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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 DANNY ZAVALA,
12 Booking No. 21103200,

Plaintiff,

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14 vs.

15 SAN DIEGO SHERIFF,
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Defendant.
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Case No.: 3:21-cv-01104-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)(1)**

21 DANNY ZAVALA (“Plaintiff”), currently housed in the San Diego Central Jail
22 (“SDCJ”) located in San Diego, California, is proceeding pro se in this case with a civil
23 rights Complaint filed pursuant to 22 U.S.C. § 1983 (ECF No. 1).

24 Plaintiff has not prepaid the \$402 civil filing fee required by 28 U.S.C. § 1914(a);
25 instead, he has filed a Motion to Proceed In Forma Pauperis (“IFP”) pursuant to 28
26 U.S.C. § 1915(a) (ECF No. 2).

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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 \$402.¹ 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*, 136 S. Ct. 627, 629 (2016); *Williams v. Paramo*, 775 F.3d 1182, 1185
10 (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 “certified
13 copy of the trust fund account statement (or institutional equivalent) for . . . the 6-month
14 period immediately preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2);
15 *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified trust account
16 statement, the Court assesses an initial payment of 20% of (a) the average monthly
17 deposits in the account for the past six months, or (b) the average monthly balance in the
18 account for the past six months, whichever is greater, unless the prisoner has no assets. 28
19 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having custody of the
20 prisoner then collects subsequent payments, assessed at 20% of the preceding month's
21 income, in any month in which his account exceeds \$10, and forwards those payments to
22 the Court until the entire filing fee is paid. See 28 U.S.C. § 1915(b)(2); *Bruce*, 136 S. Ct.
23 at 629.

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27 ¹ In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$52.
28 See 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14 (eff. Dec. 1, 2020)). The additional \$52 administrative fee does not apply to persons granted leave to proceed IFP. *Id.*

1 In support of his Motion to Proceed IFP, Plaintiff has submitted a copy of his
2 inmate trust account statement. (*See* ECF No. 2); *see* 28 U.S.C. § 1915(a)(2); S.D. CAL.
3 CivLR 3.2; *Andrews*, 398 F.3d at 1119. This statement shows that Plaintiff had an
4 average monthly balance of \$1.60, and average monthly deposits of \$15.00 to his account
5 over the 6-month period immediately preceding the filing of his Complaint, as well as an
6 available balance of \$9.62 at the time of filing. Based on this financial information, the
7 Court GRANTS Plaintiff’s Motion to Proceed IFP (ECF No. 2), and assesses his initial
8 partial filing fee to be \$3.00 pursuant to 28 U.S.C. § 1915(b)(1).

9 However, the Court will direct the Watch Commander of SDCJ, or their designee,
10 to collect this initial fee only if sufficient funds are available in Plaintiff’s account at the
11 time this Order is executed. *See* 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event
12 shall a prisoner be prohibited from bringing a civil action or appealing a civil action or
13 criminal judgment for the reason that the prisoner has no assets and no means by which to
14 pay the initial partial filing fee.”); *Bruce*, 136 S. Ct. at 630; *Taylor*, 281 F.3d at 850
15 (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve” preventing dismissal of a
16 prisoner’s IFP case based solely on a “failure to pay ... due to the lack of funds available
17 to him when payment is ordered.”). The remaining balance of the \$350 total fee owed in
18 this case must be collected and forwarded to the Clerk of the Court pursuant to 28 U.S.C.
19 § 1915(b)(1).

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

21 **A. Standard of Review**

22 Because Plaintiff is a prisoner and is proceeding IFP, his Complaint requires a pre-
23 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.
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1 2010) (discussing 28 U.S.C. § 1915A(b)). “The purpose of [screening] is ‘to ensure that
2 the targets of frivolous or malicious suits need not bear the expense of responding.’”
3 *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir. 2014) (citations omitted).

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 B. Plaintiff’s Factual Allegations

22 Plaintiff alleges that he was “shot in the head by San Diego Police Officers” on
23 January 29, 2021. (Compl. at 3.) While not clear, it appears that Plaintiff was later
24 transported to SDCJ where he was allegedly “brutally beaten, maced, maimed, and
25 raped” by unnamed San Diego Sheriff Deputies. (*Id.*) Plaintiff claims that this incident
26 was “filmed” and he was asked by someone if he “understood what was happening.”
27 (*Id.*) He was then “tended to by a nurse briefly and subsequently thrown” inside a cell.
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1 (*Id.*) A counselor later came to speak to Plaintiff but he was “hesitant to speak to her
2 about the incident because a deputy was present.” (*Id.*)

3 Despite allegedly being shot and raped, Plaintiff was not “housed in the medical
4 floor for further observation.” (*Id.* at 4.) On February 8, 2021, Plaintiff was “being strip
5 searched in the multipurpose room” when he “had a seizure.” (*Id.*) Two days later,
6 Plaintiff purportedly had another seizure and was “finally monitored for a few hours” but
7 told there “was no room in medical housing.” (*Id.*)

8 Plaintiff filed a grievance on May 12, 2021 “concerning [his] rape and lack of
9 medical care.” (*Id.* at 5.) Plaintiff also “filed a complaint with Internal Affairs.” (*Id.*)
10 Plaintiff filed a second grievance following additional seizures and the lack of a response
11 by the “floor deputy.” (*Id.*) After Plaintiff allegedly suffered another seizure on June 3,
12 2021, he was taken to “medical where [he] was given [his] seizure meds early.” (*Id.*)

