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

JUAN GUTIERREZ,
CDCR #F-02975,

Plaintiff,

v.

R.C. JOHNSON; R. RIPPA;
D. TAMAYO; A. CHAVEZ; JOHN
DOES; JANE DOES,

Defendants.

Case No.: 20-cv-01836-BAS-WVG

**(1) GRANTING MOTION TO
PROCEED IN FORMA
PAUPERIS (ECF No. 4);**

AND

**(2) DISMISSING COMPLAINT FOR
FAILING TO STATE A CLAIM**

Plaintiff Juan Gutierrez, incarcerated at California State Prison – Los Angeles County (“CSP-LAC”) located in Lancaster, California and proceeding pro se, filed a civil rights Complaint (“Compl.”) pursuant to 42 U.S.C. § 1983.¹ (ECF No. 1.) Plaintiff has not prepaid the \$400 civil filing fee required by 28 U.S.C. § 1914(a); instead, he seeks to proceed in forma pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a). (ECF Nos. 2, 4.). The Court denied Plaintiff’s initial motion to proceed IFP for failing to attach his most current certified trust account statement. (ECF Nos. 2, 3.) Pursuant to the Court’s order, Plaintiff filed a renewed Motion to Proceed IFP the same day. (ECF No. 4.)

¹ R.C. Johnson was initially listed as a defendant, but a review of Plaintiff’s Complaint indicates that this was done in error. Plaintiff listed “R.C. Johnson” as a defendant in a case he previously filed and does not appear that he intended to name “R.C. Johnson” as a defendant in this matter. (See Compl. at 1–2.)

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 \$400.² 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*, 577 U.S. 82, 84 (2016); *Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015),
10 and regardless of whether his action is ultimately dismissed. See 28 U.S.C. § 1915(b)(1) &
11 (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
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 balance
18 in the account for the past six months, whichever is greater, unless the prisoner has no
19 assets. See 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having custody
20 of the prisoner then collects subsequent payments, assessed at 20% of the preceding
21 month’s income, in any month in which his account exceeds \$10, and forwards those
22 payments to the Court until the entire filing fee is paid. See 28 U.S.C. § 1915(b)(2); *Bruce*,
23 577 U.S. at 84.

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26 ² In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$50. See
27 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14 (eff.
28 June 1, 2016). The additional \$50 administrative fee does not apply to persons granted leave to proceed
IFP. *Id.*

1 In support of his renewed Motion, Plaintiff has submitted a copy of his CDCR
2 Inmate Statement Report. (ECF No. 4.) *See also* 28 U.S.C. § 1915(a)(2); S.D. Cal. CivLR
3 3.2; *Andrews*, 398 F.3d at 1119. This document shows Plaintiff had only \$2.15 to his credit
4 at the time of filing. (ECF No. 4 at 6.) Based on this accounting, the Court grants Plaintiff’s
5 Motion to Proceed IFP (ECF No. 4) and assesses no initial partial filing fee. *See* 28 U.S.C.
6 § 1915(b)(4) (“In no event shall a prisoner be prohibited from bringing a civil action or
7 appealing a civil action or criminal judgment for the reason that the prisoner has no assets
8 and no means by which to pay the initial partial filing fee.”); *Taylor*, 281 F.3d at 850
9 (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve” preventing dismissal of a
10 prisoner’s IFP case based solely on a “failure to pay . . . due to the lack of funds available
11 to him when payment is ordered”). The Court directs the Secretary of the California
12 Department of Corrections and Rehabilitation (“CDCR”), or her designee, to collect the
13 entire \$350 balance of the filing fees required by 28 U.S.C. § 1914 and forward them to
14 the Clerk of the Court pursuant to the installment payment provisions set forth in 28 U.S.C.
15 § 1915(b)(1).

16 **II. SCREENING**

17 **A. Standard of Review**

18 Because Plaintiff is a prisoner and is proceeding IFP, his Complaint requires a
19 preliminary 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 it,
21 which is frivolous, malicious, fails to state a claim, or seeks damages from defendants who
22 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.’”
26 *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir. 2014) (quoting *Wheeler v. Wexford*
27 *Health Sources, Inc.*, 689 F.3d 680, 681 (7th Cir. 2012)).

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 F.3d
4 1108, 1112 (9th Cir. 2012); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir.
5 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 to “contain sufficient factual matter,
8 accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*,
9 556 U.S. 662, 678 (2009) (internal quotation marks omitted).

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 relief
13 [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
14 experience and common sense.” *Id.* The “mere possibility of misconduct” or “unadorned,
15 the defendant-unlawfully-harmed me accusation[s]” fall short of meeting this plausibility
16 standard. *Id.*; *see also Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).

