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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

VINCENT BRYANT,
CDCR #BI-2557,

Plaintiff,

vs.

SAN DIEGO COUNTY SHERIFF; JOHN
DOE; JANE DOE,

Defendants.

Case No.: 3:19-cv-00648-AJB-BGS

ORDER:

**(1) GRANTING MOTION TO
PROCEED IN FORMA PAUPERIS
PURSUANT TO 28 U.S.C. § 1915(a)
[Doc. No. 5]; AND**

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

Vincent Bryant (“Plaintiff”), a state inmate currently incarcerated at the California Rehabilitation Center located in Norco, California, and proceeding pro se, has filed a civil complaint (“Compl.”) pursuant to 42 U.S.C. § 1983. *See* Doc. No. 1 at 1.

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*, ___ U.S. ___, 136 S. Ct. 627, 629 (2016); *Williams v. Paramo*, 775 F.3d
13 1182, 1185 (9th Cir. 2015), and regardless of whether his action is ultimately dismissed.
14 See 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir.
15 2002).

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

4 In support of his IFP motion, Plaintiff has submitted a certified copy of his trust
5 account statement, as well as a prison certificate, verified by an accounting officer,
6 pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2. *See* Doc. No. 5 at 4-7;
7 *Andrews*, 398 F.3d at 1119. These statements shows that while Plaintiff had an average
8 monthly deposit of \$13.54 and an average monthly balance of \$16.17 in his trust account
9 during the 6-month period preceding the filing of his Complaint. However, he had only
10 an available balance of \$0.00 at the time of filing. Therefore, the Court does not assess an
11 initial partial filing fee at this time. *See* 28 U.S.C. § 1915(b)(4) (providing that “[i]n no
12 event shall a prisoner be prohibited from bringing a civil action or appealing a civil action
13 or criminal judgment for the reason that the prisoner has no assets and no means by
14 which to pay the initial partial filing fee.”); *Bruce*, 136 S. Ct. at 630; *Taylor*, 281 F.3d at
15 850 (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve” preventing dismissal of
16 a prisoner’s IFP case based solely on a “failure to pay . . . due to the lack of funds
17 available to him when payment is ordered.”).

18 Therefore, the Court GRANTS Plaintiff’s Motion to Proceed IFP, declines to
19 “exact” an initial filing fee because his prison certificate shows he “has no means to pay
20 it,” *Bruce*, 136 S. Ct. at 629, and directs the Acting Secretary for the CDCR, or their
21 designee, to instead collect the entire \$350 balance of the filing fees required by 28
22 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 In September of 2018 Plaintiff was housed at the San Diego Central Jail. (*See*
27 *Compl.* at 1.) Plaintiff alleges “all Defendants in this Complaint ‘knowingly’ knew about
28 my medical condition.” (*Id.*) Plaintiff had a “hernia in nature” which he claims “caused

1 acute excruciating pain” on September 18, 2018. (*Id.*) Plaintiff contends he was “denied
2 medical attention for 4 months.” (*Id.*) Despite submitting grievances “12 times formally
3 and verbally,” all were “rebuffed.” (*Id.*) As a result of Defendants’ actions, Plaintiff
4 claims that he went through “physical acute pain” for “4 months.” (*Id.*)

5 In addition, Plaintiff claims, “all the named Defendants knew” Plaintiff needed to
6 “use the law library to meet court imposed deadlines.” (*Id.*) Plaintiff alleges that the
7 purported actions by Defendants caused him to “lose his right to pursue ongoing legal
8 actions.” (*Id.*)

9 Plaintiff seeks injunctive relief and damages in the amount of the “cost of ‘in
10 forma pauperis filing’ paid to the U.S. District Court.” (*Id.* at 5.)

