

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Taylor v. California Department of Corrections

Taylor · No. 23-cv-206-MMA (JLB) · Decided March 16, 2023

OPINION

Taylor v. California Department of Corrections

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 MATTHEW SCOTT TAYLOR, Case No.: 23-cv-206-MMA (JLB)

CDCR #BC-7959,

12

ORDER: (1) GRANTING MOTION

Plaintiff,

13 TO PROCEED IN FORMA

vs. PAUPERIS; (2) DISMISSING

14

DEFENDANT CDCR PURSUANT TO

15 28 U.S.C. §§ 1915(e)(2)(B) & 1915A(b);

CALIFORNIA DEP'T OF AND (3) DIRECTING USMS TO

16

CORRECTIONS; TORRES; JANE DOE EFFECT SERVICE OF COMPLAINT

17 NO. 1; JOHN DOE NO. 2; DOES 1-5,

18 Defendants. [Doc. No. 2] 19 20 21 Plaintiff Matthew Scott Taylor (“Plaintiff” or “Taylor”),
proceeding pro se, is 22 currently incarcerated at Corcoran State Prison located in Corcoran,
California, and has 23 filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. See Doc. No. 1
 (“Compl.”). 24 Taylor alleges Defendants violated his Eighth Amendment rights by failing to
properly 25 protect him when he was attacked by a fellow inmate. See *id.* at 5–6. Taylor did not
26 prepay the civil filing fee required by 28 U.S.C. § 1914(a) at the time of filing, but 27 instead
has filed a Motion to Proceed In Forma Pauperis (“IFP”) pursuant to 28 U.S.C. 28 § 1915(a). See
Doc. No. 2.

1 I. IFP MOTION

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. See 28

U.S.C. § 1914(a).¹ The action may proceed despite a plaintiff's failure to prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). The fee is not waived for prisoners, however. If granted leave to proceed IFP, prisoners remain obligated to pay the entire fee in "increments" or "installments," *Bruce v. Samuels*, 577 U.S. 82, 84 (2016); *Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), and regardless of whether their actions are dismissed for other reasons. See 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002). To qualify, Section 1915(a)(2) requires prisoners seeking leave to proceed IFP to submit a "certified copy of the trust fund account statement (or institutional equivalent) for . . . the 6-month period immediately preceding the filing of the complaint." 28 U.S.C. § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified trust account statement, the Court assesses an initial payment of 20% of (a) the average monthly deposits in the account for the past six months, or (b) the average monthly balance in the account for the past six months, whichever is greater, unless the prisoner has no assets. See 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having custody of the prisoner then collects subsequent payments, assessed at 20% of the preceding month's income, in any month in which his account exceeds \$10, and forwards those payments to the Court until the entire filing fee is paid. See 28 U.S.C. § 1915(b)(2); *Bruce*, 577 U.S. at 84. In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$52.

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. In support of his IFP Motion, Taylor submitted a Prison Certificate. See Doc.

No. 2 at 3; see also 28 U.S.C. § 1915(a)(2); S.D. Cal. CivLR 3.2; *Andrews*, 398 F.3d at

1119. This financial record shows Taylor had an average monthly balance of \$441.22, over the past six months, average monthly deposits of \$176.66 over the past six months, and an available balance of \$253.23 to his credit at the time of filing. See Doc. No. 2 at 6. Therefore, the Court GRANTS Taylor's Motion to Proceed IFP (Doc. No. 2) and assesses an initial partial filing fee of \$88.24. In addition, the Court DIRECTS the Secretary of the California Department of Corrections and Rehabilitation ("CDCR"), or their designee, to collect the entire \$350 balance of the filing fee required by 28 U.S.C. § 1914 and to forward all payments to the Clerk of the Court pursuant to the installment provisions set forth in 28 U.S.C. § 1915(b)(2).