17 **B. Discussion**

18 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
19 elements: (1) that a right secured by the Constitution or laws of the United States was
20 violated; and (2) that the alleged violation was committed by a person acting under the
21 color of state law. *Naffe v. Frye*, 789 F.3d 1030, 1035–36 (9th Cir. 2015); *West v. Atkins*,
22 487 U.S. 42, 48 (1988). However, Plaintiff’s Complaint contains virtually no factual
23 allegations whatsoever. Thus, as currently presented, Plaintiff’s Complaint fails to comply
24 with Federal Rule of Civil Procedure 8 (“Rule 8”) and fails to state a claim upon which
25 relief may be granted. *See* 28 U.S.C. §§ 1915(e)(2)(B)(ii), 1915A(b)(1); *Iqbal*, 556 U.S.
26 at 677–78.

1 1. Due Process and State Law Claims

2 In “Claim 1,” Plaintiff alludes to due process violations in unidentified disciplinary
3 proceedings and lists a number of state law causes of action including battery and breach
4 of contract. (*See* Compl. at 5.) However, Plaintiff does not state any facts to explain the
5 circumstances and conduct from which these violations of his civil rights allegedly arose.
6 This type of submission falls far short of stating a plausible claim for relief. *See Iqbal*, 556
7 U.S. at 678 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

8 “Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a “short
9 and plain statement of the claim,” Fed. R. Civ. P. 8(a)(2), and that “each allegation must
10 be simple, concise, and direct.” Fed. R. Civ. P. 8(d)(1); *see Iqbal*, 556 U.S. at 677–78. In
11 addition to the grounds for sua sponte dismissal set out in § 1915(e)(2)(B) and § 1915A(b),
12 the district court may also dismiss a complaint for failure to comply with Rule 8 if it fails
13 to provide the defendant fair notice of the wrongs allegedly committed. *See McHenry v.*
14 *Renne*, 84 F.3d 1172, 1178–80 (9th Cir. 1996). “Rule 8 marks a notable and generous
15 departure from the hyper-technical, code pleading regime of a prior era, but it does not
16 unlock the doors of discovery for a plaintiff armed with nothing more than conclusions.”
17 *Iqbal*, 556 U.S. at 678–79.

18 The court “ha[s] an obligation where the petitioner is pro se, particularly in civil
19 rights cases, to construe the pleadings liberally and to afford the petitioner the benefit of
20 any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (citing *Bretz v.*
21 *Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)); however, it may not “supply essential
22 elements of claims that were not initially pled.” *Ivey v. Bd. of Regents of the Univ. of*
23 *Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). Even pro se litigants must “allege with at least
24 some degree of particularity overt acts which defendants engaged in” in order to state a
25 claim. *Jones v. Comm’ty Redev. Agency of City of Los Angeles*, 733 F.2d 646, 649 (9th
26 Cir. 1984). Complaints like the one Plaintiff has filed, which “tender [only] ‘naked
27 assertion[s]’ devoid of ‘further factual enhancement’” do not suffice. *Iqbal*, 556 U.S. at
28 678 (quoting *Twombly*, 550 U.S. at 557). Legal conclusions, such as violations of due

1 process (*see* Compl. at 5), “can provide the framework of a complaint, [but] they must be
2 supported by factual allegations,” lest a plaintiff face dismissal. *Id.*

3 2. Eighth Amendment

4 To the extent that Plaintiff may be also attempting to state an Eighth Amendment
5 claim, he fails to state a claim upon which relief may be granted. In Plaintiff’s “request for
6 relief,” he alleges he came “close to dying” and he may be alleging he was assaulted by
7 other inmates. (Compl. at 6.) Plaintiff claims he “had to be taken to the off-site hospital.”
8 (*Id.*)

9 “The Eighth Amendment requires that prison officials ‘must take reasonable
10 measures to guarantee the safety of the inmates.’” *United States v. Williams*, 842 F.3d
11 1143, 1153 (9th Cir. 2016) (quoting *Farmer v. Brennan*, 511 U.S. 825, 833 (1994)
12 (“[P]rison officials have a duty [under the Eighth Amendment] . . . to protect prisoners
13 from violence at the hands of other prisoners.”); *see also Clem v. Lomeli*, 566 F.3d 1177,
14 1181 (9th Cir. 2009). “It is not, however, every injury suffered by one prisoner at the hands
15 of another that translates into constitutional liability for prison officials responsible for the
16 victim’s safety.” *Farmer*, 511 U.S. at 834. “In *Wilson v. Seiter*, [the Supreme Court]
17 rejected a reading of the Eighth Amendment that would allow liability to be imposed on
18 prison officials solely because of the presence of objectively inhumane prison conditions.”
19 *Id.* at 838 (citing *Wilson*, 501 U.S. 294, 299–302 (1991)). Therefore, a prison official’s
20 failure to protect an inmate violates the Eighth Amendment only when “(1) the deprivation
21 alleged is ‘objectively, sufficiently serious’ and (2) the prison officials had a ‘sufficiently
22 culpable state of mind,’ acting with deliberate indifference.” *Hearns v. Terhune*, 413 F.3d
23 1036, 1040 (9th Cir. 2005) (quoting *Farmer*, 511 U.S. at 834).

