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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DAVID BRYAN TURNER, Jr.,
Booking No. 197347785,

Plaintiff,

vs.

COUNTY OF SAN DIEGO; SAN
DIEGO HARBOR POLICE, Police
Officer John Doe; SHERIFF DEP.'T, San
Diego Sheriff John Doe;
METROPOLITAN TRANSIT
SYSTEMS, Trolley Police Officer Jane
Doe,

Defendants.

Case No.: 3:19-cv-1982 GPC (RBM)

ORDER:

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

AND

**2) DISMISSING COMPLAINT
PURSUANT
TO 28 U.S.C. § 1915(e)(2) AND
§ 1915A(b).**

David Bryan Turner, Jr., (“Plaintiff”), incarcerated at the George Bailey Detention Facility (“GBDF”) located in San Diego, California, has filed a civil rights action (“Compl.”) pursuant to 42 U.S.C. § 1983. In addition, Plaintiff has filed a Motion to Proceed In Forma Pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a) (ECF No. 2).

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1 **I. Motion to Proceed IFP¹**

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 \$400.² 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); *Rodriguez v.*
7 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, a prisoner granted leave to proceed
8 IFP remains obligated to pay the entire fee in “increments” or “installments,” *Bruce v.*
9 *Samuels*, ___ U.S. ___, 136 S. Ct. 627, 629 (2016); *Williams v. Paramo*, 775 F.3d 1182,
10 1185 (9th Cir. 2015), and regardless of whether his action is ultimately dismissed. See 28
11 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

12 Section 1915(a)(2) 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
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18 ¹ A court “may take notice of proceedings in other courts, both within and without the
19 federal judicial system, if those proceedings have a direct relation to the matters at issue.”
20 *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (quoting *Bennett v. Medtronic,*
21 *Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)). Here, the Court takes judicial notice that
22 Plaintiff has been previously barred from proceeding IFP pursuant to 28 U.S.C.
23 § 1915(g). See *Turner v. United State of America, et al.*, S.D. Cal. Civil Case No. 3:19-
24 cv-01305-JAH-MDD (Aug. 27, 2019) (Order denying motion to proceed IFP on the
25 ground that Plaintiff has filed at least five (5) civil actions that were dismissed on the
26 grounds that they were frivolous, malicious, or failed to state a claim upon which relief
27 may be granted.”) (hereafter *Turner I*). However, because Plaintiff makes vague
28 allegations that he is currently in “imminent danger,” an exception to the § 1915(g) bar,
the Court will permit Plaintiff to proceed IFP in this matter.

² 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 trust account statement, the Court assesses an initial payment of 20% of (a) the average
2 monthly deposits in the account for the past six months, or (b) the average monthly
3 balance in the account for the past six months, whichever is greater, unless the prisoner
4 has no assets. *See* 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having
5 custody of the prisoner then collects subsequent payments, assessed at 20% of the
6 preceding month’s income, in any month in which his account exceeds \$10, and forwards
7 those payments to the Court until the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2);
8 *Bruce*, 136 S. Ct. at 629.

9 In support of his request to proceed IFP, Plaintiff has submitted a copy of his
10 GBDF Inmate Statement Report. *See* ECF No. 2; 28 U.S.C. § 1915(a)(2); S.D. Cal.
11 CivLR 3.2; *Andrews*, 398 F.3d at 1119. This document shows that Plaintiff had an
12 available balance of zero at the time of filing. *See* ECF No. 2 at 4. Based on this
13 accounting, the Court GRANTS Plaintiff’s request to proceed IFP, and will assess no
14 initial partial filing fee pursuant to 28 U.S.C. § 1915(b)(1). *See* 28 U.S.C. § 1915(b)(4)
15 (providing that “[i]n no event shall a prisoner be prohibited from bringing a civil action
16 or appealing a civil action or criminal judgment for the reason that the prisoner has no
17 assets and no means by which to pay the initial partial filing fee.”); *Bruce*, 136 S. Ct. at
18 630; *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve”
19 preventing dismissal of a prisoner’s IFP case based solely on a “failure to pay ... due to
20 the lack of funds available to him when payment is ordered.”). The Court will further
21 direct the Watch Commander of GBDF, or their designee, to instead collect the entire
22 \$350 balance of the filing fees required by 28 U.S.C. § 1914 and forward them to the
23 Clerk of the Court pursuant to the installment payment provisions set forth in 28 U.S.C.
24 § 1915(b)(1). *See id.*

