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

STEPS WINN DAVIS
CDCR #BI-4186,

Plaintiff,

v.

SAN DIEGO POLICE DEP'T; ROBERT
NELSON; PETER LARSON; WILLIS
SHORT; JERRAD SCHNAUTZ,

Defendants.

Case No.: 3:19-cv-2044-MMA-KSC

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

[Doc. No. 2]

**DISMISSING CIVIL ACTION SUA
SPONTE FOR FAILING TO STATE
A CLAIM UPON WHICH RELIEF
CAN BE GRANTED PURSUANT TO
28 U.S.C. § 1915(e)(2)(B)(ii) & § 1915A**

Plaintiff Steps Winn Davis, a state inmate currently incarcerated at the California Rehabilitation Center locate in Norco, California, and proceeding *pro se*, has filed a civil rights complaint pursuant to 42 U.S.C. § 1983 seeking damages against the San Diego Police Department (“SDPD”) and individual SDPD officers. *See* Doc. No. 1. Plaintiff did not pay the filing fee required by 28 U.S.C. § 1914(a) to commence a civil action 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.

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); *Rodriguez v.*
7 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, a prisoner who is granted leave to
8 proceed IFP remains obligated to pay the entire fee in “increments” or “installments,”
9 *Bruce v. Samuels*, ___ U.S. ___, 136 S. Ct. 627, 629 (2016); *Williams v. Paramo*, 775 F.3d
10 1182, 1185 (9th Cir. 2015), and regardless of whether his action is ultimately dismissed.
11 See 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir.
12 2002).

13 Section 1915(a)(2) requires prisoners seeking leave to proceed IFP to submit a
14 “certified copy of the trust fund account statement (or institutional equivalent) for ... the
15 6-month period immediately preceding the filing of the complaint.” 28 U.S.C.
16 § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified
17 trust account statement, the Court assesses an initial payment of 20% of (a) the average
18 monthly deposits in the account for the past six months, or (b) the average monthly
19 balance in the account for the past six months, whichever is greater, unless the prisoner
20 has no assets. See 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution
21 having custody of the prisoner then collects subsequent payments, assessed at 20% of the
22 preceding month’s income, in any month in which his account exceeds \$10, and forwards
23 those payments to the Court until the entire filing fee is paid. See 28 U.S.C. §
24 1915(b)(2); *Bruce*, 136 S. Ct. at 629.

25
26
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.
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. *See* ECF No. 2 at 3; 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2;
3 *Andrews*, 398 F.3d at 1119. This statement indicates that Plaintiff had an available
4 balance of \$0.33 at the time of filing. *See* ECF No. 2 at 3. Thus, the Court **GRANTS**
5 Plaintiff’s Motion to Proceed IFP (Doc. No. 2) and assesses no initial partial filing fee
6 pursuant to 28 U.S.C. § 1915(b)(1).

7 **II. Screening Pursuant to 28 U.S.C. § 1915(e)(2)**

8 A. Standard of Review

9 A complaint filed by any person proceeding in forma pauperis is subject to sua
10 sponte dismissal, however, if it is “frivolous, malicious, fail[s] to state a claim upon
11 which relief may be granted, or seek[s] monetary relief from a defendant immune from
12 such relief.” 28 U.S.C. § 1915(e)(2)(B); *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir.
13 2001) (per curiam) (holding that “the provisions of 28 U.S.C. § 1915(e)(2)(B) are not
14 limited to prisoners.”); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc)
15 (“[S]ection 1915(e) not only permits, but requires a district court to dismiss an in forma
16 pauperis complaint that fails to state a claim.”).

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

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

1 (“[W]hen determining whether a complaint states a claim, a court must accept as true all
2 allegations of material fact and must construe those facts in the light most favorable to
3 the plaintiff.”); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (noting that
4 § 1915(e)(2) “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”).

5 However, while the court “ha[s] an obligation where the petitioner is pro se,
6 particularly in civil rights cases, to construe the pleadings liberally and to afford the
7 petitioner the benefit of any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir.
8 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)), it may not
9 “supply essential elements of claims that were not initially pled.” *Ivey v. Board of*
10 *Regents of the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

11 B. Discussion

12 1. Factual Allegations

13 Plaintiff was “arrested during a traffic stop” by SDPD Officer Nelson on April 21,
14 2018. Compl. at 3. Plaintiff alleges Nelson “collected a lot of [his] belongings that
15 didn’t have anything to do with the charges” against him. *Id.* On September 4, 2018,
16 Plaintiff was again stopped by SDPD officers and “arrested for a warrant.” *Id.* at 5.
17 SDPD Officer Schnautz “impounded all” of Plaintiff’s property at the time he was
18 arrested. *Id.*