II. SCREENING PURSUANT TO 28 U.S.C. §§ 1915(e)(2)(B) AND 1915A(b)

A. Standard of Review Because Taylor is a prisoner and is proceeding IFP, his Complaint requires a pre-answer screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b). Under these statutes, the Court must sua sponte dismiss a prisoner's IFP complaint, or any portion of it, which is frivolous, malicious, fails to state a claim, or seeks damages from defendants

who are immune. See *Williams v. King*, 875 F.3d 500, 502 (9th Cir. 2017) (discussing 28 U.S.C. § 1915(e)(2)) (citing *Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing 28 U.S.C. 22 § 1915A(b)). “The purpose of [screening] is ‘to ensure that the targets of frivolous or malicious suits need not bear the expense of responding.’” *Nordstrom v. Ryan*, 762 F.3d 24 903, 920 n.1 (9th Cir. 2014) (citation omitted). 25 “The standard for determining whether a plaintiff has failed to state a claim upon 26 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of 27 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668 28 F.3d 1108, 1112 (9th Cir. 2012); see also *Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th

1 Cir. 2012) (noting that screening pursuant to § 1915A “incorporates the familiar standard 2 applied in the context of failure to state a claim under Federal Rule of Civil Procedure 3 12(b) (6)”). 4 Federal Rules of Civil Procedure 8(a) and 12(b)(6) require a complaint to “contain 5 sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its 6 face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted); 7 *Wilhelm*, 680 F.3d at 1121. Detailed factual allegations are not required, but 8 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory 9 statements, do not suffice.” *Iqbal*, 556 U.S. at 678. And while the court “ha[s] an 10 obligation where the petitioner is pro se, particularly in a civil rights case, to construe the 11 pleadings liberally and to afford the petitioner the benefit of any doubt,” *Hebbe v. Pliler*, 12 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 13 (9th Cir. 1985)), it may not “supply essential elements of claims that were not initially 14 pled.” *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). 15 B. Plaintiff’s Allegations 16 On October 5, 2021, a new inmate was moved into Plaintiff’s cell. See Compl. at 17 5. Plaintiff’s new cellmate purportedly was moved into his cell because he had made 18 “threats of violence to his cellmates in his previous housing unit.” *Id.* Two days later, 19 Plaintiff approached Defendant Doe 1, the “assigned counselor during ‘open-line’ 20 visiting hours” to “alert her of the threats” his new cellmate was making to him and other 21 inmates. *Id.* However, Plaintiff claims she was dismissive of his concerns and made a 22 “shooing gesture with her hands.” *Id.* The following day, Plaintiff alleges that his 23 cellmate “made good on his threats” and stabbed Plaintiff multiple times with a 24 “manufactured weapon.” *Id.* at 6. Plaintiff “blacked out and awoke in the shower with 25 multiple stab wounds” and was bleeding. *Id.* Plaintiff alleges that Defendant Torres 26 stated to another inmate that he “knew [Plaintiff’s cellmate] was a problem.” *Id.* 27 Plaintiff seeks \$2,200,000 in compensatory and punitive damages. See *id.* at 13. 28 // 1 C. Discussion 2 Taylor contends the actions of the defendants violated his Eighth Amendment 3 rights. “The Eighth Amendment requires prison officials to protect inmates from 4 violence.” *Wilk v. Neven*, 956 F.3d 1143, 1147 (9th Cir. 2020) (citing *Farmer v. 5 Brennan*, 511 U.S. 825, 833 (1994)). In order to state a plausible Eighth Amendment 6 claim for relief, however, a Plaintiff must allege facts sufficient to show that

Defendants 7 acted with “deliberate indifference.” *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 8 1068 (9th Cir. 2016); *Iqbal*, 556 U.S. at 678. “A prison official acts with ‘deliberate 9 indifference . . . only if the [prison official] knows of and disregards an excessive risk to 10 inmate health and safety.’” *Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004) 11 (quoting *Gibson v. Cnty. of Washoe*, 290 F.3d 1175, 1187 (9th Cir. 2002)), overruled on 12 other grounds by *Castro*, 833 F.3d at 1076. “Under this standard, the prison official must 13 not only ‘be aware of facts from which the inference could be drawn that a substantial 14 risk of serious harm exists,’ but that person ‘must also draw the inference.’” *Id.* (quoting 15 *Farmer*, 511 U.S. at 837).

