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

STEVEN HANS LAKE, Booking No. 17136590, <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">vs.</p> COUNTY OF SAN DIEGO; GEORGE BAILEY MEDICAL DIRECTOR; <p style="text-align: right;">Defendants.</p>
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Case No.: 3:19-cv-01558-MMA-RBM

**ORDER GRANTING MOTION TO
PROCEED IN FORMA PAUPERIS;**

[Doc. No. 2]

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

Plaintiff Steven Hans Lake, while detained at the San Diego County Sheriff Department’s George Bailey Detention Facility (“GBDF”) located in San Diego, California, and proceeding *pro se*, has filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. *See* Compl., Doc. No. 1. Plaintiff did not pay the fee required by 28 U.S.C. § 1914(a) when he filed his Complaint; instead he has filed a Motion to Proceed In Forma Pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a). *See* Doc. No. 2.

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 \$400.¹ *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). However, a prisoner who is granted leave to
5 proceed IFP remains obligated to pay the entire fee in “increments” or “installments,”
6 *Bruce v. Samuels*, ___ U.S. ___, 136 S. Ct. 627, 629 (2016); *Williams v. Paramo*, 775 F.3d
7 1182, 1185 (9th Cir. 2015), and regardless of whether his action is ultimately dismissed.
8 *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir.
9 2002).

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

22 In support of his IFP Motion, Plaintiff has submitted a copy of his San Diego
23 County Sheriff’s Department prison certificate attesting as to his deposits and balances
24 for the 6-month period preceding the filing of his Complaint. *See* Doc. No. 2 at 3; 28
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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, 2016). The additional \$50 administrative fee does not apply to persons granted leave to proceed
IFP. *Id.*

1 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2; *Andrews*, 398 F.3d at 1119. These statements
2 show Plaintiff had an average monthly deposit of \$93.51 to his account, carried an
3 approximate average monthly balance of \$.069, he had only a \$4.10 available balance to
4 his credit at the time of filing. *See* Doc. No. 2 at 4.

5 Based on this accounting, the Court assesses an initial partial filing fee of \$18.70
6 pursuant to 28 U.S.C. § 1915(a)(1) and (b)(1), but notes Plaintiff may have insufficient
7 funds with which to pay that initial fee at the time this Order issues. *See* 28 U.S.C.
8 § 1915(b)(4) (providing that “[i]n no event shall a prisoner be prohibited from bringing a
9 civil action or appealing a civil action or criminal judgment for the reason that the
10 prisoner has no assets and no means by which to pay the initial partial filing fee.”);
11 *Bruce*, 136 S. Ct. at 630; *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4)
12 acts as a “safety-valve” preventing dismissal of a prisoner’s IFP case based solely on a
13 “failure to pay ... due to the lack of funds available to him when payment is ordered.”).

14 Therefore, the Court **GRANTS** Plaintiff’s Motion to Proceed IFP (Doc. No. 2),
15 declines to exact the initial filing fee assessed by this Order because his trust account
16 statements suggest he may have “no means to pay it,” *Bruce*, 136 S. Ct. at 629, and
17 instead directs the Watch Commander at the GBDF, or their designee, to collect the entire
18 \$350 balance of the filing fee required by 28 U.S.C. § 1914 and to forward all payments
19 to the Clerk of the Court pursuant to the installment provisions set forth in 28 U.S.C.
20 § 1915(b)(1).

21 **II. Screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A**

22 **A. Standard of Review**

23 Because Plaintiff is a prisoner and is proceeding IFP, his Complaint requires a pre-
24 answer screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b). Under these
25 statutes, the Court must review and *sua sponte* dismiss an IFP complaint, and any
26 complaint filed by a prisoner seeking redress from a governmental entity, or officer or
27 employee of a governmental entity, which is frivolous, malicious, fails to state a claim, or
28 seeks damages from defendants who are immune. *See Lopez v. Smith*, 203 F.3d 1122,

1 1126-27 (9th Cir. 2000) (en banc) (discussing 28 U.S.C. § 1915(e)(2)); *Rhodes v.*
2 *Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing 28 U.S.C. § 1915A(b)). “The
3 purpose of [screening] is ‘to ensure that the targets of frivolous or malicious suits need
4 not bear the expense of responding.’” *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th
5 Cir. 2014) (quoting *Wheeler v. Wexford Health Sources, Inc.*, 689 F.3d 680, 681 (7th Cir.
6 2012)).

