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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 RANDALL GOODLETT,
11 CDCR #AZ-3323,

Plaintiff,

12 vs.

13 RAMIRO DELGADO; CHARLES
14 HAMILTON; PAUL RODRIGUEZ; J.
15 DEIS,

16 Defendants.
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Case No.: 3:19-cv-01922-AJB-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)**

21 Randall Goodlett (“Plaintiff”), currently incarcerated at the Substance Abuse
22 Treatment Facility (“SATF”) located in Corcoran, California, and proceeding pro se, has
23 filed a civil rights complaint pursuant to 42 U.S.C. § 1983, claiming various prison
24 officials at Richard J. Donovan Correctional Facility (“RJD”) violated his Eighth
25 Amendment rights in 2018. (*See* Compl., ECF No. 1 at 1-5.)

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

1 **I. Motion to Proceed IFP**

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

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

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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 In support of his IFP Motion, Plaintiff has submitted a copy of his CDCR Inmate
2 Statement Report as well as a Prison Certificate completed by a trust account official at
3 SATF. *See* ECF No. 2 at 4-7; 28 U.S.C. § 1915(a)(2); S.D. Cal. CivLR 3.2; *Andrews*, 398
4 F.3d at 1119. These documents show Plaintiff carried an average monthly balance of
5 \$99.23, maintained \$15.53 in average monthly deposits to his trust account for the 6-
6 months preceding the filing of this action, but had an available balance of \$0.00 to his
7 credit at the time of filing. *See* ECF No. 2 at 4-5.

8 Therefore, the Court GRANTS Plaintiff’s Motion to Proceed IFP (ECF No. 2) and
9 assesses no initial partial filing fee per 28 U.S.C. § 1915(b)(1). *See* 28 U.S.C.
10 § 1915(b)(4) (providing that “[i]n no event shall a prisoner be prohibited from bringing a
11 civil action or appealing a civil action or criminal judgment for the reason that the
12 prisoner has no assets and no means by which to pay the initial partial filing fee.”);
13 *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve”
14 preventing dismissal of a prisoner’s IFP case based solely on a “failure to pay . . . due to
15 the lack of funds available to him when payment is ordered.”).

16 However, the entire \$350 balance of the filing fees due for this case must be
17 collected by the California Department of Corrections and Rehabilitation (“CDCR”) and
18 forwarded to the Clerk of the Court pursuant to the installment payment provisions set
19 forth in 28 U.S.C. § 1915(b)(1).

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

21 **A. Standard of Review**

22 Because Plaintiff is a prisoner and is proceeding IFP, his Complaint also requires a
23 pre-answer screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b). Under these
24 statutes, the Court must sua sponte dismiss a prisoner’s IFP complaint, or any portion of
25 it, which is frivolous, malicious, fails to state a claim, or seeks damages from defendants
26 who are immune. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)
27 (discussing 28 U.S.C. § 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir.
28 2010) (discussing 28 U.S.C. § 1915A(b)). “The purpose of [screening] is ‘to ensure that

1 the targets of frivolous or malicious suits need not bear the expense of responding.”
2 *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir. 2014) (quoting *Wheeler v. Wexford*
3 *Health Sources, Inc.*, 689 F.3d 680, 681 (7th Cir. 2012)).

4 “The standard for determining whether a plaintiff has failed to state a claim upon
5 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of
6 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668
7 F.3d 1108, 1112 (9th Cir. 2012); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th
8 Cir. 2012) (noting that screening pursuant to § 1915A “incorporates the familiar standard
9 applied in the context of failure to state a claim under Federal Rule of Civil Procedure
10 12(b)(6)”). Rule 12(b)(6) requires a complaint “contain sufficient factual matter, accepted
11 as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S.
12 662, 678 (2009) (internal quotation marks omitted); *Wilhelm*, 680 F.3d at 1121.

13 Detailed factual allegations are not required, but “[t]hreadbare recitals of the
14 elements of a cause of action, supported by mere conclusory statements, do not suffice.”
15 *Iqbal*, 556 U.S. at 678. “Determining whether a complaint states a plausible claim for
16 relief [is] ... a context-specific task that requires the reviewing court to draw on its
17 judicial experience and common sense.” *Id.* The “mere possibility of misconduct” or
18 “unadorned, the defendant-unlawfully-harmed me accusation[s]” fall short of meeting
19 this plausibility standard. *Id.*; *see also Moss v. U.S. Secret Service*, 572 F.3d 962, 969
20 (9th Cir. 2009).

21 Finally, in deciding whether Plaintiff has stated a plausible claim for relief, the
22 Court may consider exhibits attached to his Complaint. *See Fed. R. Civ. P. 10(c)* (“A
23 copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all
24 purposes.”); *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1555
25 n.19 (9th Cir. 1990) (citing *Amfac Mortg. Corp. v. Ariz. Mall of Tempe, Inc.*, 583 F.2d
26 426 (9th Cir. 1978) (“[M]aterial which is properly submitted as part of the complaint may
27 be considered” in ruling on a Rule 12(b)(6) motion to dismiss.)).

