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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 BRANDON M. TRAMMELL,
12 Booking No. 17163702,

13 Plaintiff,

14 vs.

15 SHERIFF WILLIAM D. GORE; GBDF
16 Faculty 8,

17 Defendants.
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Case No.: 3:18-cv-01168-GPC-KSC

ORDER:

(1) **GRANTING MOTION TO
PROCEED IN FORMA PAUPERIS
PURSUANT TO 28 U.S.C. § 1915(a)
[Doc. No. 2]; AND**

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

25 Brandon M. Trammell (“Plaintiff”), currently housed at the San Diego Central Jail
26 (“SDCJ”) located in San Diego, California, and proceeding pro se, has filed a civil
27 complaint pursuant to 42 U.S.C. § 1983. *See* Doc. No. 1 at 1.
28

1 Plaintiff did not prepay the civil filing fees required by 28 U.S.C. § 1914(a) at the
2 time of filing; instead he has filed a Motion to Proceed In Forma Pauperis (“IFP”)
3 pursuant to 28 U.S.C. § 1915(a) (Doc. No. 2).

4 **I. Plaintiff’s IFP Motion**

5 All parties instituting any civil action, suit or proceeding in a district court of the
6 United States, except an application for writ of habeas corpus, must pay a filing fee of
7 \$400.¹ See 28 U.S.C. § 1914(a). The action may proceed despite a plaintiff’s failure to
8 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.
9 § 1915(a). See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*
10 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, a prisoner who is granted leave to
11 proceed IFP remains obligated to pay the entire fee in “increments” or “installments,”
12 *Bruce v. Samuels*, 136 S. Ct. 627, 629 (2016); *Williams v. Paramo*, 775 F.3d 1182, 1185
13 (9th Cir. 2015), and regardless of whether his action is ultimately dismissed. See 28
14 U.S.C. § 1915(b)(1) & (2); *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
17 6-month period immediately preceding the filing of the complaint.” 28 U.S.C.
18 § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified
19 trust account statement, the Court assesses an initial payment of 20% of (a) the average
20 monthly deposits in the account for the past six months, or (b) the average monthly
21 balance in the account for the past six months, whichever is greater, unless the prisoner
22 has no assets. See 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution
23 having custody of the prisoner then collects subsequent payments, assessed at 20% of the
24 preceding month’s income, in any month in which his account exceeds \$10, and forwards
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27 ¹ In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$50. See
28 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court 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 those payments to the Court until the entire filing fee is paid. *See* 28 U.S.C. §
2 1915(b)(2); *Bruce*, 136 S. Ct. at 629.

3 In support of his IFP motion, Plaintiff has submitted a certified copy of his trust
4 account statement, as well as a prison certificate, verified by an accounting officer,
5 pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2. *See* Doc. No. 2 at 4-7;
6 *Andrews*, 398 F.3d at 1119. These statements shows that while Plaintiff had an average
7 monthly deposit of \$72.00 and an average monthly balance of \$40.00 in his trust account
8 during the 6-month period preceding the filing of his Complaint, he only had an available
9 balance of \$0.14 at the time of filing. Therefore, the Court assesses Plaintiff’s initial
10 partial filing fee to be \$14.40 pursuant to 28 U.S.C. § 1915(b)(1). However, the Court
11 also notes Plaintiff may be unable to pay that initial fee at this time. *See* 28 U.S.C.
12 § 1915(b)(4) (providing that “[i]n no event shall a prisoner be prohibited from bringing a
13 civil action or appealing a civil action or criminal judgment for the reason that the
14 prisoner has no assets and no means by which to pay the initial partial filing fee.”);
15 *Bruce*, 136 S. Ct. at 630; *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4)
16 acts as a “safety-valve” preventing dismissal of a prisoner’s IFP case based solely on a
17 “failure to pay . . . due to the lack of funds available to him when payment is ordered.”).

