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

SEAN DION ROSS,  
CDCR #BX-0976

Plaintiff,

vs.

SHLAMAN, LEACH, R. PAGE, CITY OF  
SAN DIEGO,

Defendants.

Case No.: 3:24-cv-1078-CAB-KSC

**ORDER: (1) GRANTING MOTION  
TO PROCEED IN FORMA  
PAUPERIS [ECF No. 2] AND  
(2) DISMISSING COMPLAINT  
WITHOUT PREJUDICE AND  
WITH LEAVE TO AMEND**

**I. INTRODUCTION**

On June 20, 2024, Sean Dion Ross (“Plaintiff” or “Ross”), an inmate currently housed at California Substance Abuse Treatment Facility and proceeding *pro se*, filed a civil rights action pursuant to 42 U.S.C. § 1983, along with Motion to Proceed In Forma Pauperis (“IFP”). ECF Nos. 1, 2. In his Complaint, Plaintiff alleges his Fourth Amendment rights were violated when San Diego police officers searched his apartment without a warrant. ECF No. 1 at 3. For the reasons discussed below, the Court grants Ross’s IFP motion and dismisses the Complaint without prejudice and with leave to amend.

**II. MOTION TO PROCEED IFP**

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of

1 \$405.<sup>1</sup> See 28 U.S.C. § 1914(a). A party may initiate a civil action without prepaying the  
2 required filing fee if the Court grants leave to proceed IFP based on indigency. 28 U.S.C.  
3 § 1915(a); *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007).

4 To proceed IFP, plaintiffs must establish their inability to pay by filing an affidavit  
5 regarding their income and assets. See *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th  
6 Cir. 2015). Prisoners must also submit a “certified copy of the [prisoner’s] trust fund  
7 account statement (or institutional equivalent) for . . . the 6-month period immediately  
8 preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2). From the certified trust  
9 account statement, the Court assesses an initial payment of 20% of (a) the average monthly  
10 deposits in the account for the past six months, or (b) the average monthly balance in the  
11 account for the past six months, whichever is greater, unless the prisoner has no assets. See  
12 28 U.S.C. §§ 1915(b)(1) & (4). Prisoners who proceed IFP must repay the entire fee in  
13 installments regardless of whether their action is ultimately dismissed. 28 U.S.C.  
14 § 1915(b)(2); *Bruce v. Samuels*, 577 U.S. 82, 84 (2016).

15 In support of his IFP Motion, Ross provided a copy of his prison certificate and trust  
16 account statement. ECF No. 2 at 5–7. During the six months prior to filing suit, Plaintiff  
17 had an average monthly balance of \$78.38, average monthly deposits of \$64.80, and an  
18 available account balance of \$160.15 at the time he filed suit. *Id.* at 5. Accordingly, the  
19 Court **GRANTS** Plaintiff’s IFP motion and assesses an initial partial filing fee of \$15.68  
20 pursuant to 28 U.S.C. § 1915(b)(1). However, *this initial fee need be collected only if*  
21 *sufficient funds are available in Plaintiff’s account at the time this Order is executed.* See  
22 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event shall a prisoner be prohibited from  
23 bringing a civil action or appealing a civil action or criminal judgment for the reason that  
24 the prisoner has no assets and no means by which to pay the initial partial filing fee”);

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28 <sup>1</sup> Civil litigants must pay an administrative fee of \$55 in addition to the \$350 filing fee. See 28  
U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14  
(eff. Dec. 1, 2023)). The additional \$55 administrative fee does not apply to persons granted leave  
to proceed IFP. *Id.*

1 *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve”  
2 preventing dismissal of a prisoner’s IFP case based solely on “failure to pay . . . due to the  
3 lack of funds available to him when payment is ordered.”). The CDCR must thereafter  
4 collect the full balance of the \$350 total fee owed in this case and forward payments to the  
5 Clerk of the Court as provided by 28 U.S.C. § 1915(b)(2).

### 6 **III. SCREENING PURSUANT TO 28 U.S.C. § 1915(e) AND § 1915A(b)**

#### 7 **A. Legal Standards**

8 Pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b), the Court must screen a  
9 prisoner’s IFP complaint and *sua sponte* dismiss it to the extent that it is frivolous,  
10 malicious, fails to state a claim, or seeks damages from defendants who are immune. *See*  
11 *Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (*en banc*); *Rhodes v. Robinson*,  
12 621 F.3d 1002, 1004 (9th Cir. 2010). “The standard for determining whether Plaintiff has  
13 failed to state a claim upon which relief can be granted under § 1915(e)(2)(B)(ii) is the  
14 same as the Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a claim.”  
15 *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). Rule 12(b)(6) requires that a  
16 complaint to “contain sufficient factual matter . . . to state a claim to relief that is plausible  
17 on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted).  
18 While detailed factual allegations are not required, “[t]hreadbare recitals of the elements  
19 of a cause of action, supported by mere conclusory statements, do not suffice” to state a  
20 claim. *Id.* The “mere possibility of misconduct” or “unadorned, the defendant-unlawfully-  
21 harmed me accusation[s]” fall short of meeting this plausibility standard. *Id.*

