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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 MICHAEL THOMAS LEKEITH
12 BRAGGS, BOOKING #24723149,

13 Plaintiff,

14 vs.

15 SAN DIEGO SHERIFF'S
16 DEPARTMENT,

17 Defendant.
18
19

Case No.: 3:24-cv-1772-RBM-VET

ORDER

**(1) GRANTING MOTION TO
PROCEED IN FORMA PAUPERIS**

**(2) DISMISSING COMPLAINT FOR
FAILURE TO STATE A CLAIM
PURSUANT TO 28 U.S.C.
§§ 1915(e)(2)(B) & 1915A(b)**

20 On October 3, 2024, Plaintiff Michael Thomas LeKeith Braggs (“Plaintiff”), an
21 inmate at the George Bailey Detention Facility in Santee, California, proceeding pro se,
22 filed a civil rights Complaint pursuant to 42 U.S.C. § 1983 alleging violations of his First,
23 Fourth, Eighth, and Fourteenth Amendment rights. (Doc. 1 at 1, 3.) Plaintiff claims that
24 he was subjected to the excessive use of force while being booked into the San Diego
25 Central Jail. (*Id.* at 2–5.) Plaintiff has also filed a Motion to Proceed in Forma Pauperis
26 (“IFP Motion”). (Doc. 2.)

27 **I. IFP MOTION**

28 All parties instituting any civil action, suit, or proceeding in a district court of the

1 United States, except an application for writ of habeas corpus, must pay a filing fee of
2 \$405, consisting of a \$350 statutory fee plus an additional administrative fee of \$55,
3 although the administrative fee does not apply to persons granted leave to proceed IFP.
4 *See* 28 U.S.C. § 1914(a); Judicial Conference Schedule of Fees, District Court Misc. Fee
5 Schedule, § 14 (eff. Dec. 1, 2023). The action may proceed despite a plaintiff’s failure to
6 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.
7 § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007) (“Plaintiffs
8 normally must pay \$350 to file a civil complaint in federal district court, 28 U.S.C. §
9 1914(a), but 28 U.S.C. § 1915(a)(1) allows the district court to waive the fee, for most
10 individuals unable to afford it, by granting IFP status.”).

11 A prisoner seeking leave to proceed IFP must submit a “certified copy of the trust
12 fund account statement (or institutional equivalent) for ... the 6-month period immediately
13 preceding the filing of the complaint[.]” 28 U.S.C. § 1915(a)(2); *see also Andrews v. King*,
14 398 F.3d 1113, 1119 (9th Cir. 2005) (“[P]risoners must demonstrate that they are not able
15 to pay the filing fee with an affidavit and submission of their prison trust account
16 records[.]”). From the certified trust account statement, the Court assesses an initial
17 payment of 20% of (a) the average monthly deposits in the account for the past six months,
18 or (b) the average monthly balance in the account for the past six months, whichever is
19 greater, unless the prisoner has insufficient assets. *See* 28 U.S.C. § 1915(b)(1), (4); *Bruce*
20 *v. Samuels*, 577 U.S. 82, 84 (2016). Prisoners who proceed IFP must pay any remaining
21 balance in “increments” or “installments,” regardless of whether their action is ultimately
22 dismissed. *See* 28 U.S.C. § 1915(b)(1), (2); *Bruce*, 577 U.S. at 84.

23 In support of his IFP motion, Plaintiff has submitted copies of his Prison Certificate,
24 Trust Account Withdrawal Authorization, and Account Activity. (Doc. 2 at 4–6.) The
25 documents show that Plaintiff has an average monthly balance of \$251.25, average
26 monthly deposits of \$251.25, and an available balance of \$25.93. (*Id.* at 4, 6.)

27 Based on this documentation, the Court **GRANTS** Plaintiff’s IFP Motion and
28 assesses an initial partial filing fee of \$50.25. *See Taylor v. Delatoore*, 281 F.3d 844, 850

1 (9th Cir. 2002) (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve” preventing
2 dismissal of a prisoner’s IFP case based solely on a “failure to pay ... due to the lack of
3 funds available to him when payment is ordered.”). However, this initial fee only need be
4 collected if sufficient funds are available in Plaintiff’s account at the time of this Order.
5 *See* 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event shall a prisoner be prohibited
6 from bringing a civil action or appealing a civil action or criminal judgment for the reason
7 that the prisoner has no assets and no means by which to pay the initial partial filing fee.”).
8 Pursuant to 28 U.S.C. § 1915(b)(2), the agency having custody of Plaintiff must forward
9 payments to the Clerk of the Court until the \$350 statutory fee is paid in full.

10 **II. SCREENING PURSUANT TO 28 U.S.C. §§ 1915(E)(2) & 1915A(B)**

11 Because Plaintiff is a prisoner proceeding IFP, his Complaint requires pre-answer
12 screening pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b). *See Rhodes v. Robinson*,
13 621 F.3d 1002, 1004 (9th Cir. 2010) (citing 28 U.S.C. § 1915A(a)). The Court must
14 dismiss *sua sponte* a prisoner’s IFP complaint, or any portion of it, that is frivolous,
15 malicious, fails to state a claim on which relief may be granted, or seeks monetary relief
16 from defendants who are immune. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir.
17 2000) (en banc) (citing 28 U.S.C. § 1915(e)(2)).

