

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

FREDDY ZAVALA ODANGA  
Inmate No. 1811340006,

Plaintiff,

v.s.

## Defendants.

Case No.: 3:19-cv-1292-JLS-RBM

**ORDER: (1) GRANTING MOTION  
TO PROCEED IN FORMA  
PAUPERIS; AND (2) DISMISSING  
CIVIL ACTION AS FRIVOLOUS  
PURSUANT TO 28 U.S.C.  
§ 1915(e)(2)(B)**

(ECF No. 3)

Plaintiff Freddy Zavala Odanga, proceeding pro se, and currently housed at the West Valley Detention Center located in Rancho Cucamonga, California, has filed this civil rights action under to 42 U.C.S. § 1983. Complaint (“Compl.”), ECF No. 1. Plaintiff did not prepay the civil filing fee required by 28 U.S.C. § 1914(a); instead, he filed a Motion to Proceed In Forma Pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a). See ECF No. 3.

## **I. Motion to Proceed IFP**

All parties instituting any civil action, suit, or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of

1 \$400.<sup>1</sup> See 28 U.S.C. § 1914(a). The action may proceed despite a plaintiff's failure to  
2 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.  
3 § 1915(a). See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*  
4 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). A prisoner granted leave to proceed IFP,  
5 however, remains obligated to pay the entire fee in "increments" or "installments," *Bruce*  
6 *v. Samuels*, 136 S. Ct. 627, 629 (2016); *Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir.  
7 2015), regardless of whether the action is ultimately dismissed. See 28 U.S.C. § 1915(b)(1)  
8 & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

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

21 In support of his request to proceed IFP, Plaintiff has submitted a copy of his inmate  
22 trust account statement. See ECF No. 4; 28 U.S.C. § 1915(a)(2); S.D. Cal. CivLR 3.2;  
23 *Andrews*, 398 F.3d at 1119. These documents show that Plaintiff had a negative balance  
24 at the time of filing. Based on this accounting, the Court **GRANTS** Plaintiff's request to

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28 <sup>1</sup> In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$50. See  
28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, 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 proceed IFP, and will assess no initial partial filing fee pursuant to 28 U.S.C. § 1915(b)(1).  
2 See 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event shall a prisoner be prohibited  
3 from bringing a civil action or appealing a civil action or criminal judgment for the reason  
4 that the prisoner has no assets and no means by which to pay the initial partial filing fee.”);  
5 Bruce, 136 S. Ct. at 630; Taylor, 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4) acts  
6 as a “safety-valve” preventing dismissal of a prisoner’s IFP case based solely on a “failure  
7 to pay . . . due to the lack of funds available to him when payment is ordered.”). The Court  
8 will further direct the Watch Commander for the West Valley Detention Center, or their  
9 designee, to collect the entire \$350 balance of the filing fees required by 28 U.S.C. § 1914  
10 and forward them to the Clerk of the Court pursuant to the installment payment provisions  
11 set forth in 28 U.S.C. § 1915(b)(1). See *id.*

## 12 **II. Sua Sponte Screening per 28 U.S.C. § 1915(e)(2) and § 1915A**

### 13 **A. Standard of Review**

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

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

12(b)(6)”). Rule 12(b)(6) requires a complaint to “contain sufficient factual matter,  
2 accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*,  
3 556 U.S. 662, 678 (2009) (internal quotation marks omitted); *Wilhelm*, 680 F.3d at 1121.

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

## 11       B.     Analysis

12       Although difficult to discern, Plaintiff’s Complaint appears to contain allegations  
13 that there is a prostitution ring operating out the San Diego County Sheriff’s Department.  
14 See generally Compl. Plaintiff also alleges Defendants are “levying war or acts of treason  
15 against the U.S.” *Id.* at 2.

16       The Court finds Plaintiff’s entire Complaint frivolous. A pleading is “factual[ly]  
17 frivolous[]” if “the facts alleged rise to the level of the irrational or the wholly incredible,  
18 whether or not there are judicially noticeable facts available to contradict them.” *Denton*  
19 *v. Hernandez*, 504 U.S. 25, 25–26 (1992). “[A] complaint, containing as it does both  
20 factual allegations and legal conclusions, is frivolous where it lacks an arguable basis either  
21 in law or in fact. . . . [The] term ‘frivolous,’ when applied to a complaint, embraces not  
22 only the inarguable legal conclusion, but also the fanciful factual allegation.” *Neitzke v.*  
23 *Williams*, 490 U.S. 319, 325 (1989). When determining whether a complaint is frivolous,  
24 the court need not accept the allegations as true, but must “pierce the veil of the complaint’s  
25 factual allegations,” *id.* at 327, to determine whether they are “‘fanciful,’ ‘fantastic,’ [or]  
26 ‘delusional,’” *Denton*, 504 U.S. at 33 (quoting *Neitzke*, 490 U.S. at 328).

27       Here, the Court finds that Plaintiff’s claims “rise to the level of the irrational or the  
28 wholly incredible,” *Denton*, 504 U.S. at 33, and, as such, his Complaint requires dismissal

1 as frivolous and without leave to amend. See Lopez v. Smith 203 F.3d 1122, 1127 n.8 (9th  
2 Cir. 2000) (en banc) (noting that if a claim is classified as frivolous, “there is by definition  
3 no merit to the underlying action and so no reason to grant leave to amend.”).

4 **III. Conclusion and Order**

5 Based on the foregoing, the Court:

6 1. **GRANTS** Plaintiff’s Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a)  
7 (ECF No. 3).

8 2. **ORDERS** the Watch Commander for the West Valley Detention Center, or  
9 their designee, to collect from Plaintiff’s prison trust account the \$350 filing fee owed in  
10 this case by collecting monthly payments from the account in an amount equal to twenty  
11 percent (20%) of the preceding month’s income and forward payments to the Clerk of the  
12 Court each time the amount in the account exceeds \$10 in accordance with 28 U.S.C.  
13 § 1915(b)(2). **ALL PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME**  
14 **AND NUMBER ASSIGNED TO THIS ACTION.**

15 3. **DIRECTS** the Clerk of the Court to serve a copy of this Order on Watch  
16 Commander, West Valley Detention Center, 9500 Etiwanda Avenue, Rancho Cucamonga,  
17 California 91739.

18 4. **DISMISSES** Plaintiff’s Complaint as frivolous pursuant to 28 U.S.C.  
19 § 1915(e)(2) & § 1915A and without leave to amend; and

20 5. **CERTIFIES** that an IFP appeal from this Order would also be frivolous and  
21 therefore, could not be taken in good faith pursuant to 28 U.S.C. § 1915(a)(3). See  
22 Coppedge v. United States, 369 U.S. 438, 445 (1962); Gardner v. Pogue, 558 F.2d 548,  
23 550 (9th Cir. 1977) (indigent appellant is permitted to proceed IFP on appeal only if appeal  
24 would not be frivolous).

25 **IT IS SO ORDERED.**

26 Dated: October 7, 2019

  
27 Hon. Janis L. Sammartino  
28 United States District Judge