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

10
11 ABONILICO CARROLL,
12 CDCR #AX-2101,

13 Plaintiff,

14 vs.

15 C/O MILLER; W/O WRIGHT; CHIEF
16 MEDICAL OFFICER

17 Defendants.

Case No. 18-cv-1264-BAS-PCL

ORDER:

1) **GRANTING MOTION TO
PROCEED IN FORMA PAUPERIS
[Doc. No. 2]; AND**

2) **DIRECTING U.S. MARSHAL TO
EFFECT SERVICE PURSUANT TO
28 U.S.C. § 1915(d) AND
Fed. R. Civ. P. 4(c)(3)**

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23 Abonilico Carroll (“Plaintiff”) is currently incarcerated at Richard J. Donovan
24 Correctional Facility (“RJD”) in San Diego, California. He is proceeding *pro se*, and has
25 filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. (ECF No. 1, Compl.) Plaintiff
26 did not prepay the \$400 civil filing fee required by 28 U.S.C. § 1914(a) at the time of filing.
27 Instead, he has filed a motion to proceed *in forma pauperis* (“IFP”) pursuant to 28 U.S.C.
28 § 1915(a). (ECF No. 2.)

1 **I. MOTION TO PROCEED *IN FORMA PAUPERIS***

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 \$400.¹ 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*, 136 S. Ct. 627, 629 (2016); *Williams v. Paramo*, 775 F.3d 1182, 1185
10 (9th Cir. 2015), and regardless of whether his action is ultimately dismissed. See 28 U.S.C.
11 § 1915(b)(1) & (2).

12 Section 1915(a)(2) requires prisoners seeking leave to proceed IFP to submit a
13 “certified copy of the trust fund account statement (or institutional equivalent) for . . . the
14 6-month period immediately preceding the filing of the complaint.” 28 U.S.C.
15 § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified
16 trust account statement, the Court assesses an initial payment of 20% of (a) the average
17 monthly deposits in the account for the past six months, or (b) the average monthly balance
18 in the account for the past six months, whichever is greater, unless the prisoner has no
19 assets. See 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having custody
20 of the prisoner then collects subsequent payments, assessed at 20% of the preceding
21 month’s income, in any month in which his account exceeds \$10, and forwards those
22 payments to the Court until the entire filing fee is paid. See 28 U.S.C. § 1915(b)(2); *Bruce*,
23 136 S. Ct. at 629.

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26 ¹ In addition to the \$350 statutory fee, civil litigants must pay an additional
27 administrative fee of \$50. See 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees,
28 District Court Misc. Fee Schedule, § 14 (eff. June 1, 2016). 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 copy of his CDCR Inmate
2 Statement Report and a Prison Certificate signed by a RJD accounting officer attesting to
3 his balances and deposits over the 6-month period preceding the filing of his Complaint.
4 (*See* ECF No. 2 at 4–7); *see also* 28 U.S.C. § 1915(a)(2); S.D. Cal. Civ. L.R. 3.2; *Andrews*,
5 398 F.3d at 1119. These statements show that Plaintiff has had almost no money in his
6 trust account for the 6-months preceding the filing of this action, and that he had a zero
7 balance at the time of filing. (*See* ECF No. 4 at 4, 7); *see also* 28 U.S.C. § 1915(b)(4)
8 (providing that “[i]n no event shall a prisoner be prohibited from bringing a civil action or
9 appealing a civil action or criminal judgment for the reason that the prisoner has no assets
10 and no means by which to pay the initial partial filing fee.”); *Bruce*, 136 S. Ct. at 630.

11 Therefore, the Court **GRANTS** Plaintiff’s Motion to Proceed IFP (ECF No. 2),
12 declines to “exact” any initial filing fee because his trust account statement shows he “has
13 no means to pay it,” *Bruce*, 136 S. Ct. at 629, and directs the Secretary of the California
14 Department of Corrections and Rehabilitation (“CDCR”) to collect the entire \$350 balance
15 of the filing fees required by 28 U.S.C. § 1914 and forward them to the Clerk of the Court
16 pursuant to the installment payment provisions set forth in 28 U.S.C. § 1915(b)(1).

17 **II. SCREENING OF COMPLAINT PURSUANT TO 28 U.S.C. §§ 1915(E)(2)(B)**
18 **AND 1915A(B)**

19 **A. Standard of Review**

20 Because Plaintiff is a prisoner and is proceeding IFP, his Complaint requires a pre-
21 answer screening which the Court conducts *sua sponte* pursuant to 28 U.S.C. § 1915(e)(2)
22 and § 1915A(b). Under these statutes, the Court must dismiss a prisoner’s IFP complaint,
23 or any portion of it, which is frivolous, malicious, fails to state a claim, or seeks damages
24 from defendants who are immune. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir.
25 2000) (en banc) (discussing 28 U.S.C. § 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002,
26 1004 (9th Cir. 2010) (discussing 28 U.S.C. § 1915A(b)). “The purpose of [screening] is
27 ‘to ensure that the targets of frivolous or malicious suits need not bear the expense of
28 responding.’” *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir. 2014) (quoting *Wheeler*

1 *v. Wexford Health Sources, Inc.*, 689 F.3d 680, 681 (7th Cir. 2012)).