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

2 A. Standard of Review

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

12 “The standard for determining whether a plaintiff has failed to state a claim upon
13 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of
14 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668
15 F.3d 1108, 1112 (9th Cir. 2012); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th
16 Cir. 2012) (noting that screening pursuant to § 1915A “incorporates the familiar standard
17 applied in the context of failure to state a claim under Federal Rule of Civil Procedure
18 12(b)(6)”). Rule 12(b)(6) requires a complaint “contain sufficient factual matter, accepted
19 as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S.
20 662, 678 (2009) (internal quotation marks omitted); *Wilhelm*, 680 F.3d at 1121.

21 Detailed factual allegations are not required, but “[t]hreadbare recitals of the
22 elements of a cause of action, supported by mere conclusory statements, do not suffice.”
23 *Iqbal*, 556 U.S. at 678. “Determining whether a complaint states a plausible claim for
24 relief [is] ... a context-specific task that requires the reviewing court to draw on its
25 judicial experience and common sense.” *Id.* The “mere possibility of misconduct” or
26 “unadorned, the defendant-unlawfully-harmed me accusation[s]” fall short of meeting
27 this plausibility standard. *Id.*; *see also Moss v. U.S. Secret Service*, 572 F.3d 962, 969
28 (9th Cir. 2009).

1 B. Plaintiff’s Factual Allegations

2 Plaintiff’s Complaint contains very few specific factual allegations and the few
3 allegations that are made are disjointed and difficult to discern. On September 18, 2019,
4 Plaintiff alleges that he was in “wanton pain caused by being place[d] in imminent danger
5 at the court date.” (Compl. at 3.) Plaintiff apparently made a request to be seen “by the
6 doctor for the injuries” but he was “never seen.” (*Id.*) It appears that Plaintiff is claiming
7 to have injuries to his “nerves, hand, face, back, and head” as well as suffering from
8 “P.T.S.D.” (*Id.*) Plaintiff alleges that these injuries were “caused by wanton conduct by
9 San Diego Sheriff Departments.” (*Id.*) Plaintiff claims that the County of San Diego has
10 policies that resulted in “harm to [Plaintiff]” including a “broken hand, head trauma, neck
11 pain, and great P.T.S.D.” (*Id.*)

12 On July 21, 2019, Plaintiff allegedly forced to take off his clothing in order for the
13 San Diego Sheriff Deputies to conduct a “visual cavity search.” (*Id.* at 9.) Plaintiff
14 claims during this search, “other inmates were present and [Plaintiff] did not have a
15 curtain between him and another inmate.” (*Id.*) Plaintiff alleges he was searched “for no
16 reason” in violation of “California privacy rights” according to the “policy adopted by the
17 County of San Diego.” (*Id.*) Plaintiff further claims he is in “imminent danger of serious
18 physical injury because of the policy of the use of force by handcuffs in the San Diego
19 County Jails.” (*Id.*)

20 On October 13, 2018, Plaintiff claims he was “returning from the hospital with a
21 broken hand on the trolley.” (*Id.* at 12.) Plaintiff was “stopped by the [Metropolitan
22 Transit System (“MTS”)] trolley police.” (*Id.*) Plaintiff alleges Defendant Jane Doe
23 “wrote [Plaintiff] a ticket” because he “could not find his trolley pass.” (*Id.*) Defendant
24 Jane Doe “called the San Diego County Sheriff Department.” (*Id.*) San Diego County
25 Sheriff Deputies “John Does and Jane Does” arrived and “placed overly tight handcuffs”
26 onto Plaintiff. (*Id.*) Plaintiff alleges that the San Diego County Sheriff Deputies “starting
27 twisting” Plaintiff and “slammed [Plaintiff] face first on the pavement.” (*Id.*)