7 All complaints must contain “a short and plain statement of the claim showing that
8 the pleader is entitled to relief.” FED. R. CIV. P. 8(a)(2). Detailed factual allegations are
9 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by
10 mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
11 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “Determining
12 whether a complaint states a plausible claim for relief [is] . . . a context-specific task that
13 requires the reviewing court to draw on its judicial experience and common sense.” *Id.*
14 The “mere possibility of misconduct” falls short of meeting this plausibility standard.
15 *Id.*; *see also Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).

16 “The standard for determining whether a plaintiff has failed to state a claim upon
17 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of
18 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668
19 F.3d 1108, 1112 (9th Cir. 2012); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th
20 Cir. 2012) (noting that screening pursuant to § 1915A “incorporates the familiar standard
21 applied in the context of failure to state a claim under Federal Rule of Civil Procedure
22 12(b)(6)”). Rule 12(b)(6) requires a complaint “contain sufficient factual matter,
23 accepted as true, to state a claim to relief that is plausible on its face.” *Iqbal*, 556 U.S. at
24 678 (internal quotation marks omitted); *Wilhelm*, 680 F.3d at 1121.

25 “When there are well-pleaded factual allegations, a court should assume their
26 veracity, and then determine whether they plausibly give rise to an entitlement to relief.”
27 *Iqbal*, 556 U.S. at 679; *see also Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000)
28 (“[W]hen determining whether a complaint states a claim, a court must accept as true all

1 allegations of material fact and must construe those facts in the light most favorable to
2 the plaintiff.”). However, while the court “ha[s] an obligation where the petitioner is pro
3 se, particularly in civil rights cases, to construe the pleadings liberally and to afford the
4 petitioner the benefit of any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir.
5 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)), it may not
6 “supply essential elements of claims that were not initially pled.” *Ivey v. Board of*
7 *Regents of the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

8 The Court finds Plaintiff’s Complaint contains factual allegations sufficient to
9 survive the “low threshold” for proceeding past the sua sponte screening required by 28
10 U.S.C. §§ 1915(e)(2) and 1915A(b) because it alleges Fourteenth Amendment due
11 process claims which are plausible on its face.² See *Wilhelm*, 680 F.3d at 1123; *Iqbal*,
12 556 U.S. at 678; *Bell v. Wolfish*, 441 U.S. 520, 535 (1979) (Due Process Clause of the
13 Fourteenth Amendment prevents punishment of a pretrial detainee prior to an
14 adjudication of guilt); *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1124-25 (9th Cir. 2018)
15 (inadequate medical care claims alleged by persons in pretrial custody “must be evaluated
16 under an objective deliberate indifference standard.”) (citing *Castro*, 833 F.3d at 1070).

17 Accordingly, the Court will direct the U.S. Marshal to effect service upon
18 Defendants on Plaintiff’s behalf. See 28 U.S.C. § 1915(d) (“The officers of the court
19 shall issue and serve all process, and perform all duties in [IFP] cases.”); FED. R. CIV. P.
20 4(c)(3) (“[T]he court may order that service be made by a United States marshal or
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23 ² The Court presumes, for purposes of screening only, that Plaintiff is a pretrial detainee at GBDF at the
24 times he alleges to have been injured by Sheriff’s Department officials, and that therefore his claims arise
25 under the Fourteenth Amendment rather than the Eighth. See *Castro v. Cty. of Los Angeles*, 833 F.3d
26 1060, 1067-68 (9th Cir. 2016) (“Inmates who sue prison officials for injuries suffered while in custody
27 may do so under the Eighth Amendment’s Cruel and Unusual Punishment Clause, or if not yet convicted,
28 under the Fourteenth Amendment’s Due Process Clause.”) (citing *Bell*, 441 U.S. at 535). “Under both
clauses, the plaintiff must show that the ... officials acted with ‘deliberate indifference.’” *Id.* at 1068.
Plaintiff is cautioned, however, that “the sua sponte screening and dismissal procedure is cumulative of,
and not a substitute for, any subsequent Rule 12(b)(6) motion that [any individual defendant] may choose
to bring.” *Teahan v. Wilhelm*, 481 F. Supp. 2d 1115, 1119 (S.D. Cal. 2007).