19 Plaintiff asked his attorney when they would return his personal belongings. *See*
20 *id.* at 3. His attorney informed him that his “stuff is in the police impound” but he would
21 not have his property returned to him until after the completion of his court proceeding
22 and he was sentenced. *Id.* Plaintiff “signed a plea deal” on December 2, 2018 and was
23 sentenced on January 10, 2019. *Id.* Following his sentencing, Plaintiff informed his
24 attorney that he wanted to “go and get” his property the week of January 14, 2019. *Id.*
25 However, Plaintiff’s family “called the police property room” and were “informed that all
26 of [Plaintiff’s] property was disposed of” in December of 2018. *Id.* Plaintiff claims that
27 he had made it “very clear” at the time that he plead guilty that he wanted his personal
28 property returned.

1 Plaintiff seeks injunctive relief along with \$50,000 in compensatory damages,
2 \$1,000,000 in punitive damages and “special damages” for “irreplaceable items in the
3 sum of \$500,000.” *Id.* at 7.

4 2. 42 U.S.C. § 1983

5 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
6 elements: (1) that a right secured by the Constitution or laws of the United States was
7 violated, and (2) that the alleged violation was committed by a person acting under the
8 color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988); *Naffe v. Frye*, 789 F.3d
9 1030, 1035-36 (9th Cir. 2015).

10 3. SDPD

11 First, to the extent Plaintiff names the SDPD as a Defendant, he fails to state a
12 claim upon which § 1983 relief may be granted. Departments of municipal entities are
13 not “persons” subject to suit under § 1983; therefore, a local law enforcement department
14 (like the SDPD) is not a proper party. *See Vance v. County of Santa Clara*, 928 F. Supp.
15 993, 996 (N.D. Cal. 1996) (“Naming a municipal department as a defendant is not an
16 appropriate means of pleading a § 1983 action against a municipality.”) (citation
17 omitted); *Powell v. Cook County Jail*, 814 F. Supp. 757, 758 (N.D. Ill. 1993) (“Section
18 1983 imposes liability on any ‘person’ who violates someone’s constitutional rights
19 ‘under color of law.’ Cook County Jail is not a ‘person.’”).

20 “Persons” under § 1983 are state and local officials sued in their individual
21 capacities, private individuals and entities which act under color of state law, and/or the
22 local governmental entity itself. *Vance*, 928 F. Supp. at 995-96. The SDPD is managed
23 by and/or a department of the City of San Diego, but it is not a “person” subject to suit
24 under § 1983. *See e.g., United States v. Kama*, 394 F.3d 1236, 1239 (9th Cir. 2005)
25 (“[M]unicipal police departments and bureaus are generally not considered ‘persons’
26 within the meaning of section 1983.”); *Rodriguez v. Cnty. of Contra Costa*, 2013 WL
27 5946112 at *3 (N.D. Cal. Nov. 5, 2013) (citing *Hervey v. Estes*, 65 F.3d 784, 791 (9th
28 Cir. 1995)) (“Although municipalities, such as cities and counties, are amenable to suit

1 under *Monell [v. Dep't of Social Servs]*, 436 U.S. 658 (1978)], sub-departments or bureaus
2 of municipalities, such as the police departments, are not generally considered “persons”
3 within the meaning of § 1983.”). Therefore, Plaintiff cannot pursue any § 1983 civil
4 rights claims against the SDPD.

5 4. Fourteenth Amendment Claims

6 Plaintiff alleges that Defendants unlawfully deprived Plaintiff of his property
7 without due process, as required under the Fourteenth Amendment of the United States
8 Constitution. *See* Compl. at 3-5. “The Fourteenth Amendment’s Due Process Clause
9 protects persons against deprivations of life, liberty, or property; and those who seek to
10 invoke its procedural protection must establish that one of these interests is at stake.”

11 *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005).