1 As currently pleaded, the Court finds Plaintiff’s Complaint contains “sufficient
2 factual matter, accepted as true,” to state Eighth Amendment claims for relief that are
3 “plausible on its face,” *Iqbal*, 556 U.S. at 678, and therefore, sufficient to survive the
4 “low threshold” set for sua sponte screening pursuant to 28 U.S.C. §§ 1915(e)(2) and
5 1915A(b). *See Wilhelm*, 680 F.3d at 1123; *Iqbal*, 556 U.S. at 678; *Hudson v. McMillian*,
6 503 U.S. 1, 5 (1992) (unnecessary and wanton infliction of pain violates the Cruel and
7 Unusual Punishments Clause of the Eighth Amendment); *Wilkins v. Gaddy*, 559 U.S. 34,
8 37 (2010) (per curiam) (for claims arising out of the use of excessive physical force, the
9 issue is “whether force was applied in a good-faith effort to maintain or restore discipline,
10 or maliciously and sadistically to cause harm.”) (citing *Hudson*, 503 U.S. at 7); *United*
11 *States v. Williams*, 842 F.3d 1143, 1153 (9th Cir. 2016) (the Eighth Amendment “requires
12 that prison officials ‘must take reasonable measures to guarantee the safety of the
13 inmates.’”); *Robins v. Meecham*, 60 F.3d 1436, 1442 (9th Cir. 1995) (“[A] prison official
14 can violate a prisoner’s Eighth Amendment rights by failing to intervene.”).

15 Therefore, the Court will direct the U.S. Marshal to effect service of summons
16 Plaintiff’s Complaint on his behalf.² *See* 28 U.S.C. § 1915(d) (“The officers of the court
17 shall issue and serve all process, and perform all duties in [IFP] cases.”); Fed. R. Civ. P.
18 4(c)(3) (“[T]he court may order that service be made by a United States marshal or
19 deputy marshal ... if the plaintiff is authorized to proceed in forma pauperis under 28
20 U.S.C. § 1915.”).

21 **III. Conclusion and Order**

22 For the reasons explained, the Court:

23 1. **GRANTS** Plaintiff’s Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a)
24 (ECF No. 2).

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27 ² Plaintiff is cautioned that “the sua sponte screening and dismissal procedure is cumulative
28 of, and not a substitute for, any subsequent Rule 12(b)(6) motion that [a defendant] may
choose to bring.” *Teahan v. Wilhelm*, 481 F. Supp. 2d 1115, 1119 (S.D. Cal. 2007).

1 2. **DIRECTS** the Secretary of the CDCR, or his designee, to garnish the \$350
2 filing fee owed in this case by collecting monthly payments from his account in an
3 amount equal to twenty percent (20%) of the preceding month's income and forwarding
4 them to the Clerk of the Court each time the amount in the account exceeds \$10 pursuant
5 to 28 U.S.C. § 1915(b)(2). ALL PAYMENTS MUST BE CLEARLY IDENTIFIED BY
6 THE NAME AND NUMBER ASSIGNED TO THIS ACTION.

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

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

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


22 6. **ORDERS** Defendants, once they have been served, to reply to Plaintiff's
23 Complaint within the time provided by the applicable provisions of Federal Rule of Civil
24 Procedure 12(a). *See* 42 U.S.C. § 1997e(g)(2) (while a defendant may occasionally be
25 permitted to "waive the right to reply to any action brought by a prisoner confined in any
26 jail, prison, or other correctional facility under section 1983," once the Court has
27 conducted its sua sponte screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b),
28 and thus, has made a preliminary determination based on the face on the pleading alone

1 that Plaintiff has a “reasonable opportunity to prevail on the merits,” defendant is
2 required to respond).

3 7. **ORDERS** Plaintiff, after service has been effected by the U.S. Marshal, to
4 serve upon Defendants, or if appearance has been entered by counsel, upon Defendants’
5 counsel, a copy of every further pleading, motion, or other document submitted for the
6 Court’s consideration pursuant to Fed. R. Civ. P. 5(b). Plaintiff must include with every
7 original document he seeks to file with the Clerk of the Court, a certificate stating the
8 manner in which a true and correct copy of that document has been served on
9 Defendants or their counsel, and the date of that service. *See* S.D. Cal. CivLR 5.2. Any
10 document received by the Court which has not been properly filed with the Clerk or
11 which fails to include a Certificate of Service upon the Defendants, or their counsel, may
12 be disregarded.

13 **IT IS SO ORDERED.**

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15 Dated: October 11, 2019


16 Hon. Anthony J. Battaglia
17 United States District Judge
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