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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 JOHNAE HOYT,
11 CDCR #K-67211,

Plaintiff,

12
13 vs.

14 GEORGE VALDOVINOS, Correctional
15 Officer, et al.,

16 Defendants.
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Case No.: 3:19-cv-01553-L-AGS

ORDER:

**1) GRANTING MOTION TO
PROCEED IN FORMA PAUPERIS
[ECF No. 2]**

AND

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

22 Plaintiff Johnae Hoyt, while incarcerated at Mule Creek State Prison (“MCSP”) in
23 Ione, California, and represented by counsel, has filed a civil rights complaint pursuant to
24 42 U.S.C. § 1983, claiming various prison officials at Richard J. Donovan Correctional
25 Facility (“RJD”) violated his First and Eighth Amendment rights in April and May 2017
26 while he was incarcerated there. *See* Compl., ECF No. 1, at 11-19 ¶¶ 75-114. He seeks
27 compensatory and punitive damages, as well as “court costs and reasonable litigation
28 expenses.” *Id.* at 19-20.

1 Hoyt did not prepay the civil filing fee required by 28 U.S.C. § 1914(a) when he
2 filed his Complaint; instead, he filed a Motion to Proceed In Forma Pauperis (“IFP”)
3 pursuant to 28 U.S.C. § 1915(a) (ECF No. 2).

4 **I. Motion to Proceed IFP**

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). However,
10 prisoners who are granted leave to proceed IFP remain obligated to pay the entire fee in
11 “increments” or “installments,” *Bruce v. Samuels*, ___ U.S. ___, 136 S. Ct. 627, 629
12 (2016); *Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), and regardless of
13 whether their action is ultimately dismissed. See 28 U.S.C. § 1915(b)(1) & (2); *Taylor v.*
14 *Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

15 Section 1915(a)(2) also 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 having
23 custody of the prisoner then collects subsequent payments, assessed at 20% of the
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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 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, Hoyt has submitted a copy of his CDCR Inmate
5 Statement Report as well as a Prison Certificate completed by trust account officials at
6 MCSP. *See* ECF No. 2 at 4, 6-8; 28 U.S.C. § 1915(a)(2); S.D. Cal. CivLR 3.2; *Andrews*,
7 398 F.3d at 1119. These records show he carried an average monthly balance of \$5.52
8 and maintained \$5.50 in average monthly deposits in his account during the 6-months
9 preceding suit, but that he had a current available balance of zero at the time of filing. *See*
10 ECF No. 2 at 4. Therefore, the Court **GRANTS** Hoyt's Motion to Proceed IFP (ECF No.
11 2), declines to exact any initial filing fee because his prison certificates indicate he may
12 have "no means to pay it," *Bruce*, 136 S. Ct. at 629, and directs the Secretary of the
13 California Department of Corrections and Rehabilitation ("CDCR"), or his designee, to
14 instead collect the entire \$350 balance of the filing fees required by 28 U.S.C. § 1914 and
15 forward them to the Clerk of the Court pursuant to the installment payment provisions set
16 forth in 28 U.S.C. § 1915(b)(1).

17 **II. Screening Pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)**

18 Because Hoyt is a prisoner and is proceeding IFP, his Complaint also requires a
19 pre-answer screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b). Under these
20 statutes, the Court must sua sponte dismiss a prisoner's IFP complaint, or any portion of
21 it, which is frivolous, malicious, fails to state a claim, or seeks damages from defendants
22 who are immune. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)
23 (discussing 28 U.S.C. § 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir.
24 2010) (discussing 28 U.S.C. § 1915A(b)). "The purpose of [screening] is 'to ensure that
25 the targets of frivolous or malicious suits need not bear the expense of responding.'" *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir. 2014) (quoting *Wheeler v. Wexford*
26 *Health Sources, Inc.*, 689 F.3d 680, 681 (7th Cir. 2012)).

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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 As currently pleaded, the Court finds Hoyt’s Complaint contains “sufficient factual
19 matter, accepted as true,” to state First and Eighth Amendment claims for relief that are
20 “plausible on its face,” *Iqbal*, 556 U.S. at 678, and therefore, sufficient to survive the
21 “low threshold” set for sua sponte screening pursuant to 28 U.S.C. §§ 1915(e)(2) and
22 1915A(b). *See Wilhelm*, 680 F.3d at 1123; *Iqbal*, 556 U.S. at 678; *Hudson v. McMillian*,
23 503 U.S. 1, 5 (1992) (unnecessary and wanton infliction of pain violates the Cruel and
24 Unusual Punishments Clause of the Eighth Amendment); *Wilkins v. Gaddy*, 559 U.S. 34,
25 37 (2010) (per curiam) (for claims arising out of the use of excessive physical force, the
26 issue is “whether force was applied in a good-faith effort to maintain or restore discipline,
27 or maliciously and sadistically to cause harm.”) (citing *Hudson*, 503 U.S. at 7); *United*
28 *States v. Williams*, 842 F.3d 1143, 1153 (9th Cir. 2016) (the Eighth Amendment “requires

1 that prison officials ‘must take reasonable measures to guarantee the safety of the
2 inmates.’”); *Robins v. Meecham*, 60 F.3d 1436, 1442 (9th Cir. 1995) (“[A] prison official
3 can violate a prisoner’s Eighth Amendment rights by failing to intervene.”); *Estelle v.*
4 *Gamble*, 429 U.S. 97, 104 (1976) (prison officials’ deliberate indifference to an inmate’s
5 serious medical needs constitutes cruel and unusual punishment in violation of the Eighth
6 Amendment); *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005) (“Within the
7 prison context, a viable claim of First Amendment retaliation entails five basic elements:
8 (1) An assertion that a state actor took some adverse action against an inmate (2) because
9 of (3) that prisoner’s protected conduct, and that such action (4) chilled the inmate’s
10 exercise of his First Amendment rights, and (5) the action did not reasonably advance a
11 legitimate correctional goal.”).

12 Therefore, the Court will direct the U.S. Marshal to effect service of summons
13 Hoyt’s Complaint on his behalf. *See* 28 U.S.C. § 1915(d) (“The officers of the court shall
14 issue and serve all process, and perform all duties in [IFP] cases.”); Fed. R. Civ. P.
15 4(c)(3) (“[T]he court may order that service be made by a United States marshal or
16 deputy marshal ... if the plaintiff is authorized to proceed in forma pauperis under 28
17 U.S.C. § 1915.”).

18 **III. Conclusion and Order**

19 For the reasons explained, the Court:

20 1. **GRANTS** Hoyt’s Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a)
21 (ECF No. 2).

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

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

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

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


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

25 7. **ORDERS** Hoyt, after service has been effected by the U.S. Marshal, to
26 serve upon Defendants, or if appearance has been entered by counsel, upon Defendants’
27 counsel, a copy of every further pleading, motion, or other document submitted for the
28 Court’s consideration pursuant to Fed. R. Civ. P. 5(b). Hoyt must include with every

1 original document he seeks to file with the Clerk of the Court, a certificate stating the
2 manner in which a true and correct copy of that document has been served on
3 Defendants or their counsel, and the date of that service. *See* S.D. Cal. CivLR 5.2. Any
4 document received by the Court which has not been properly filed with the Clerk or
5 which fails to include a Certificate of Service upon the Defendants, or their counsel, may
6 be disregarded.

7 **IT IS SO ORDERED.**

8 Dated: August 27, 2019

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10 Hon. M. James Lorenz
11 United States District Judge
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