12 Ordinarily, due process of law requires notice and an opportunity for some kind of
13 hearing prior to the deprivation of a significant property interest. *Sinaloa Lake Owners*
14 *Ass’n v. City of Simi Valley*, 882 F.2d 1398, 1405 (9th Cir. 1989). Neither the negligent
15 nor intentional deprivation of property states a due process claim under section 1983 if
16 the deprivation was random and unauthorized, however. *Parratt v. Taylor*, 451 U.S. 527,
17 535-44 (1981) (state employee negligently lost prisoner’s hobby kit), *overruled in part on*
18 *other grounds*, *Daniels v. Williams*, 474 U.S. 327, 330-31 (1986); *Hudson v. Palmer*, 468
19 U.S. 517, 533 (1984) (intentional destruction of inmate’s property). The availability of
20 an adequate state post-deprivation remedy, *e.g.* a state tort action, precludes relief
21 because it provides sufficient procedural due process. *See Zinermon v. Burch*, 494 U.S.
22 113, 128 (1990) (where state cannot foresee, and therefore provide meaningful hearing
23 prior to the deprivation, a statutory provision for post-deprivation hearing or a state
24 common law tort remedy for erroneous deprivation satisfies due process); *King v.*
25 *Massarweh*, 782 F.2d 825, 826 (9th Cir. 1986) (same). The Ninth Circuit has long
26 recognized that California law provides such an adequate post-deprivation remedy.
27 *Barnett v. Centoni*, 31 F.3d 813, 816-17 (9th Cir. 1994) (citing CAL. GOV’T CODE §§ 810-
28 895).

1 Deprivations of property resulting from negligence, or “mere lack of due care” do
2 not deny due process at all, and must be redressed through a state court damages action.
3 *See Daniels*, 474 U.S. at 328 (“[T]he Due Process Clause is simply not implicated by a
4 negligent act of an official causing unintended loss of or injury to life, liberty, or
5 property.”); *id.* at 330 (“To hold that this kind of loss is a deprivation of property within
6 the meaning of the Fourteenth Amendment seems not only to trivialize, but grossly to
7 distort the meaning and intent of the Constitution.”) (quoting *Parratt*, 451 U.S. at 545
8 (Stewart, J., concurring)). In fact, the Supreme Court has explicitly warned against
9 turning the Fourteenth Amendment and § 1983 into a “font of tort law to be
10 superimposed upon whatever systems may already be administered by the States.” *See*
11 *Paul v. Davis*, 424 U.S. 693, 701 (1976).

12 Thus, because Plaintiff claims SDPD officers deprived him of personal property,
13 any remedy he may have lies in state court and his federal action must be dismissed for
14 failing to state a claim upon which § 1983 relief may be granted. 28 U.S.C. § 1915(e)(2);
15 *Lopez*, 203 F.3d at 1126-27.

16 Thus, for all these reasons, Plaintiff’s case must be dismissed sua sponte based on
17 his failure to state a claim upon which § 1983 relief may be granted. *See* 28 U.S.C.
18 § 1915(e)(2)(B)(ii); § 1915A(b)(1); *Lopez*, 203 F.3d at 1126-27.

19 **III. Conclusion and Order**

20 Accordingly, the Court:

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

23 2. **ORDERS** the Secretary of the CDCR, or his designee, to collect from
24 Plaintiff’s trust account the full \$350 owed in monthly payments in an amount equal to
25 twenty percent (20%) of the preceding month’s income to the Clerk of the Court each
26 time the amount in Plaintiff’s account exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2).

27 **ALL PAYMENTS MUST BE CLEARLY IDENTIFIED BY THE NAME AND**
28 **NUMBER ASSIGNED TO THIS ACTION.**

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

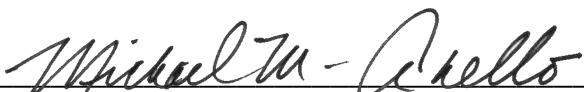
3 4. **DISMISSES** this civil action sua sponte pursuant to 28 U.S.C.
4 § 1915(e)(2)(B) and 1915A(b) for failing to state a claim upon which § 1983 relief can be
5 granted.

6 5. **GRANTS** Plaintiff forty-five (45) days leave from the date of this Order in
7 which to file an Amended Complaint which cures all the deficiencies of pleading noted.
8 Plaintiff's Amended Complaint must be complete by itself without reference to his
9 original pleading. Defendants not named and any claim not re-alleged in his Amended
10 Complaint will be considered waived. *See* S.D. Cal. CivLR 15.1; *Hal Roach Studios, Inc.*
11 *v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (“[A]n amended
12 pleading supersedes the original.”); *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir.
13 2012) (noting that claims dismissed with leave to amend which are not re-alleged in an
14 amended pleading may be “considered waived if not repled.”).

15 6. **DIRECTS** the Clerk of Court to mail Plaintiff a court approved civil rights
16 complaint form for his use in amending.

17 **IT IS SO ORDERED.**

18 DATE: November 18, 2019



HON. MICHAEL M. ANELLO
United States District Judge