22 To state a claim under § 1983, a plaintiff must plausibly allege “both (1) deprivation  
23 of a right secured by the Constitution and laws of the United States, and (2) that the  
24 deprivation was committed by a person acting under color of state law.” *Tsao v. Desert*  
25 *Palace, Inc.*, 698 F.3d 1128, 1138 (9th Cir. 2012).

#### 26 **B. Plaintiff’s Allegations**

27 Plaintiff alleges that on February 14, 2024, San Diego police officers were  
28 responding to a call reporting “a person on a rooftop.” ECF No. 1 at 3. Ross states that

1 “instead of going through the maintenance door, Officers Schlaman and Leach entered  
2 apartment #325 and started searching [the] premises.” *Id.* At some point, Schlaman and  
3 Leach left the apartment but “later came back and searched the property while [Ross] was  
4 in the hospital.” *Id.* Ross states this search took place at approximately 2:14 a.m. At some  
5 point during the night Ross was transferred from the hospital to San Diego County Jail,  
6 where he was “booked at 6:00 a.m.” *Id.* At about 8:00 a.m., while Ross was still in jail,  
7 Schlaman and Leach obtained a search warrant for the residence. *Id.*

8 Ross was subsequently charged with two counts of possession of a controlled  
9 substance, one count of maintenance of a narcotic house, and being under the influence of  
10 a controlled substance. Detective Page “signed off . . . on [Ross’s] arrest report.” *Id.* at 5.  
11 The charges against Ross were dropped “six months later.” *Id.* The City of San Diego  
12 “knew” that Ross’s residence had been searched “illegally” but “still pursued the charges  
13 for six months.” *Id.* As a result, Plaintiff was evicted, lost property and became homeless.  
14 *Id.*

### 15 **C. Discussion**

16 In his Complaint, Ross contends his Fourth Amendment right to be free from  
17 unreasonable searches was violated when officers entered his residence and searched it  
18 without a warrant. *Id.* at 3–5. He names four defendants: Schlaman, Leach, Page and the  
19 City of San Diego. *Id.* at 2.

20 First, Ross alleges his Fourth Amendment rights were violated when Officers  
21 Schlaman and Leach entered and searched his apartment without a warrant. ECF No. 1 at  
22 3. The Fourth Amendment guarantees citizens the right “to be secure in their persons . . .  
23 against unreasonable . . . seizures” of the person. *Graham v. Connor*, 490 U.S. 386, 394  
24 (1989). It is well established that ““searches and seizures inside a home without a warrant  
25 are presumptively unreasonable.”” *Payton v. New York*, 445 U.S. 573, 590 (1980); *see also*  
26 *LaLonde v. County of Riverside*, 204 F.3d 947, 954 (9th Cir. 2000). But there are exceptions  
27 to the warrant requirement, even as to residential searches. The Supreme Court has held,  
28 for instance, that “law enforcement officers may enter private property without a warrant

1 when certain exigent circumstances exist, including the need to render emergency  
2 assistance to an injured occupant or to protect an occupant from imminent injury.” *Caniglia*  
3 *v. Strom*, 593 U.S. 194, 198 (2021) (quoting *Kentucky v. King*, 563 U.S. 452, 460 (2011))  
4 (internal quotation marks omitted).

5 Here, Ross has failed to allege sufficient facts to state a Fourth Amendment claim  
6 against Officers Schlaman and Leach. Plaintiff’s allegations do not adequately explain the  
7 circumstances under which the officers entered Ross’s apartment. He states officers were  
8 responding to a report of a “person on a rooftop,” which raises the question of whether  
9 exigent circumstances existed for an unauthorized entry. Ross also states that he was  
10 hospitalized and placed under arrest that evening (it is unclear in what order) but provides  
11 no facts as to when these events occurred relative to the purported warrantless entry, or  
12 what caused the need for Plaintiff to be hospitalized. In sum, the general lack of clarity as  
13 to the timeline of events makes it impossible to determine whether exigent circumstances,  
14 or any other exception to the warrant requirement may apply. Therefore, as currently  
15 pleaded, Plaintiff has failed to state a Fourth Amendment claim against Schlaman and  
16 Leach. *See Iqbal*, 556 U.S. at 678.

