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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOSEPH GEORGE CDCR #BF-3836, <p style="text-align: right;">Plaintiff,</p>	vs.	UNITED STATES; WILLIAM BARR, Attorney General; ANDREW RODENSTEIN, Assistant Attorney General; JOHN DOE, Director of the F.B.I.; JOHN DOE, Director of the D.E.A., <p style="text-align: right;">Defendants.</p>
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Case No.: 3:19-cv-1544-AJB-BLM

ORDER:

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

2) DENYING MOTION TO APPOINT COUNSEL AND MOTION FOR JOINDER [Doc. Nos. 5, 7];

AND

3) DISMISSING CIVIL ACTION AS FRIVOLOUS PURSUANT TO 28 U.S.C. § 1915(e)(2)(B)

Joseph George (“Plaintiff”), proceeding pro se, and currently housed at the California Correctional Institution located in Tehachapi, California has filed this civil rights action pursuant to 42 U.C.S. (Doc. 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) (Doc. No. 2).

1 In addition, Plaintiff has filed a “Motion to Appoint Counsel,” along with a “Motion
2 for Joinder.” (Doc. Nos. 5, 7.)

3 **I. Motion to Proceed IFP**

4 All parties instituting any civil action, suit or proceeding in a district court of the
5 United States, except an application for writ of habeas corpus, must pay a filing fee of
6 \$400.¹ See 28 U.S.C. § 1914(a). The action may proceed despite a plaintiff’s failure to
7 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.
8 § 1915(a). See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*
9 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, a prisoner granted leave to proceed
10 IFP remains obligated to pay the entire fee in “increments” or “installments,” *Bruce v.*
11 *Samuels*, ___ U.S. ___, 136 S. Ct. 627, 629 (2016); *Williams v. Paramo*, 775 F.3d 1182,
12 1185 (9th Cir. 2015), and regardless of whether his action is ultimately dismissed. See 28
13 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

14 Section 1915(a)(2) requires prisoners seeking leave to proceed IFP to submit a
15 “certified copy of the trust fund account statement (or institutional equivalent) for ... the
16 6-month period immediately preceding the filing of the complaint.” 28 U.S.C.
17 § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified
18 trust account statement, the Court assesses an initial payment of 20% of (a) the average
19 monthly deposits in the account for the past six months, or (b) the average monthly
20 balance in the account for the past six months, whichever is greater, unless the prisoner
21 has no assets. See 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having
22 custody of the prisoner then collects subsequent payments, assessed at 20% of the
23 preceding month’s income, in any month in which his account exceeds \$10, and forwards
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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. June 1, 2016). 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. § 1915(b)(2);
2 *Bruce*, 136 S. Ct. at 629.

3 In support of his request to proceed IFP, Plaintiff has submitted a copy of his
4 CDCR Inmate Statement Report. *See* Doc. No. 2; 28 U.S.C. § 1915(a)(2); S.D. Cal.
5 CivLR 3.2; *Andrews*, 398 F.3d at 1119. These documents show that Plaintiff had an
6 available balance of zero at the time of filing. Based on this accounting, the Court
7 GRANTS Plaintiff's request to proceed IFP, and will assess no initial partial filing fee
8 pursuant to 28 U.S.C. § 1915(b)(1). *See* 28 U.S.C. § 1915(b)(4) (providing that “[i]n no
9 event shall a prisoner be prohibited from bringing a civil action or appealing a civil action
10 or criminal judgment for the reason that the prisoner has no assets and no means by
11 which to pay the initial partial filing fee.”); *Bruce*, 136 S. Ct. at 630; *Taylor*, 281 F.3d at
12 850 (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve” preventing dismissal of
13 a prisoner's IFP case based solely on a “failure to pay ... due to the lack of funds
14 available to him when payment is ordered.”). The Court will further direct the Secretary
15 of the CDCR, or his designee, to instead collect the entire \$350 balance of the filing fees
16 required by 28 U.S.C. § 1914 and forward them to the Clerk of the Court pursuant to the
17 installment payment provisions set forth in 28 U.S.C. § 1915(b)(1). *See id.*

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

19 **A. Standard of Review**

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

1 “The standard for determining whether a plaintiff has failed to state a claim upon
2 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of
3 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668
4 F.3d 1108, 1112 (9th Cir. 2012); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th
5 Cir. 2012) (noting that screening pursuant to § 1915A “incorporates the familiar standard
6 applied in the context of failure to state a claim under Federal Rule of Civil Procedure
7 12(b)(6)”). Rule 12(b)(6) requires a complaint “contain sufficient factual matter, accepted
8 as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S.
9 662, 678 (2009) (internal quotation marks omitted); *Wilhelm*, 680 F.3d at 1121.