16 1. CDCR

17 As an initial matter, Plaintiff’s claims against the California Department of 18 Corrections (“CDCR”) must be dismissed. The CDCR is not a “person” subject to suit 19 under Section 1983 and it is entitled to immunity from suit for monetary damages under 20 the Eleventh Amendment. See *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 53–54 21 (1996); *Groten v. California*, 251 F.3d 844, 851 (9th Cir. 2001) (citing *Hale v. Arizona*, 22 993 F.2d 1387, 1398–99 (9th Cir. 1993)); see also *Dragasits v. California*, No. 3:16-cv- 23 01998-BEN-JLB, 2016 WL 680947, at *3 (S.D. Cal. Nov. 15, 2016) (“The State of 24 California’s Department of Corrections and Rehabilitation and any state prison, 25 correctional agency, sub-division, or department under its jurisdiction, are not ‘persons’ 26 subject to suit under § 1983.” (citing *Groten*, 251 F.3d at 851)). 27 Accordingly, Plaintiff’s claims against this Defendant are dismissed sua sponte for 28 failure to state a plausible claim and for seeking monetary relief against an immune 1 defendant. See 28 U.S.C. § 1915(e)(2) (B); 28 U.S.C. § 1915A(b). 2 2. Eighth Amendment Failure to Protect Claim 3 The Court finds that Plaintiff’s allegations are sufficient to plausibly allege an 4 Eighth Amendment failure to protect claim against the remaining Defendants because 5 they show Defendants were “‘aware of facts from which the inference could be drawn 6 that a substantial risk of serious harm exist[ed],’” and that Defendants actually drew that 7 inference. *Toguchi*, 391 F.3d at 1057 (quoting *Farmer*, 511 U.S. at 837); *Iqbal*, 556 U.S. 8 at 678. The Court will permit these claims to survive the sua sponte screening process. 9 However, Plaintiff is cautioned that the sua sponte screening process is “cumulative of, 10 not a substitute for, any subsequent [motion to dismiss] that the defendant[s] may choose 11 to bring.” *Teahan v. Wilhelm*, 481 F.Supp.2d 1115, 1119 (S.D. Cal. 2007). 12 Because cognizable Eighth Amendment failure to protect claims against 13 Defendants remain and are “sufficient to meet the low threshold for proceeding past the 14 screening stage,” see *Wilhelm v. Rotman*, 680 F.3d 1113, 1123 (9th Cir. 2012), the Court 15 will order the U.S. Marshal to effect service of summons and Plaintiff’s Complaint upon 16 those Defendants pursuant to 28 U.S.C. § 1915(d) and Fed. R. Civ. P. 4(c)(3).

17 III. CONCLUSION AND ORDER

18 For the reasons explained, the Court: 19 1. GRANTS Plaintiff’s Motion to Proceed In Forma Pauperis (Doc. No. 2); 20 2. ORDERS the Secretary of the CDCR, or their designee, to collect from 21 Plaintiff’s prison trust account the \$350 filing fee owed in this case by collecting monthly

22 payments from the account in an amount equal to twenty percent (20%) of the preceding 23 month's income and forward payments to the Clerk of the Court each time the amount in 24 the account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2). ALL PAYMENTS

25 MUST BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER ASSIGNED TO

26 HIS ACTION; 27 3. DIRECTS the Clerk of the Court to serve a copy of this Order on Jeff 28 Macomber, Secretary, CDCR, P.O. Box 942883, Sacramento, California, 94283-0001, by 1 U.S. Mail, or by forwarding an electronic copy to trusthelpdesk@cdcr.ca.gov; 2 4. DISMISSES Plaintiff's claims against Defendant CDCR for failure to state 3 a claim upon which relief may be granted and for seeking monetary damages against 4 immune defendants pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b). The Clerk of 5 Court is directed to terminate this Defendant from the Court's docket. 6 5. DIRECTS the Clerk to issue a summons as to Plaintiff's Complaint (Doc. 7 No. 1) upon the remaining Defendants² and forward it to Plaintiff along with a blank U.S.