18 Therefore, the Court GRANTS Plaintiff’s Motion to Proceed IFP, declines to
19 “exact” the initial \$14.40 initial filing fee because his prison certificate shows he “has no
20 means to pay it,” *Bruce*, 136 S. Ct. at 629, and directs the Watch Commander for SDCJ,
21 or their designee, to instead collect the entire \$350 balance of the filing fees required by
22 28 U.S.C. § 1914 and forward them to the Clerk of the Court pursuant to the installment
23 payment provisions set forth in 28 U.S.C. § 1915(b)(1). *See id.*

24 **II. Initial Screening per 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)**

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
28 statutes, the Court must sua sponte dismiss a prisoner’s IFP complaint, or any portion of

1 it, which is frivolous, malicious, fails to state a claim, or seeks damages from defendants
2 who are immune. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)
3 (discussing 28 U.S.C. § 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir.
4 2010) (discussing 28 U.S.C. § 1915A(b)). “The purpose of [screening] is ‘to ensure that
5 the 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)).

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

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

25 **B. Plaintiff’s Allegations**

26 Plaintiff alleges that he was housed at the George Bailey Detention Facility
27 (“GBDF”) on January 16, 2018. *See* Doc. No. 1 at 1. Plaintiff hit his leg on the “stool”
28 in his cell which “broke the skin.” *Id.* Plaintiff informed an unnamed officer of the

1 incident who “allowed [him] to take a shower” and told Plaintiff he would be seen at
2 “sick call” the next day. *Id.* The next morning Plaintiff informed a nurse that he “did not
3 feel good.” *Id.* The nurse instructed Plaintiff to “fill out a sick call slip” but Plaintiff
4 refused. *Id.* Plaintiff informed this nurse that he “needed medical attention asap.” *Id.*
5 The nurse told Plaintiff that he had a fever and needed to have a “culture” taken. *Id.*
6 Plaintiff was taken to the GBDF. Plaintiff claims, however, he “could not take the pain
7 and went man down.” *Id.* Plaintiff was “rushed to Tri-City in an ambulance.” *Id.*
8 Plaintiff had “contracted a flesh eating infection that almost took” his life. *Id.* Plaintiff
9 alleges he was in the hospital for seventeen (17) days. *See id.*

10 **C. 42 U.S.C. § 1983**

11 Section 1983 is a “vehicle by which plaintiffs can bring federal constitutional and
12 statutory challenges to actions by state and local officials.” *Anderson v. Warner*, 451
13 F.3d 1063, 1067 (9th Cir. 2006). To state a claim under 42 U.S.C. § 1983, a plaintiff
14 must allege two essential elements: (1) that a right secured by the Constitution or laws of
15 the United States was violated, and (2) that the alleged violation was committed by a
16 person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Naffe*
17 *v. Frye*, 789 F.3d 1030, 1035-36 (9th Cir. 2015).

18 **D. Improper Defendant**

19 As an initial matter, the Court finds that to the extent Plaintiff includes the “GBDF
20 Faculty 8” as a Defendant in the caption of his Complaint, his claims must be dismissed
21 sua sponte pursuant to both 28 U.S.C. § 1915(e)(2)(B)(ii) and § 1915A(b)(1) for failing
22 to state a claim upon which § 1983 relief can be granted. *Lopez*, 203 F.3d at 1126-27;
23 *Rhodes*, 621 F.3d at 1004. A local law enforcement department (like the San Diego
24 County Sheriff’s Department or its Jail) is not a proper defendant under § 1983. *See*
25 *Vance v. County of Santa Clara*, 928 F. Supp. 993, 996 (N.D. Cal. 1996) (“Naming a
26 municipal department as a defendant is not an appropriate means of pleading a § 1983
27 action against a municipality.”) (citation omitted); *Powell v. Cook County Jail*, 814 F.
28 Supp. 757, 758 (N.D. Ill. 1993) (“Section 1983 imposes liability on any ‘person’ who

1 violates someone’s constitutional rights ‘under color of law.’ Cook County Jail is not a
2 ‘person.’”).

3 To the extent Plaintiff intends to assert a claim against the County of San Diego
4 itself, his allegations are insufficient. A municipal entity is liable under section 1983
5 only if plaintiff shows that his constitutional injury was caused by employees acting
6 pursuant to the municipality’s policy or custom. *Mt. Healthy City Sch. Dist. Bd. of Ed. v.*
7 *Doyle*, 429 U.S. 274, 280 (1977); *Monell v. New York City Dep’t of Soc. Servs.*, 436 U.S.
8 658, 691 (1978); *Villegas v. Gilroy Garlic Festival Ass’n*, 541 F.3d 950, 964 (9th Cir.
9 2008). Local government entities may not be held vicariously liable under section 1983
10 for the unconstitutional acts of its employees under a theory of respondeat superior. *See*
11 *Board of Cty. Comm’rs. v. Brown*, 520 U.S. 397, 403 (1997).