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1 On October 22, 2018, Plaintiff alleges that he was “arrest[ed] by John Doe Harbor
2 Police Officer” and taken to San Diego County of Mental Health facility. (*Id.*) Plaintiff
3 was given a “shot” and “woke up nude at the Central Jail in great pain with no doctor’s
4 care.” (*Id.*)

5 Plaintiff seeks injunctive relief, \$21,000,000 in compensatory damages,
6 \$21,000,000 in punitive damages, and “release from County Jail.” (*Id.* at 18.)

7 C. Duplicative Claims

8 As an initial matter, the Court notes that Plaintiff is raising claims duplicative of a
9 previous action he has filed. As noted above, Plaintiff previously filed a civil rights
10 action in which he raised the identical claims against the actions that arose in October of
11 2018 against the MTS, the Harbor Police Department, and the San Diego County
12 Sheriff’s Department. *See Turner I*, ECF No. 1 at 3-5. A prisoner’s complaint is
13 considered frivolous if it “merely repeats pending or previously litigated claims.” *Cato v.*
14 *United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (construing former 28 U.S.C.
15 § 1915(d)) (citations and internal quotations omitted). While Plaintiff was denied the
16 ability to proceed IFP in *Turner I* due to his having accumulated multiple “strikes”
17 pursuant to 28 U.S.C. § 1915(g), he cannot simply re-allege these allegations in another
18 matter in which he was given IFP status.³ Even though Plaintiff was denied IFP status in
19 *Turner I*, he had the ability to pursue those claims by paying the \$400 civil and
20 administrative filing fees required by 28 U.S.C. § 1914(a). He chose not to pay those
21 fees and thus, the Court finds that he cannot proceed with those claims in this action.

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26 ³ In addition, in *Turner I*, United States District Judge John Houston took judicial notice of the Court’s
27 own docket and found that “Turner has filed more than two dozen similar cases over the course of the
28 last ten years, most of them alleging excessive force and the denial of medical care, and seeking
monetary relief from the City and County of San Diego, County Sheriff’s Department officials, and the
Metropolitan Transit Authority.” *Turner I*, ECF No. 3 at 2, fn. 1.

1 Therefore, because Plaintiff already filed an action with identical claims presented
2 in the instant action, the Court must dismiss the duplicative claims brought in this action
3 pursuant to 28 U.S.C. § 1915(e) (2) & 1915A(b). *See Cato*, 70 F.3d at 1105 n.2; *Resnick*,
4 213 F.3d at 446.

5 D. San Diego Sheriff’s Department

6 Plaintiff claims that he has been “denied the right to medical care/freedom from
7 cruel and unusual punishment.” (Compl. at 3.) Plaintiff claims that he has suffered
8 injuries “by San Diego Sheriff Departments” manifesting extreme indifference to the
9 injury to [Plaintiff].” (*Id.*) Plaintiff contends that the actions are due to “policies adopted
10 by County of San Diego.” (*Id.*)

11 To the extent Plaintiff names the San Diego Sheriff’s Department, *see* Compl. at 1,
12 he fails to state a claim upon which § 1983 relief may be granted. *See* 28 U.S.C.
13 § 1915(e)(2)(B)(ii); 28 U.S.C. § 1915A(b)(1).