17 Furthermore, to the extent Ross alleges Detective Page violated his constitutional  
18 rights because he knew Schlaman and Leach had conducted a warrantless search but  
19 nonetheless “signed off” on the police report (ECF No. 1 at 5), he fails to state a claim.  
20 There is no respondeat superior liability under § 1983, and defendants cannot be held liable  
21 simply by virtue of their supervisory roles. *See Iqbal*, 556 U.S. at 676 (“Government  
22 officials may not be held liable for the unconstitutional conduct of their subordinates under  
23 a theory of respondeat superior.”). Instead, a plaintiff must allege “personal involvement  
24 in the constitutional deprivation” or “a sufficient causal connection between the  
25 supervisor’s wrongful conduct and the constitutional violation.” *See Jones v. Williams*,  
26 297 F.3d 930, 934 (9th Cir. 2002). There are no facts in the Complaint suggesting Page  
27 was present for, or played any role in, the alleged unlawful search. As such, Ross has failed  
28 to state a claim against Page. *See Iqbal*, 556 U.S. at 678.

1 Finally, Ross fails to state a claim against the City of San Diego. A municipality is  
2 liable for constitutional violations only where its own policy, custom, or practice is the  
3 “moving force” behind the violation. *See Monell v. Dep’t of Soc. Servs. of City of New*  
4 *York*, 436 U.S. 658, 690–91 (1978). Ross has made no such allegations in his Complaint.  
5 He alleges only that the City of San Diego is liable based on its status as they “employer”  
6 of the officers. ECF No. 1 at 4. As such, he has failed to allege sufficient facts to state a  
7 claim against the City. *See Iqbal*, 556 U.S. at 678.

8 For the above reasons, the Court DISMISSES the Complaint in its entirety without  
9 prejudice for failure to state a claim. *See* 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b); *Iqbal*, 556  
10 U.S. at 678.

#### 11 **D. Leave to Amend**

12 In light of Plaintiff’s pro se status the Court **GRANTS** him leave to amend. *See*  
13 *Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir. 2015) (“A district court should not  
14 dismiss a pro se complaint without leave to amend [pursuant to 28 U.S.C.  
15 § 1915(e)(2)(B)(ii)] unless ‘it is absolutely clear that the deficiencies of the complaint  
16 could not be cured by amendment.’”) (quoting *Akhtar v Mesa*, 698 F.3d 1202, 1212 (9th  
17 Cir. 2012)).

### 18 **IV. CONCLUSION AND ORDER**

19 For the reasons set forth above, the Court hereby:

20 1. **GRANTS** Plaintiff’s Motion to proceed IFP pursuant to 28 U.S.C. § 1915(a)  
21 (ECF No. 2).

22 2. **ORDERS** the Secretary of the CDCR, or his designee, to collect from  
23 Plaintiff’s trust account the \$15.68 initial filing fee assessed, *if those funds are available*  
24 *at the time this Order is executed*, and forward whatever balance remains of the full \$350  
25 owed in monthly payments in an amount equal to twenty percent (20%) of the preceding  
26 month’s income to the Clerk of the Court each time the amount in the account exceeds \$10  
27 pursuant to 28 U.S.C. § 1915(b)(2).

28 3. **DIRECTS** the Clerk of the Court to serve a copy of this Order on Jeff


1 Macomber, Secretary, CDCR, P.O. Box 942883, Sacramento, California, 94283-0001, via  
2 U.S. Mail, or by forwarding an electronic copy to [trusthelpdesk@cdcr.ca.gov](mailto:trusthelpdesk@cdcr.ca.gov).

3 4. **DISMISSES** the Complaint without prejudice and with leave to amend for  
4 failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b).

5 5. **GRANTS** Plaintiff forty-five (45) days leave from the date of this Order in  
6 which to file a First Amended Complaint which cures the deficiencies of pleading noted in  
7 this Order. Specifically, Plaintiff's Amended Complaint must be complete by itself without  
8 reference to any previous version of his pleading; Defendants not named and any claims  
9 not re-alleged in the Amended Complaint will be considered waived. *See* S.D. Cal. CivLR  
10 15.1; *Hal Lacey v. Maricopa County*, 693 F.3d 896, 928 (9th Cir. 2012) (noting that claims  
11 dismissed with leave to amend which are not re-alleged in an amended pleading may be  
12 "considered waived if not repled"); *Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896  
13 F.2d 1542, 1546 (9th Cir. 1989). If Plaintiff fails to timely amend, the Court will enter a  
14 final Order dismissing this civil action. *See Lira v. Herrera*, 427 F.3d 1164, 1169 (9th Cir.  
15 2005) ("If a plaintiff does not take advantage of the opportunity to fix his complaint, a  
16 district court may convert the dismissal of the complaint into dismissal of the entire  
17 action.")

18 **IT IS SO ORDERED.**

19 Dated: September 26, 2024

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22 Hon. Cathy Ann Bencivengo  
23 United States District Judge  
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