18 “The standard for determining whether a plaintiff has failed to state a claim upon
19 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of
20 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668 F.3d
21 1108, 1112 (9th Cir. 2012); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir.
22 2012) (noting that § 1915A screening “incorporates the familiar standard applied in the
23 context of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).”) Rule
24 12(b)(6) requires a complaint to “contain sufficient factual matter, accepted as true, to ‘state
25 a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
26 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “Determining
27 whether a complaint states a plausible claim for relief [is] a context-specific task that
28 requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at

1 679.

2 Here, Plaintiff bring a claim for excessive force pursuant to 42 U.S.C. § 1983. (Doc.
3 1 at 1–2.) Title 42 U.S.C. § 1983 “creates a private right of action against **individuals**
4 who, acting under color of state law, violate federal constitutional or statutory rights.”
5 *Devereaux v. Abbey*, 263 F.3d 1070, 1074 (9th Cir. 2001) (emphasis added). “To establish
6 § 1983 liability, a plaintiff must show both (1) deprivation of a right secured by the
7 Constitution and laws of the United States, and (2) that the deprivation was committed by
8 a **person** acting under color of state law.” *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128,
9 1138 (9th Cir. 2012) (emphasis added).

10 Here, the only named defendant in Plaintiff’s Complaint is the San Diego Sheriff’s
11 Department. (Doc. 1 at 2.) Plaintiff cannot state a § 1983 claim against the San Diego
12 Sheriff’s Department because it is not a “person” within the meaning of § 1983. *See*
13 *Johnson v. County of San Diego*, 18cv1846-LAB (RBB), 2018 WL 5630503, at *3 (S.D.
14 Cal. 2018) (“Local law enforcement departments, like the San Diego Sheriff’s Department,
15 municipal agencies, or subdivisions of that department or agency, are not proper defendants
16 under § 1983.”).¹

17 Accordingly, the Court finds that Plaintiff’s Complaint fails to state a plausible claim
18 against the only named defendant and is subject to *sua sponte* dismissal pursuant to 28
19 U.S.C. § 1915(e)(2)(B)(ii) and § 1915A(b)(1). *See Lopez*, 203 F.3d at 1126–27; *Rhodes*,
20 621 F.3d at 1004. Because Plaintiff is proceeding pro se, the Court will grant him an
21 opportunity to amend his Complaint. *See Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir.
22 2015) (“A district court should not dismiss a pro se complaint without leave to amend
23 [pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii)] unless it is absolutely clear that the deficiencies
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26 ¹ “[A]s a municipality, the County [of San Diego could] be held liable under § 1983—but
27 only where the Plaintiff alleges facts to show that a constitutional deprivation was caused
28 by the implementation or execution of ‘a policy statement, ordinance, regulation, or
decision officially adopted and promulgated’ by the County, or a ‘final decision maker’ for
the County.” *Johnson*, 2018 WL 5630503, at *2. No such allegations exist here.

1 of the complaint could not be cured by amendment.”) (internal quotation marks omitted).
2 If Plaintiff fails to file an Amended Complaint within the time provided, the Court will
3 enter a final order dismissing this civil action based on Plaintiff’s failure to state a claim
4 upon which relief can be granted pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and
5 1915A(b)(1), as well as Plaintiff’s failure to prosecute this action in compliance with this
6 Order. *See Lira v. Herrera*, 427 F.3d 1164, 1169 (9th Cir. 2005) (“If a plaintiff does not
7 take advantage of the opportunity to fix his complaint, a district court may convert the
8 dismissal of the complaint into dismissal of the entire action.”)

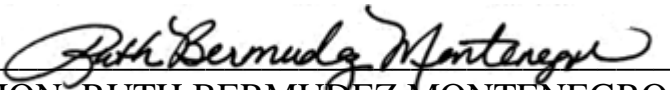
9 **III. CONCLUSION**

10 Based on the foregoing, the Court:

- 11 1. **GRANTS** Plaintiff’s IFP Motion (Doc. 2);
- 12 2. **DIRECTS** the Watch Commander at the George Bailey Detention Facility,
13 or their designee, to collect from Plaintiff’s trust account an initial filing fee of \$50.25, if
14 those funds are available at the time of this Order, and forward whatever balance remains
15 of the \$350 owed in monthly payments in an amount equal to twenty 20% of the preceding
16 month’s income to the Clerk of the Court each time the amount in the account exceeds \$10
17 pursuant to 28 U.S.C. § 1915(b)(2);
- 18 3. **DISMISSES** Plaintiff’s Complaint for failure to state a claim upon which
19 relief may be granted pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b)(1); and
- 20 4. **GRANTS** Plaintiff forty-five (45) days from the date of this Order to file an
21 Amended Complaint that cures all of the deficiencies identified above.

22 **IT IS SO ORDERED.**

23 DATE: October 28, 2024

24 
25 HON. RUTH BERMUDEZ MONTENEGRO
26 UNITED STATES DISTRICT JUDGE
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