13 Plaintiff seeks injunctive relief, \$1,000,000 in compensatory damages, and
14 \$38,000,000 in punitive damages.

15 C. Individual Causation

16 Plaintiff’s Complaint contains some very serious factual allegations. However,
17 Plaintiff has failed to identify any specific individual whom he claims violated his
18 constitutional rights. “Because vicarious liability is inapplicable to . . . § 1983 suits, a
19 plaintiff must plead that each government-official defendant, through the official’s own
20 individual actions, has violated the Constitution.” *Iqbal*, 556 U.S. at 676; *see also Jones*
21 *v. Community Redevelopment Agency of City of Los Angeles*, 733 F.2d 646, 649 (9th Cir.
22 1984) (even pro se plaintiffs must “allege with at least some degree of particularity overt
23 acts which defendants engaged in” in order to state a claim). “A plaintiff must allege
24 facts, not simply conclusions, that show that [each defendant] was personally involved in
25 the deprivation of his civil rights.” *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir.
26 1998); *see also Estate of Brooks ex rel. Brooks v. United States*, 197 F.3d 1245, 1248 (9th
27 Cir. 1999) (“Causation is, of course, a required element of a § 1983 claim.”).

1 Plaintiff must identify specific individuals in order to proceed with this action.
2 The only named Defendant is “San Diego Sheriff” but this Defendant, William Gore, is
3 not alleged to have any involvement in the actions allegedly taken by San Diego Sheriff
4 Deputies. Supervisory officials may only be held liable under § 1983 if Plaintiff alleges
5 their “personal involvement in the constitutional deprivation, or . . . a sufficient causal
6 connection between the supervisor’s wrongful conduct and the constitutional violation.”
7 *Keates v. Koile*, 883 F.3d 1228, 1242–43 (9th Cir. 2018); *Starr v. Baca*, 652 F.3d 1202,
8 1207 (9th Cir. 2011). Plaintiff makes no such allegations against Sheriff Gore in his
9 Complaint. There are no facts alleged which show a “causal connection between the
10 supervisor’s wrongful conduct and the constitutional violation.” *Hansen v. Black*, 885
11 F.2d 642, 646 (9th Cir. 1989).

12 Accordingly, the Court *sua sponte* dismisses all claims in the Complaint against
13 Defendant Sheriff Gore. *See* 28 U.S.C. § 1915(e)(2)(B)(ii) & § 1915A(b)(1).

14 D. Leave to Amend

15 While the Court has dismissed all claims found in Plaintiff’s Complaint, the Court
16 will give Plaintiff leave to amend to identify, with as much specificity as he can, the
17 individuals whom he claims are responsible for the alleged constitutional violations. *See*
18 *Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir. 2015) (“A district court should not
19 dismiss a pro se complaint without leave to amend [pursuant to 28 U.S.C.
20 § 1915(e)(2)(B)(ii)] unless ‘it is absolutely clear that the deficiencies of the complaint
21 could not be cured by amendment.’”) (quoting *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th
22 Cir. 2012)). Along with setting forth factual allegations, Plaintiff must also identify the
23 specific individuals whom he claims are committing the alleged violations.

24 If Plaintiff does not know the names of the individuals he alleges harmed him, but
25 would still like to name them as defendants in this action, he may sue unknown
26 defendants using a pseudonym (for example, “John Doe” or “Jane Doe”) and may be
27 given an opportunity to identify their true names through discovery, if warranted. *See*
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1 *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980). If he chooses to do so, Plaintiff
2 is advised that he should provide all the information he possesses about each “John Doe”
3 defendant, including what actions relevant to the complaint that each “John Doe”
4 defendant is alleged to have engaged in, to assist the parties in identifying the defendants
5 and to enable the Court to determine whether Plaintiff has stated a claim.

6 **III. Conclusion and Order**

7 Based on the foregoing, the Court:

8 1) **GRANTS** Plaintiff’s Motion to Proceed In Forma Pauperis (ECF No. 2).
9 2) **ORDERS** the Watch Commander for the SDCJ, or their designee, to collect
10 from Plaintiff’s trust account the \$3.00 initial filing fee assessed, if those funds are
11 available at the time this Order is executed, and to forward whatever balance remains of
12 the full \$350 owed in monthly payments in an amount equal to twenty percent (20%) of
13 the preceding month’s income to the Clerk of the Court each time the amount in
14 Plaintiff’s account exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2). **ALL PAYMENTS**
15 **MUST BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER ASSIGNED TO**
16 **THIS ACTION.**

17 3) **DIRECTS** the Clerk of the Court to serve a copy of this Order on Watch
18 Commander, San Diego Central Jail, 1173 Front Street, San Diego, California 92101.

19 4) **DISMISSES** Plaintiff’s Complaint sua sponte for failing to state a claim
20 upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b).

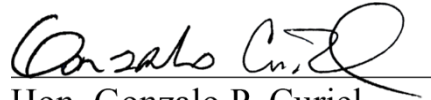
21 5) **GRANTS** Plaintiff sixty (60) days leave from the date of this Order in
22 which to file an Amended Complaint which cures the deficiencies of pleading noted.
23 Plaintiff’s Amended Complaint must be complete by itself without reference to his
24 original pleading. Defendants not named and any claim not re-alleged in his Amended
25 Complaint will be considered waived. *See* S.D. CAL. CIVLR 15.1; *Hal Roach Studios,*
26 *Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (“[A]n amended
27 pleading supersedes the original.”); *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir.

1 2012) (noting that claims dismissed with leave to amend which are not re-alleged in an
2 amended pleading may be “considered waived if not repled.”).

3 The Court **DIRECTS** the Clerk of the Court to provide Plaintiff with a blank copy
4 of its form complaint under the Civil Rights Act, 42 U.S.C. § 1983 for Plaintiff’s use and
5 to assist him in complying with LR 8.2.a’s requirements.

6 **IT IS SO ORDERED.**

7 Dated: June 21, 2021

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9 Hon. Gonzalo P. Curiel
United States District Judge

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