8 Marshal Form 285 for each of these Defendants. In addition, the Clerk will provide 9 Plaintiff with certified copies of this Order, certified copies of his Complaint (Doc.

10 No. 1), and the summons so that he may serve the Defendants. Upon receipt of this "IFP

11 Package," Plaintiff must complete the USM Form 285s as completely and accurately as 12 possible, include an address where each Defendant may be found and/or subject to 13 service pursuant to S.D. Cal. CivLR 4.1c., and return them to the United States Marshal 14 according to the instructions the Clerk provides in the letter accompanying his IFP 15 package; 16 6. ORDERS the U.S. Marshal to serve a copy of the Complaint and summons 17 upon Defendants upon receipt and as directed by Plaintiff on the completed USM Form 18 19 20 2 However, Plaintiff must identify the Doe Defendants, see *Farmer*, 511 U.S. at 833, 837, and substitute 21 their true names in an amended pleading before the United States Marshal will be able to execute service upon them. See *Aviles v. Village of Bedford Park*, 160 F.R.D. 565, 567 (1995) (Doe defendants must be 22 identified and served within [90] days of the commencement of the action against them); Fed. R. Civ. P. 15(c)(1)(C) & 4(m). Generally, Doe pleading is disfavored, *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th

23 Cir. 1980), and in most instances it is impossible for the United States Marshal to serve a party identified

only as a Doe. See *Walker v. Sumner*, 14 F.3d 1415, 1422 (9th Cir. 1994) (in order to properly effect 24 service under Rule 4 in an IFP case, the plaintiff is required to "furnish the information necessary to 25 identify the defendant"); *Finefeuiaki v. Maui Cmty. Corr. Ctr. Staff & Affiliates*, 2018 WL 3580764, at

*6 (D. Haw. July 25, 2018) (noting that "[a]s a practical matter, the United States Marshal cannot serve

26 a summons and complaint on an anonymous defendant"). However, where the identity of an alleged party is not known prior to filing of an action, Ninth Circuit authority permits Plaintiff the opportunity to 27 pursue appropriate discovery to identify the unknown Doe, unless it is clear that

discovery would not uncover their identity, or his pleading requires dismissal for other reasons. See *Wakefield v. Thompson*, 28 1 |}285s, and to promptly file proof of service, or proof of any attempt at service unable to be 2 executed, with the Clerk of Court. See S.D. Cal. CivLR 5.2. All costs of that service will 3 || be advanced by the United States. See 28 U.S.C. § 1915(d); Fed. R. Civ. P. 4(c)(3); 4 7. ORDERS Defendants, once they have been served, to reply to Plaintiff's 5 ||Complaint within the time provided by the applicable provisions of Federal Rule of Civil 6 || Procedure 12(a). See 42 U.S.C. § 1997e(g)(2) (while a defendant may occasionally be 7 || permitted to “waive the right to reply to any action brought by a prisoner confined in any 8 prison, or other correctional facility under section 1983,” once the Court has 9 || conducted its sua sponte screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b), 10 thus, has made a preliminary determination based on the face on the pleading alone 11 Plaintiff has a “reasonable opportunity to prevail on the merits,” defendant is 12 || required to respond); 13 8. ORDERS Plaintiff, after service has been effected by the U.S. Marshal, to 14 serve upon Defendants, or if appearance has been entered by counsel, upon Defendants’ 15 counsel, a copy of every further pleading, motion, or other document submitted for the 16 || Court’s consideration pursuant to Fed. R. Civ. P. 5(b). Plaintiff must include with every 17 || original document he seeks to file with the Clerk of the Court, a certificate stating the 18 manner in which a true and correct copy of that document has been served on Defendants 19 || or their counsel, and the date of that service. See S.D. Cal. CivLR 5.2. Any document 20 || received by the Court which has not been properly filed with the Clerk or which fails to 21 include a Certificate of Service upon the Defendants, or their counsel, may be 22 || disregarded. 23 IT IS SO ORDERED. 24 || Dated: March 16, 2023 25 BWMaihul lu = hill 26 HON. MICHAEL M. ANELLO 07 United States District Judge 28 8 oe