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

18 B. Application to Plaintiff’s Complaint

19 In his Complaint, Plaintiff seeks to hold the Attorney General, Assistant Attorney
20 General, Director of the Federal Bureau of Investigation, and the Director of the Drug
21 Enforcement Administration liable for “conspiracy, failure to protect, investigate and
22 prosecute, concealing murders, accessory, aiding and abetting, material support.”
23 (Compl. at 1-3.)

24 The Court finds Plaintiff’s entire Complaint is patently frivolous. A pleading is
25 “factual[ly] frivolous[.]” if “the facts alleged rise to the level of the irrational or the
26 wholly incredible, whether or not there are judicially noticeable facts available to
27 contradict them.” *Denton v. Hernandez*, 504 U.S. 25, 25-26 (1992).

1 “[A] complaint, containing as it does both factual allegations and legal
2 conclusions, is frivolous where it lacks an arguable basis either in law or in fact. . . .
3 [The] term ‘frivolous,’ when applied to a complaint, embraces not only the inarguable
4 legal conclusion, but also the fanciful factual allegation.” *Neitzke v. Williams*, 490 U.S.
5 319, 325 (1989). When determining whether a complaint is frivolous, the court need not
6 accept the allegations as true, but must “pierce the veil of the complaint’s factual
7 allegations,” *Id.* at 327, to determine whether they are “‘fanciful,’ ‘fantastic,’ [or]
8 ‘delusional,’” *Denton*, 504 U.S. at 33 (quoting *Neitzke*, 490 U.S. at 328).

9 Here, the Court finds that Plaintiff’s claims “rise to the level of the irrational or the
10 wholly incredible,” *Denton*, 504 U.S. at 33, and as such, his Complaint requires dismissal
11 as frivolous and without leave to amend. *See Lopez v. Smith* 203 F.3d 1122, 1127 n.8
12 (9th Cir. 2000) (en banc) (noting that if a claim is classified as frivolous, “there is by
13 definition no merit to the underlying action and so no reason to grant leave to amend.”).

14 **III. Motion to Appoint Counsel**

15 Plaintiff also seeks the appointment of counsel. However, there is no constitutional
16 right to counsel in a civil case. *Lassiter v. Dept. of Social Servs.*, 452 U.S. 18, 25 (1981);
17 *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009). And while 28 U.S.C. § 1915(e)(1)
18 grants the district court limited discretion to “request” that an attorney represent an
19 indigent civil litigant, *Agyeman v. Corr. Corp. of America*, 390 F.3d 1101, 1103 (9th Cir.
20 2004), this discretion may be exercised only under “exceptional circumstances.” *Id.*; *see*
21 *also Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). A finding of exceptional
22 circumstances requires the Court “to consider whether there is a ‘likelihood of success on
23 the merits’ and whether ‘the prisoner is unable to articulate his claims in light of the
24 complexity of the legal issues involved.’” *Harrington v. Scribner*, 785 F.3d 1299, 1309
25 (9th Cir. 2015) (*quoting Palmer*, 560 F.3d at 970).

26 As currently pleaded, Plaintiff’s Complaint demonstrates neither the likelihood of
27 success nor the legal complexity required to support the appointment of pro bono counsel
28 pursuant to 28 U.S.C. § 1915(e)(1). *See Terrell*, 935 F.3d at 1017; *Palmer*, 560 F.3d at

1 970. Therefore, the Court finds no “exceptional circumstances” currently exist and
2 DENIES Plaintiff’s Motion to Appoint Counsel (Doc. No. 5).

3 **IV. Conclusion and Order**

4 Good cause appearing, the Court:

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

7 2. **DISMISSES** Plaintiff’s Complaint as frivolous pursuant to 28 U.S.C.
8 § 1915(e)(2) & § 1915A and without leave to amend;

9 3. **DENIES** Plaintiff’s Motion to Appoint Counsel (Doc. No. 5);

10 4. **DENIES** Plaintiff’s Motion for Joinder as moot (Doc. No. 7)

11 5. **CERTIFIES** that an IFP appeal from this Order would also be frivolous and
12 therefore, could not be taken in good faith pursuant to 28 U.S.C. § 1915(a)(3). *See*
13 *Coppedge v. United States*, 369 U.S. 438, 445 (1962); *Gardner v. Pogue*, 558 F.2d 548,
14 550 (9th Cir. 1977) (indigent appellant is permitted to proceed IFP on appeal only if appeal
15 would not be frivolous).

16 **IT IS SO ORDERED.**

17 Dated: October 7, 2019

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19 Hon. Anthony J. Battaglia
20 United States District Judge
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