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

SAMUEL KENNETH PORTER,  
CDCR #J-87467,

Plaintiff,

vs.

L.W. McEWEN;

Defendant.

Civil No. 11cv2021 LAB (BLM)

**ORDER:**

**(1) GRANTING PLAINTIFF’S  
MOTION TO PROCEED *IN FORMA  
PAUPERIS*, IMPOSING NO  
INITIAL PARTIAL FILING FEE,  
GARNISHING \$350.00 BALANCE  
FROM PRISONER’S TRUST  
ACCOUNT [ECF No.2]; and**

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

Samuel Kenneth Porter, (“Plaintiff”), is a state prisoner currently incarcerated at Calipatria State Prison located in Calipatria, California, and proceeding pro se, has submitted an action filed pursuant to 42 U.S.C. § 1983. Additionally, Plaintiff has filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) [ECF No.2].

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1 I.

2 MOTION TO PROCEED IFP [ECF No.2]

3 All parties instituting any civil action, suit or proceeding in a district court of the United  
4 States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28  
5 U.S.C. § 1914(a). An action may proceed despite a plaintiff’s failure to prepay the entire fee  
6 only if the plaintiff is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See*  
7 *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, prisoners granted leave to  
8 proceed IFP remain obligated to pay the entire fee in installments, regardless of whether their  
9 action is ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d  
10 844, 847 (9th Cir. 2002).

11 Under 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act (“PLRA”), a  
12 prisoner seeking leave to proceed IFP must submit a “certified copy of the trust fund account  
13 statement (or institutional equivalent) for the prisoner for the six-month period immediately  
14 preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113,  
15 1119 (9th Cir. 2005). From the certified trust account statement, the Court must assess an initial  
16 payment of 20% of (a) the average monthly deposits in the account for the past six months, or  
17 (b) the average monthly balance in the account for the past six months, whichever is greater,  
18 unless the prisoner has no assets. *See* 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The  
19 institution having custody of the prisoner must collect subsequent payments, assessed at 20%  
20 of the preceding month’s income, in any month in which the prisoner’s account exceeds \$10, and  
21 forward those payments to the Court until the entire filing fee is paid. *See* 28 U.S.C.  
22 § 1915(b)(2).

23 The Court finds that Plaintiff has no available funds from which to pay filing fees at this  
24 time. *See* 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event shall a prisoner be prohibited  
25 from bringing a civil action or appealing a civil action or criminal judgment for the reason that  
26 the prisoner has no assets and no means by which to pay the initial partial filing fee.”); *Taylor*,  
27 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve” preventing  
28 dismissal of a prisoner’s IFP case based solely on a “failure to pay ... due to the lack of funds

1 available to him when payment is ordered.”). Therefore, the Court **GRANTS** Plaintiff’s Motion  
2 to Proceed IFP [ECF No.2] and assesses no initial partial filing fee per 28 U.S.C. § 1915(b)(1).  
3 However, the entire \$350 balance of the filing fees mandated shall be collected and forwarded  
4 to the Clerk of the Court pursuant to the installment payment provisions set forth in 28 U.S.C.  
5 § 1915(b)(1).

## 6 II.

### 7 INITIAL SCREENING PER 28 U.S.C. §§ 1915(e)(2)(b)(ii) and 1915A(b)(1)

8 Notwithstanding IFP status or the payment of any partial filing fees, the Court must  
9 subject each civil action commenced pursuant to 28 U.S.C. § 1915(a) to mandatory screening  
10 and order the sua sponte dismissal of any case it finds “frivolous, malicious, failing to state a  
11 claim upon which relief may be granted, or seeking monetary relief from a defendant immune  
12 from such relief.” 28 U.S.C. § 1915(e)(2)(B); *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir.  
13 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.”); *Lopez v.*  
14 *Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (noting that 28 U.S.C. § 1915(e) “not  
15 only permits but requires” the court to sua sponte dismiss an *in forma pauperis* complaint that  
16 fails to state a claim).

17 Before its amendment by the PLRA, former 28 U.S.C. § 1915(d) permitted sua sponte  
18 dismissal of only frivolous and malicious claims. *Lopez*, 203 F.3d at 1130. However, as  
19 amended, 28 U.S.C. § 1915(e)(2) mandates that the court reviewing an action filed pursuant to  
20 the IFP provisions of section 1915 make and rule on its own motion to dismiss before directing  
21 the U.S. Marshal to effect service pursuant to FED.R.CIV.P. 4(c)(3). *See Calhoun*, 254 F.3d at  
22 845; *Lopez*, 203 F.3d at 1127; *see also McGore v. Wrigglesworth*, 114 F.3d 601, 604-05 (6th Cir.  
23 1997) (stating that sua sponte screening pursuant to § 1915 should occur “before service of  
24 process is made on the opposing parties”).