14 Departments of municipal entities are not “persons” subject to suit under § 1983;
15 therefore, local law enforcement departments (like the San Diego Sheriff’s Department)
16 are not proper parties. *See Vance v. County of Santa Clara*, 928 F. Supp. 993, 996 (N.D.
17 Cal. 1996) (“Naming a municipal department as a defendant is not an appropriate means
18 of pleading a § 1983 action against a municipality.”) (citation omitted); *Powell v. Cook*
19 *County Jail*, 814 F. Supp. 757, 758 (N.D. Ill. 1993) (“Section 1983 imposes liability on
20 any ‘person’ who violates someone’s constitutional rights ‘under color of law.’ Cook
21 County Jail is not a ‘person.’”).

22 “Persons” under § 1983 are state and local officials sued in their individual
23 capacities, private individuals and entities which act under color of state law, and/or the
24 local governmental entity itself. *Vance*, 928 F. Supp. at 995-96. The San Diego Sheriff’s
25 Department is a department of the County of San Diego—but is not a “person” subject to
26 suit under § 1983. *See e.g., United States v. Kama*, 394 F.3d 1236, 1239 (9th Cir. 2005)
27 (“[M]unicipal police departments and bureaus are generally not considered ‘persons’
28 within the meaning of section 1983.”)

1 E. Monell Liability

2 However, the County of San Diego *itself* may be considered a “person” and
3 therefore, a proper defendant under § 1983, *see Monell v. Department of Social Services*,
4 436 U.S. 658, 691 (1978); *Hammond v. County of Madera*, 859 F.2d 797, 801 (9th Cir.
5 1988). As a municipality, the County *may* be held liable under § 1983—but only where
6 the Plaintiff alleges facts to show that a constitutional deprivation was caused by the
7 implementation or execution of “a policy statement, ordinance, regulation, or decision
8 officially adopted and promulgated” by the County, or a “final decision maker” for the
9 County. *Monell*, 436 U.S. at 690; *Board of the County Commissioners v. Brown*, 520 U.S.
10 397, 402-04 (1997); *Navarro v. Block*, 72 F.3d 712, 714 (9th Cir. 1995). In other words,
11 “respondeat superior and vicarious liability are not cognizable theories of recovery
12 against a municipality.” *Miranda v. Clark County, Nevada*, 279 F.3d 1102, 1109-10 (9th
13 Cir. 2002). “Instead, a *Monell* claim exists only where the alleged constitutional
14 deprivation was inflicted in ‘execution of a government’s policy or custom.’” *Id.* (quoting
15 *Monell*, 436 U.S. at 694).

16 As currently pleaded, Plaintiff’s fails to state a claim against the County of San
17 Diego because he has failed to allege any facts which “might plausibly suggest” that the
18 County itself violated his constitutional rights. *See Hernandez v. County of Tulare*, 666
19 F.3d 631, 637 (9th Cir. 2012) (applying *Iqbal*’s pleading standards to *Monell* claims);
20 *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (42 U.S.C. § 1983 provides for relief
21 only against those who, through their personal involvement as evidenced by affirmative
22 acts, participation in another’s affirmative acts, or failure to perform legally required
23 duties, cause the deprivation of plaintiff’s constitutionally protected rights).

24 F. Medical Care Claims

25 “[C]laims for violations of the right to adequate medical care ‘brought by pretrial
26 detainees against individual defendants under the Fourteenth Amendment’ must be
27 evaluated under an objective deliberate indifference standard.” *Gordon v. Cty. of*
28 *Orange*, 888 F.3d 1118, 1125 (9th Cir. 2018) (quoting *Castro v. County of Los Angeles*,

1 833 F.3d 1060, 1070 (9th Cir. 2016)). Therefore, “the plaintiff must ‘prove more than
2 negligence but less than subjective intent - something akin to reckless disregard.’” *Id.*

3 Plaintiff must allege facts sufficient to show that:

4 (i) [each] defendant made an intentional decision with respect to the
5 conditions under which [he] was confined; (ii) those conditions put [him] at
6 substantial risk of suffering serious harm; (iii) [each] defendant did not take
7 reasonable available measures to abate that risk, even though a reasonable
8 official in the circumstances would have appreciated the high degree of risk
involved—making the consequences of the defendant’s conduct obvious; and
(iv) by not taking such measures, [each] defendant caused [his] injuries.