11 **C. Improper Defendants & Municipal Liability**

12 As an initial matter, the Court finds that to the extent Plaintiff names the San Diego
13 County Sheriff’s Department as a Defendant, his claims must be dismissed sua sponte
14 pursuant to both 28 U.S.C. § 1915(e)(2) and § 1915A(b) for failing to state a claim upon
15 which § 1983 relief can be granted.

16 Local law enforcement departments, like the San Diego Sheriff’s Department,
17 municipal agencies, or subdivisions of that department or agency, are not proper
18 defendants under § 1983. *See Vance v. County of Santa Clara*, 928 F. Supp. 993, 996
19 (N.D. Cal. 1996) (“Naming a municipal department as a defendant is not an appropriate
20 means of pleading a § 1983 action against a municipality.”) (citation omitted); *Powell v.*
21 *Cook County Jail*, 814 F. Supp. 757, 758 (N.D. Ill. 1993) (“Section 1983 imposes
22 liability on any ‘person’ who violates someone’s constitutional rights ‘under color of
23 law.’ Cook County Jail is not a ‘person.’”).

24 While the County of San Diego *itself* may be considered a “person” and therefore,
25 a proper defendant under § 1983, *see Monell v. Department of Social Services*, 436 U.S.
26 658, 691 (1978); *Hammond v. County of Madera*, 859 F.2d 797, 801 (9th Cir. 1988),
27 Plaintiff has not named the County as a Defendant. Moreover, as a municipality, the
28 County *may* be held liable under § 1983—but only where the Plaintiff alleges facts to

1 show that a constitutional deprivation was caused by the implementation or execution of
2 “a policy statement, ordinance, regulation, or decision officially adopted and
3 promulgated” by the County, or a “final decision maker” for the County. *Monell*, 436
4 U.S. at 690; *Board of the County Commissioners v. Brown*, 520 U.S. 397, 402-04 (1997);
5 *Navarro v. Block*, 72 F.3d 712, 714 (9th Cir. 1995). In other words, “respondeat superior
6 and vicarious liability are not cognizable theories of recovery against a municipality.”
7 *Miranda v. Clark County, Nevada*, 279 F.3d 1102, 1109-10 (9th Cir. 2002). “Instead, a
8 *Monell* claim exists only where the alleged constitutional deprivation was inflicted in
9 ‘execution of a government’s policy or custom.’” *Id.* (quoting *Monell*, 436 U.S. at 694).

10 As currently pleaded, Plaintiff’s Complaint fails to state a claim under 28 U.S.C.
11 §§ 1915(e)(2) and 1915A(b) because he has failed to allege any facts which “might
12 plausibly suggest” that the County itself violated his constitutional rights. *See Hernandez*
13 *v. County of Tulare*, 666 F.3d 631, 637 (9th Cir. 2012) (applying *Iqbal*’s pleading
14 standards to *Monell* claims); *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (42
15 U.S.C. § 1983 provides for relief only against those who, through their personal
16 involvement as evidenced by affirmative acts, participation in another’s affirmative acts,
17 or failure to perform legally required duties, cause the deprivation of plaintiff’s
18 constitutionally protected rights).

19 **D. Medical care claims**

20 At the time the events in the Complaint occurred, it appears that Plaintiff was a
21 pretrial detainee. A pretrial detainee’s claim of the denial of the right to adequate
22 medical care is analyzed under an objective deliberate indifference standard. *See Gordon*
23 *v. Cty. of Orange*, 888 F.3d 1118, 1124-25 (9th Cir. 2018). The elements of such a claim
24 are: “(i) the defendant made an intentional decision with respect to the conditions under
25 which the plaintiff was confined; (ii) those conditions put the plaintiff at substantial risk
26 of suffering serious harm; (iii) the defendant did not take reasonable available measures
27 to abate that risk, even though a reasonable official in the circumstances would have
28 appreciated the high degree of risk involved—making the consequences of the