25 “[W]hen determining whether a complaint states a claim, a court must accept as true all  
26 allegations of material fact and must construe those facts in the light most favorable to the  
27 plaintiff.” *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000); *Barren*, 152 F.3d at 1194  
28 (noting that § 1915(e)(2) “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”);

1 *Andrews*, 398 F.3d at 1121. In addition, the Court has a duty to liberally construe a pro se’s  
2 pleadings, *see Karim-Panahi v. Los Angeles Police Dep’t*, 839 F.2d 621, 623 (9th Cir. 1988),  
3 which is “particularly important in civil rights cases.” *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261  
4 (9th Cir. 1992). In giving liberal interpretation to a pro se civil rights complaint, however, the  
5 court may not “supply essential elements of claims that were not initially pled.” *Ivey v. Board*  
6 *of Regents of the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

7 Section 1983 imposes two essential proof requirements upon a claimant: (1) that a person  
8 acting under color of state law committed the conduct at issue, and (2) that the conduct deprived  
9 the claimant of some right, privilege, or immunity protected by the Constitution or laws of the  
10 United States. *See* 42 U.S.C. § 1983; *Nelson v. Campbell*, 541 U.S. 637, 124 S.Ct. 2117, 2122  
11 (2004); *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985) (en banc).

12 **A. Fourteenth Amendment Due Process Claims**

13 Plaintiff’s Complaint consist of allegations in which he appears to claim that prison  
14 officials have failed to adequately process his administrative grievances. The Fourteenth  
15 Amendment provides that: “[n]o state shall ... deprive any person of life, liberty, or property,  
16 without due process of law.” U.S. CONST. amend. XIV, § 1. “The requirements of procedural  
17 due process apply only to the deprivation of interests encompassed by the Fourteenth  
18 Amendment’s protection of liberty and property.” *Board of Regents v. Roth*, 408 U.S. 564, 569  
19 (1972). State statutes and prison regulations may grant prisoners liberty or property interests  
20 sufficient to invoke due process protection. *Meachum v. Fano*, 427 U.S. 215, 223-27 (1976).  
21 To state a procedural due process claim, Plaintiff must allege: “(1) a liberty or property interest  
22 protected by the Constitution; (2) a deprivation of the interest by the government; [and] (3) lack  
23 of process.” *Wright v. Riveland*, 219 F.3d 905, 913 (9th Cir. 2000).

24 However, the Ninth Circuit has held that prisoners have no protected *property* interest in  
25 an inmate grievance procedure arising directly from the Due Process Clause. *See Ramirez v.*  
26 *Galaza*, 334 F.3d 850, 869 (9th Cir. 2003) (“[I]nmates lack a separate constitutional entitlement  
27 to a specific prison grievance procedure”) (citing *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir.  
28 1988) (finding that the due process clause of the Fourteenth Amendment creates “no legitimate

1 claim of entitlement to a [prison] grievance procedure”)); *accord Adams v. Rice*, 40 F.3d 72, 75  
2 (4th Cir. 1994) (1995); *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993).

3 In addition, Plaintiff has failed to plead facts sufficient to show that prison official  
4 deprived him of a protected *liberty* interest by allegedly failing to respond to his prison  
5 grievances in a satisfactory manner. While a liberty interest can arise from state law or prison  
6 regulations, *Meachum*, 427 U.S. at 223-27, due process protections are implicated only if  
7 Plaintiff alleges facts to show that Defendants: (1) restrained his freedom in a manner not  
8 expected from his sentence, and (2) “impose[d] atypical and significant hardship on [him] in  
9 relation to the ordinary incidents of prison life.” *Sandin v. Conner*, 515 U.S. 472, 484 (1995);  
10 *Neal v. Shimoda*, 131 F.3d 818, 827-28 (9th Cir. 1997). Plaintiff pleads nothing to suggest how  
11 the allegedly inadequate review and consideration of his inmate grievances resulted in an  
12 “atypical” and “significant hardship.” *Sandin*, 515 U.S. at 483-84.

13 Thus, to the extent Plaintiff challenges the procedural adequacy of inmate grievance  
14 procedures, his Complaint fails to state a due process claim. Consequently, the Court finds that  
15 Plaintiff’s Complaint must be dismissed sua sponte for failing to state a claim upon which relief  
16 can be granted pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b).

### 17 III.

#### 18 CONCLUSION AND ORDER

19 Good cause appearing, **IT IS HEREBY ORDERED** that:

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

22 2. The Secretary of California Department of Corrections and Rehabilitation, or his  
23 designee, shall collect from Plaintiff’s prison trust account the \$350 balance of the filing fee  
24 owed in this case by collecting monthly payments from the account in an amount equal to twenty  
25 percent (20%) of the preceding month’s income and forward payments to the Clerk of the Court  
26 each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2).

27 **ALL PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER**  
28 **ASSIGNED TO THIS ACTION.**