9 *Gordon*, 888 F.3d at 1125.

10 Here, Plaintiff’s Complaint is devoid of any specific allegation regarding his
11 requests for medical care. Moreover, he does not even attempt to identify a specific
12 individual whom he claims denied him medical care.

13 G. State Law Claims

14 Plaintiff also seeks to bring California state law claims against the named
15 Defendants. (*See* Compl. at 9.) However, because Plaintiff has failed to allege a
16 violation of federal law, the Court exercises its discretion to dismiss his pendent state law
17 claims without prejudice. 28 U.S.C. § 1367(c)(3) (“The district court may decline to
18 exercise supplemental jurisdiction over a claim under subsection (a) if– [it] has dismissed
19 all claims over which it has original jurisdiction.”); *United Mine Workers of America v.*
20 *Gibbs*, 383 U.S. 715, 726 (1966) (“if the federal claims are dismissed before trial, ... the
21 state claims should be dismissed as well.”); *Acri v. Varian Assoc., Inc.*, 114 F.3d 999,
22 1000 (9th Cir. 1997) (“[O]nce judicial power exists under § 1367(a), retention of
23 supplemental jurisdiction over state law claims under 1367(c) is discretionary.”).

24 H. Leave to Amend

25 Thus, for all these reasons, the Court finds Plaintiff’s Complaint fails to state any
26 § 1983 claim upon which relief can be granted and contains claims that are frivolous.
27 Therefore, it must be dismissed sua sponte and in its entirety pursuant to 28 U.S.C.
28 § 1915(e)(2)(B) and § 1915A(b).

1 Because Plaintiff is proceeding pro se, however, the Court having now provided
2 him with “notice of the deficiencies in his complaint,” will also grant him an opportunity
3 to fix them. *See Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) (citing *Ferdik v.*
4 *Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992)). However, Plaintiff may not re-allege the
5 claims the Court found to be duplicative of a previous action he filed.

6 **III. Conclusion and Order**

7 Good cause appearing, **IT IS HEREBY ORDERED** that:

8 1. Plaintiff’s Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a) (ECF No.
9 2) is **GRANTED**.

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

17 3. The Clerk of the Court is directed to serve a copy of this Order on Watch
18 Commander, George Bailey Detention Facility, 446 Alta Road, Suite 5300, San Diego,
19 California 92158.

20 **IT IS FURTHER ORDERED** that:

21 4. The Court **DISMISSES** Plaintiff’s Complaint for failing to state a claim and
22 as frivolous pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b).

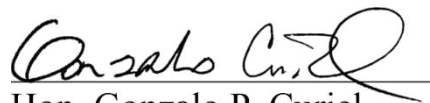
23 5. The Court **GRANTS** Plaintiff thirty (30) days leave from the date of this
24 Order in which to file an Amended Complaint which cures all the deficiencies of
25 pleading noted. Plaintiff’s Amended Complaint must be complete in itself without
26 reference to his original pleading. Defendants not named and any claims not re-alleged in
27 the Amended Complaint will be considered waived. *See S.D. CAL. CIVLR 15.1; Hal*
28 *Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989)

1 (“[A]n amended pleading supersedes the original.”); *Lacey*, 693 F.3d at 928 (noting that
2 claims dismissed with leave to amend which are not re-alleged in an amended pleading
3 may be “considered waived if not repled.”).

4 6. The Court **DIRECTS** the Clerk of the Court to provide Plaintiff with a
5 blank copy of its form Complaint under the Civil Rights Act, 42 U.S.C. § 1983 for
6 Plaintiff’s use in amending.

7 **IT IS SO ORDERED.**

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9 Dated: October 31, 2019

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11 Hon. Gonzalo P. Curiel
12 United States District Judge
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