1 defendant’s conduct obvious; and (iv) by not taking such measures, the defendant caused
2 the plaintiff’s injuries.” *Id.* at 1125. “With respect to the third element, the defendant’s
3 conduct must be objectively unreasonable, a test that will necessarily ‘turn[] on the facts
4 and circumstances of each particular case.’” *Id.* (quoting *Castro v. City of Los Angeles*,
5 833 F.3d 1060, 1071 (9th Cir. 2016)). A plaintiff must “prove more than negligence but
6 less than subjective intent—something akin to reckless disregard.” *Id.* (quoting *Castro*,
7 833 F.3d at 1071). The “mere lack of due care” is insufficient. *Id.* (internal quotation
8 omitted); see *Hopper v. Cty. of Riverside*, No. EDCV1801277JAKDFM, 2018 WL
9 6092563, at *4 (C.D. Cal. Nov. 20, 2018).

10 Here, Plaintiff’s allegations fall far short of stating a claim of inadequate medical
11 care and he fails to provide any description or identification of the individuals whom he
12 claims denied him adequate medical care. He states on one occasion he was denied
13 medical attention but provides no specific factual allegations with regard to this claim.
14 (*See Compl.* at 3.) A difference of opinion between a pretrial detainee and the doctors or
15 other trained medical personnel at the Jail as to the appropriate course or type of medical
16 attention he requires does not amount to deliberate indifference, see *Snow v. McDaniel*,
17 681 F.3d 978, 987 (9th Cir. 2012) (citing *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir.
18 1989)), and any delay in providing an appropriate course of treatment does not by itself
19 show deliberate indifference, unless the delay is alleged have caused harm. See
20 *McGuckin v. Smith*, 974 F.2d 1050, 1060 (9th Cir. 1991), *overruled on other grounds by*
21 *WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997) (en banc); *Shapley v. Nevada*
22 *Bd. of State Prison Comm’rs*, 766 F.2d 404, 407 (9th Cir. 1985)

23 Because Plaintiff’s inadequate medical care claims currently fails to meet, or even
24 attempt to address any of these pleading requirements, these claims must be dismissed
25 sua sponte pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and § 1915A(b)(1).

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1 **E. Access to the Courts**

2 Plaintiff also claims he has been denied access to the law library causing him to
3 “lose his right to pursue on going legal actions.” (Compl. at 3.) The Court construes this
4 as a denial of access to the courts claim. Prisoners have a constitutional right to access
5 to the courts. *Lewis v. Casey*, 518 U.S. 343, 346 (1996). The right is limited to the filing
6 of direct criminal appeals, habeas petitions, and civil rights actions. *Id.* at 354. Claims for
7 denial of access to the courts may arise from the frustration or hindrance of “a litigating
8 opportunity yet to be gained” (forward-looking access claim) or from the loss of a suit
9 that cannot now be tried (backward-looking claim). *Christopher v. Harbury*, 536 U.S.
10 403, 412-15 (2002); *see also Silva v. Di Vittorio*, 658 F.3d 1090, 1102 (9th Cir. 2011)
11 (differentiating “between two types of access to court claims: those involving prisoners’
12 right to affirmative assistance and those involving prisoners’ rights to litigate without
13 active interference.”).

14 However, Plaintiff must allege “actual injury” as the threshold requirement to any
15 access to courts claim. *Lewis*, 518 U.S. at 351-53; *Silva*, 658 F.3d at 1104. An “actual
16 injury” is “actual prejudice with respect to contemplated or existing litigation, such as the
17 inability to meet a filing deadline or to present a claim.” *Lewis*, 518 U.S. at 348; *see also*
18 *Jones v. Blanas*, 393 F.3d 918, 936 (9th Cir. 2004) (defining actual injury as the
19 “inability to file a complaint or defend against a charge”). The failure to allege an actual
20 injury is “fatal.” *Alvarez v. Hill*, 518 F.3d 1152, 1155 n.1 (9th Cir. 2008) (“Failure to
21 show that a ‘non-frivolous legal claim had been frustrated’ is fatal.”) (quoting *Lewis*, 518
22 U.S. at 353 & n.4).