1 deputy marshal . . . if the plaintiff is authorized to proceed in forma pauperis under 28
2 U.S.C. § 1915.”).

3 **III. Conclusion and Orders**

4 For the reasons explained, 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. **ORDERS** the Watch Commander of the GBDF, or their designee, to collect
8 from Plaintiff’s trust account the \$1.33 initial filing fee assessed, if those funds are
9 available at the time this Order is executed, and to forward whatever balance remains of
10 the full \$350 owed in monthly payments in an amount equal to twenty percent (20%) of
11 the preceding month’s income to the Clerk of the Court each time the amount in
12 Plaintiff’s account exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2). ALL PAYMENTS
13 MUST BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER ASSIGNED TO
14 THIS ACTION.

15 3. **DIRECTS** the Clerk of the Court to serve a copy of this Order on Watch
16 Commander, George Bailey Detention Facility, 446 Alta Road, San Diego, California
17 92158.

18 4. **DIRECTS** the Clerk to issue a summons as to Plaintiff’s Complaint (Doc.
19 No. 1) and forward it to Plaintiff along with a blank U.S. Marshal Form 285 for each
20 named Defendant. In addition, the Clerk will provide Plaintiff with a certified copy of
21 this Order, a certified copy of his Complaint and the summons so that he may serve these
22 Defendants. Upon receipt of this “IFP Package,” Plaintiff must complete the Form 285s
23 as completely and accurately as possible, *include an address where each named*
24 *Defendant may be found and/or subject to service*, and return them to the United States
25 Marshal according to the instructions the Clerk provides in the letter accompanying his
26 IFP package.

27 5. **ORDERS** the U.S. Marshal to serve a copy of the Complaint and summons
28 upon the named Defendants as directed by Plaintiff on the USM Form 285s provided to


1 him. All costs of that service will be advanced by the United States. *See* 28 U.S.C.
2 § 1915(d); FED. R. CIV. P. 4(c)(3);

3 6. **ORDERS** Defendants, once they have been served, to reply to Plaintiff's
4 Complaint within the time provided by the applicable provisions of Federal Rule of Civil
5 Procedure 12(a). *See* 42 U.S.C. § 1997e(g)(2) (while a defendant may occasionally be
6 permitted to "waive the right to reply to any action brought by a prisoner confined in any
7 jail, prison, or other correctional facility under section 1983," once the Court has
8 conducted its sua sponte screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b),
9 and thus, has made a preliminary determination based on the face on the pleading alone
10 that Plaintiff has a "reasonable opportunity to prevail on the merits," the defendant is
11 required to respond); and

12 7. **ORDERS** Plaintiff, after service has been effected by the U.S. Marshal, to
13 serve upon Defendants, or, if appearance has been entered by counsel, upon Defendants'
14 counsel, a copy of every further pleading, motion, or other document submitted for the
15 Court's consideration pursuant to FED. R. CIV. P. 5(b). Plaintiff must include with every
16 original document he seeks to file with the Clerk of the Court, a certificate stating the
17 manner in which a true and correct copy of that document has been served on
18 Defendants or their counsel, and the date of that service. *See* S.D. CAL. CIVLR 5.2. Any
19 document received by the Court which has not been properly filed with the Clerk or
20 which fails to include a Certificate of Service upon Defendants may be disregarded.

21 **IT IS SO ORDERED.**

22 DATE: September 24, 2019

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24 HON. MICHAEL M. ANELLO
25 United States District Judge
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