fails to include a Certificate of Service upon the Defendants,
12 may be disregarded.

13 **IT IS SO ORDERED.**

14
15 Dated: June 5, 2018



Hon. Larry Alan Burns
United States District Judge