24 To satisfy the first objective pleading requirement, the prisoner must allege sufficient
25 factual content to plausibly “‘show[] that he is incarcerated under conditions posing a
26 substantial risk of serious harm.’” *Lemire v. Calif. Dep’t of Corr. & Rehab.*, 726 F.3d
27 1062, 1075 (9th Cir. 2013) (quoting *Farmer*, 511 U.S. at 834); *see also Disability Rights*
28 *Montana, Inc. v. Batista*, 930 F.3d 1090, 1097 (9th Cir. 2019). To satisfy the second

1 subjective pleading requirement, he must also “plead factual content” to show that each
2 defendant was aware of facts from which the inference could be drawn that a substantial
3 risk of harm existed, and that each also drew and disregarded that inference. *Iqbal*, 556 U.S.
4 at 678; *Farmer*, 511 U.S. at 837.

5 As currently pleaded, however, Plaintiff’s Complaint fails to allege any specific facts
6 that would show that any of the named Defendants were aware of a risk to his safety.
7 Instead, Plaintiff references an “[o]fficial’s knowledge of risk” and a claim that they “did
8 nothing.” (Compl. at 6.) However, these factual allegations are far from sufficient to show
9 that any of the named Defendants acted with deliberate indifference to a serious risk to his
10 safety. *Farmer*, 511 U.S. at 834. Plaintiff does not allege any facts to plausibly show that
11 Defendants knew of and disregarded any known or obvious excessive risk to his safety or
12 failed to take reasonable steps to abate such a risk. *Farmer*, 511 at 837.

13 For these reasons, Plaintiff’s Eighth Amendment claims as alleged against
14 Defendants are subject to sua sponte dismissal pursuant to 28 U.S.C. §§ 1915(e)(2)(b)(ii)
15 and 1915A(b)(1).

16 **III. CONCLUSION AND ORDERS**

17 For the reasons discussed, the Court:

18 1. **GRANTS** Plaintiff’s Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a)
19 (ECF No. 4).

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

27 3. **DIRECTS** the Clerk of the Court to serve a copy of this Order on Kathleen
28 Allison, Secretary, CDCR, P.O. Box 942883, Sacramento, California, 94283-0001.

1 4. **DIRECTS** the Clerk of Court to terminate Defendant R.C. Johnson as a
2 defendant in this matter as R.C. Johnson was named a defendant in error.

3 5. **DISMISSES** Plaintiff's Complaint in its entirety for failing to comply with
4 the Federal Rule of Civil Procedure 8 and for failing to state a claim upon which relief may
5 be granted pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and § 1915A(b)(1).


6 6. **GRANTS** Plaintiff sixty (60) days leave from the date of this Order in which
7 to file an Amended Complaint which cures the deficiencies of pleading noted. Plaintiff's
8 Amended Complaint must be complete by itself without reference to his original pleading.
9 Defendants not named and any claim not re-alleged in his Amended Complaint will be
10 considered waived. *See* S.D. Cal. CivLR 15.1; *Hal Roach Studios, Inc. v. Richard Feiner*
11 *& Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (“[A]n amended pleading supersedes the
12 original.”); *Lacey v. Maricopa Cty.*, 693 F.3d 896, 928 (9th Cir. 2012) (noting that claims
13 dismissed with leave to amend which are not re-alleged in an amended pleading may be
14 “considered waived if not repled”).

15 If Plaintiff fails to file an Amended Complaint within the time provided, the Court
16 will enter a final Order dismissing this civil action based both on Plaintiff's failure to state
17 a claim upon which relief can be granted pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and
18 1915A(b), and his failure to prosecute in compliance with a court order requiring
19 amendment. *See Lira v. Herrera*, 427 F.3d 1164, 1169 (9th Cir. 2005) (“If a plaintiff does
20 not take advantage of the opportunity to fix his complaint, a district court may convert the
21 dismissal of the complaint into dismissal of the entire action.”).

22 7. **DIRECTS** the Clerk of Court to mail Plaintiff a blank copy of the Court's
23 approved form Complaint under the Civil Rights Act, 42 U.S.C. § 1983 for his use in
24 amending.

25 **IT IS SO ORDERED.**

26
27 **DATED: October 13, 2020**


Hon. Cynthia Bashant
United States District Judge