2 “The standard for determining whether a plaintiff has failed to state a claim upon
3 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of
4 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668 F.3d
5 1108, 1112 (9th Cir. 2012); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir.
6 2012) (noting that screening pursuant to § 1915A “incorporates the familiar standard
7 applied in the context of failure to state a claim under Federal Rule of Civil Procedure
8 12(b)(6)”). Rule 12(b)(6) requires a complaint “contain sufficient factual matter, accepted
9 as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S.
10 662, 678 (2009) (internal quotation marks omitted); *Wilhelm*, 680 F.3d at 1121. Detailed
11 factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause of
12 action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678.
13 “Determining whether a complaint states a plausible claim for relief [is] . . . a context-
14 specific task that requires the reviewing court to draw on its judicial experience and
15 common sense.” *Id.* The “mere possibility of misconduct” or “unadorned, the defendant-
16 unlawfully-harmed me accusation[s]” fall short of meeting this plausibility standard. *Id.*;
17 *see also Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).

18 **B. Plaintiff’s Allegations**

19 In August 2018, Plaintiff was “discharged from U.C.S.D. Hospital after major
20 surgery (urethral reconstruction)” back to RJD. (ECF No. 1 at 3.) As a result of this
21 surgery, Plaintiff could not climb any stairs. *Id.* When he informed Defendants Miller and
22 Wright that he was unable to walk up stairs to his cell, he claims Defendants “threatened”
23 him by telling him he would be housed in administrative segregation if he did not climb
24 the stairs. *Id.* Plaintiff was “helped” by another inmate “to get to his cell safely.” *Id.*
25 However, days later when Plaintiff “had to get his medicine,” and this inmate was not
26 available to help him, Plaintiff “fell down a flight of stairs” injuring his “neck, back, and
27 head.” *Id.* Plaintiff was “transported to Central Health” by ambulance. *Id.* Plaintiff was
28 then issued a “lower tier, lower bunk chrono,” along with a “wheelchair, cane, and back

1 brace.” *Id.* Plaintiff contends Defendants acted with “deliberate indifference” to his
2 medical needs in violation of the Eighth Amendment by failing to accommodate his
3 medical needs.

4 As currently pleaded, the Court finds that Plaintiff’s Complaint contains factual
5 content sufficient to survive the “low threshold” for proceeding past the *sua sponte*
6 screening required by 28 U.S.C. §§ 1915(e)(2) and 1915A(b), because it alleges Eighth
7 Amendment claims which are plausible on its face. *See Wilhelm*, 680 F.3d at 1123; *Iqbal*,
8 556 U.S. at 678; *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (prison officials’ deliberate
9 indifference to an inmate’s serious medical needs constitutes cruel and unusual punishment
10 in violation of the Eighth Amendment). Accordingly, the Court will direct the U.S.
11 Marshal to effect service upon the named Defendants on Plaintiff’s behalf. *See* 28 U.S.C.
12 § 1915(d) (“The officers of the court shall issue and serve all process, and perform all duties
13 in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (“[T]he court may order that service be made by
14 a United States marshal or deputy marshal . . . if the plaintiff is authorized to proceed *in*
15 *forma pauperis* under 28 U.S.C. § 1915.”).

16 **III. CONCLUSION & ORDER**

17 For the foregoing reasons, the Court:

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

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

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

1 4. **DIRECTS** the Clerk to issue a summons as to Plaintiff’s Complaint (ECF No.
2 1) and forward it to Plaintiff along with a blank U.S. Marshal Form 285 for each named
3 Defendant. In addition, the Clerk will provide Plaintiff with a certified copy of this Order,
4 a certified copy of his Complaint and the summons so that he may serve the named
5 Defendants. Upon receipt of this “IFP Package,” Plaintiff must complete the Form 285s
6 as completely and accurately as possible, *include an address where each named Defendant*
7 *may be found and/or subject to service* pursuant to S.D. Cal. Civ. L.R. 4.1c. and return
8 them to the United States Marshal according to the instructions the Clerk provides in the
9 letter accompanying his IFP package;

10 5. **ORDERS** the U.S. Marshal to serve a copy of the Complaint and summons
11 upon the named Defendants as directed by Plaintiff on the USM Form 285s provided to
12 him. All costs of that service will be advanced by the United States. *See* 28 U.S.C.
13 § 1915(d); Fed. R. Civ. P. 4(c)(3);


14 6. **ORDERS** the named and served Defendants to reply to Plaintiff’s Complaint
15 within the time provided by the applicable provisions of Federal Rule of Civil Procedure
16 12(a). *See* 42 U.S.C. § 1997e(g)(2) (while a defendant may occasionally be permitted to
17 “waive the right to reply to any action brought by a prisoner confined in any jail, prison, or
18 other correctional facility under section 1983,” once the Court has conducted its *sua sponte*
19 screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b), and thus, has made a
20 preliminary determination based on the face on the pleading alone that Plaintiff has a
21 “reasonable opportunity to prevail on the merits,” the defendant is required to respond);
22 and,

23 7. **ORDERS** Plaintiff, after service has been effected by the U.S. Marshal, to
24 serve upon the named Defendants, or, if appearance has been entered by counsel, upon
25 Defendants’ counsel, a copy of every further pleading, motion, or other document
26 submitted for the Court’s consideration pursuant to Federal Rule of Civil Procedure 5(b).
27 Plaintiff must include with every original document he seeks to file with the Clerk of the
28 Court, a certificate stating the manner in which a true and correct copy of that document

1 has been was served on Defendants or their counsel, and the date of that service. *See* S.D.
2 Cal. Civ. L.R. 5.2. Any document received by the Court which has not been properly filed
3 with the Clerk or which fails to include a Certificate of Service upon Defendants may be
4 disregarded.

5 **IT IS SO ORDERED.**

6 **DATED: July 16, 2018**

7 
8 **Hon. Cynthia Bashant**
9 **United States District Judge**

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