23 In addition, Plaintiff must allege the loss of a “non-frivolous” or “arguable”
24 underlying claim. *Harbury*, 536 U.S. at 413-14. The nature and description of the
25 underlying claim must be set forth in the pleading “as if it were being independently
26 pursued.” *Id.* at 417. Finally, Plaintiff must specifically allege the “remedy that may be
27 awarded as recompense but not otherwise available in some suit that may yet be
28 brought.” *Id.* at 415.

1 Plaintiff's Complaint fails to allege the actual injury required to state an access to
2 courts claim. *See Lewis*, 518 U.S. at 351-53; *Silva*, 658 F.3d at 1104. Thus, the Court
3 finds that Plaintiff's Complaint fails to include any "factual matter" to show how or why
4 any of the individual Defendants caused him to suffer any "actual prejudice" "such as the
5 inability to meet a filing deadline or to present a claim," with respect to any case. *Lewis*,
6 518 U.S. at 348; *Jones*, 393 F.3d at 936; *Iqbal*, 556 U.S. at 678.

7 Thus, because Plaintiff has failed to allege facts sufficient to show that Defendants
8 caused him to suffer any "actual injury" with respect to any non-frivolous direct criminal
9 appeal, habeas petition, or civil rights action he may have filed, *see Lewis*, 518 U.S. at
10 354, the Court finds Plaintiff's access to courts claims must be dismissed for failing to
11 state a plausible claim upon which § 1983 relief can be granted. *See* 28 U.S.C.
12 § 1915(e)(2)(B)(ii), § 1915A(b)(1)

13 **F. Leave to Amend**

14 A pro se litigant must be given leave to amend his pleading to state a claim unless
15 it is absolutely clear the deficiencies cannot be cured by amendment. *See Lopez*, 203 F.3d
16 at 1130 (noting leave to amend should be granted when a complaint is dismissed under
17 28 U.S.C. § 1915(e) "if it appears at all possible that the plaintiff can correct the defect").
18 Therefore, while the Court finds Plaintiff's Complaint fails to state a claim upon which
19 relief can be granted, it will provide him a chance to fix the pleading deficiencies
20 discussed in this Order, if he can. *See Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir.
21 2012) (citing *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992)).

22 **III. Conclusion and Order**

23 For all the reasons discussed, the Court:

24 1. **GRANTS** Plaintiff's Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a)
25 (Doc. No. 2).

26 2. **DIRECTS** the Acting Secretary for the CDCR, or their designee, to collect
27 from Plaintiff's trust account the \$350 filing fee owed in this case by garnishing monthly
28 payments from his account in an amount equal to twenty percent (20%) of the preceding

1 month's income and forwarding those payments to the Clerk of the Court each time the
2 amount in the account exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2). ALL
3 PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER
4 ASSIGNED TO THIS ACTION.

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


7 4. **DISMISSES** Plaintiff's Complaint for failing to state a claim upon which
8 § 1983 relief can be granted pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) & 1915A;

9 5. **GRANTS** Plaintiff forty-five (45) days leave to file an Amended Complaint
10 which cures all the deficiencies of pleading described in this Order. Plaintiff is cautioned,
11 however, that should he choose to file an Amended Complaint, it must be complete by
12 itself, comply with Federal Rule of Civil Procedure 8(a), and that any claim not re-
13 alleged will be considered waived. *See* S.D. CAL. CIVLR 15.1; *Hal Roach Studios, Inc. v.*
14 *Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (“[A]n amended
15 pleading supersedes the original.”); *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir.
16 2012) (noting that claims dismissed with leave to amend which are not re-alleged in an
17 amended pleading may be “considered waived if not repled.”).

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

20 **IT IS SO ORDERED.**

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22 Dated: June 3, 2019

23 
24 Hon. Anthony J. Battaglia
25 United States District Judge
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