12 **E. Respondeat Superior**

13 In addition, Plaintiff names Sheriff William Gore but provides no factual
14 allegations as to this Defendant. As a result, Plaintiff fails to state a claim upon which
15 § 1983 relief can be granted because he sets forth no individualized allegations of
16 wrongdoing by Sheriff Gore, and instead seeks to hold him vicariously liable for the
17 actions of his deputies and medical staff. *See Iqbal*, 556 U.S. at 676 (“Because vicarious
18 liability is inapplicable to . . . § 1983 suits,” Plaintiff “must plead that each Government-
19 official defendant, though the official’s own individual actions, has violated the
20 Constitution.”)

21 Plaintiff’s Complaint contains no factual allegations describing what Defendant
22 Sheriff Gore knew, did, or failed to do, with regard to Plaintiff’s needs. *Estate of Brooks*
23 *v. United States*, 197 F.3d 1245, 1248 (9th Cir. 1999) (“Causation is, of course, a required
24 element of a § 1983 claim.”). “The inquiry into causation must be individualized and
25 focus on the duties and responsibilities of each individual defendant whose acts or
26 omissions are alleged to have caused a constitutional deprivation.” *Leer v. Murphy*, 844
27 F.2d 628, 633 (9th Cir. 1988) (citing *Rizzo v. Goode*, 423 U.S. 362, 370–71 (1976)); *Berg*
28 *v. Kincheloe*, 794 F.2d 457, 460 (9th Cir. 1986).

1 Thus, without some specific “factual content” that might allow the Court to “draw
2 the reasonable inference” that Sheriff Gore may be held personally liable for any
3 unconstitutional conduct directed at Plaintiff, the Court finds his Complaint, as currently
4 pleaded, contains allegations which *Iqbal* makes clear fail to “state a claim to relief that is
5 plausible on its face.” *Iqbal*, 556 U.S. at 568.

6 **F. Leave to Amend**

7 A pro se litigant must be given leave to amend his pleading to state a claim unless
8 it is absolutely clear the deficiencies cannot be cured by amendment. *See Lopez*, 203
9 F.3d at 1130 (noting leave to amend should be granted when a complaint is dismissed
10 under 28 U.S.C. § 1915(e) “if it appears at all possible that the plaintiff can correct the
11 defect”). Therefore, while the Court finds Plaintiff’s Complaint fails to state a claim
12 upon which relief can be granted, it will provide him a chance to fix the pleading
13 deficiencies discussed in this Order, if he can. *See Akhtar v. Mesa*, 698 F.3d 1202, 1212
14 (9th Cir. 2012) (citing *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992)).

15 **III. Conclusion and Order**

16 For all the reasons discussed, the Court:

17 1. **GRANTS** Plaintiff’s Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a)
18 (Doc. No. 2).

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

26 3. **DIRECTS** the Clerk of the Court to serve a copy of this Order on Watch
27 Commander, San Diego Central Jail, 1173 Front Street, San Diego, California, 92101.
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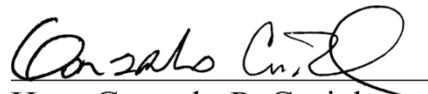
1 4. **DISMISSES** Plaintiff’s Complaint for failing to state a claim upon which
2 § 1983 relief can granted pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) & 1915A;

3 5. **GRANTS** Plaintiff forty-five (45) days leave to file an Amended Complaint
4 which cures all the deficiencies of pleading described in this Order. Plaintiff is
5 cautioned, however, that should he choose to file an Amended Complaint, it must be
6 complete by itself, comply with Federal Rule of Civil Procedure 8(a), and that any claim
7 not re-alleged will be considered waived. *See* S.D. CAL. CIVLR 15.1; *Hal Roach Studios,*
8 *Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (“[A]n amended
9 pleading supersedes the original.”); *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir.
10 2012) (noting that claims dismissed with leave to amend which are not re-alleged in an
11 amended pleading may be “considered waived if not repled”).

12 6. The Clerk of Court is directed to mail Plaintiff a court approved form civil
13 rights complaint.

14 **IT IS SO ORDERED.**

15 Dated: June 12, 2018


16 Hon. Gonzalo P. Curiel
17 United States District Judge
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