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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JOSE INIGUEZ,  
CDCR #J-36853,  
  
Plaintiff,  
  
vs.  
  
PATRICIA NEWTON,  
  
Defendant.

Case No.: 3:16-cv-2601-LAB-PCL

**ORDER:**

**1) GRANTING MOTION TO  
PROCEED IN FORMA PAUPERIS  
[ECF No. 2]**

**AND**

**3) DIRECTING U.S. MARSHAL TO  
EFFECT SERVICE OF SUMMONS  
AND COMPLAINT PURSUANT  
TO 28 U.S.C. § 1915(d) AND  
Fed. R. Civ. P. 4(c)(3)**

JOSE INIGUEZ (“Plaintiff”), is proceeding pro se, is currently incarcerated at Calipatria State Prison (“CAL”) and has filed a civil rights Complaint pursuant to 42 U.S.C. § 1983 (ECF No. 1).

Plaintiff did not prepay the civil filing fee required by 28 U.S.C. § 1914(a) at the time of filing, but instead 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. 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 \$400.<sup>1</sup> 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*, \_\_\_ U.S. \_\_\_, 136 S. Ct. 627, 629 (2016); *Williams v. Paramo*, 775 F.3d  
10 1182, 1185 (9th Cir. 2015), and regardless of whether his action is ultimately dismissed.  
11 See 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir.  
12 2002).

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

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26 <sup>1</sup> In addition to the \$350 statutory fee, civil litigants must pay an additional administrative  
27 fee of \$50. See 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court  
28 Misc. Fee Schedule, § 14 (eff. June 1, 2016). The additional \$50 administrative fee does  
not apply to persons granted leave to proceed IFP. *Id.*

1 Bruce, 136 S. Ct. at 629.

2 In support of his IFP Motion, Plaintiff has submitted copies of his CDCR Inmate  
3 Statement Report and a prison certificate authorized by a CAL official attesting to his  
4 trust account activity. See ECF No. 2 at 4-7; 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR  
5 3.2; Andrews, 398 F.3d at 1119. These statements show Plaintiff has had no monthly  
6 deposits to his account, has carried no balance over the six month period preceding the  
7 filing of his Complaint, and that his current available balance is zero (ECF No. 2 at 4, 7).  
8 See 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event shall a prisoner be prohibited  
9 from bringing a civil action or appealing a civil action or criminal judgment for the  
10 reason that the prisoner has no assets and no means by which to pay the initial partial  
11 filing fee.”); Bruce, 136 S. Ct. at 630; Taylor, 281 F.3d at 850 (finding that 28 U.S.C.  
12 § 1915(b)(4) acts as a “safety-valve” preventing dismissal of a prisoner’s IFP case based  
13 solely on a “failure to pay . . . due to the lack of funds available to him when payment is  
14 ordered.”).

15 Therefore, the Court grants Plaintiff’s Motion to Proceed IFP, declines to “exact”  
16 any initial filing fee because his trust account statement shows he “has no means to pay  
17 it,” Bruce, 136 S. Ct. at 629, and directs the Secretary of the California Department of  
18 Corrections and Rehabilitation (“CDCR”) to collect the entire \$350 balance of the filing  
19 fees required by 28 U.S.C. § 1914 and forward them to the Clerk of the Court pursuant to  
20 the installment payment provisions set forth in 28 U.S.C. § 1915(b)(1). See *id.*

21 **II. Screening Pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)**

22 A. Standard of Review

23 Because Plaintiff is a prisoner and is proceeding IFP, his complaint requires a pre-  
24 answer screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b). Under these  
25 statutes, the Court must sua sponte dismiss a prisoner’s IFP complaint, or any portion of  
26 it, which is frivolous, malicious, fails to state a claim, or seeks damages from defendants  
27 who are immune. See *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)  
28 (discussing 28 U.S.C. § 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir.

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) (quoting Wheeler v. Wexford  
4 Health Sources, Inc., 689 F.3d 680, 681 (7th Cir. 2012)).

5 “The standard for determining whether a plaintiff has failed to state a claim upon  
6 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of  
7 Civil Procedure 12(b)(6) standard for failure to state a claim.” Watison v. Carter, 668  
8 F.3d 1108, 1112 (9th Cir. 2012); see also Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th  
9 Cir. 2012) (noting that screening pursuant to § 1915A “incorporates the familiar standard  
10 applied in the context of failure to state a claim under Federal Rule of Civil Procedure  
11 12(b)(6)”). Rule 12(b)(6) requires a complaint “contain sufficient factual matter, accepted  
12 as true, to state a claim to relief that is plausible on its face.” Ashcroft v. Iqbal, 556 U.S.  
13 662, 678 (2009) (internal quotation marks omitted); Wilhelm, 680 F.3d at 1121.

14 Detailed factual allegations are not required, but “[t]hreadbare recitals of the  
15 elements of a cause of action, supported by mere conclusory statements, do not suffice.”  
16 Iqbal, 556 U.S. at 678. “Determining whether a complaint states a plausible claim for  
17 relief [is] ... a context-specific task that requires the reviewing court to draw on its  
18 judicial experience and common sense.” Id. The “mere possibility of misconduct” or  
19 “unadorned, the defendant-unlawfully-harmed me accusation[s]” fall short of meeting  
20 this plausibility standard. Id.; see also Moss v. U.S. Secret Service, 572 F.3d 962, 969  
21 (9th Cir. 2009).

## 22 B. Plaintiff’s Allegations

23 Plaintiff claims Defendant Patricia Newton, his “primary care provider” at CAL,  
24 denied him adequate medical care and retaliated against him for filing administrative  
25 appeals related to his medical care. (ECF No. 1 at 2, 3.) Specifically, Plaintiff alleges to  
26 have undergone several orthopedic surgeries to remove “bony tumors” in both feet.  
27 Plaintiff claims the surgery to his right foot was successful, but the surgery to his left,  
28 which took place on May 28, 2015, was not and left him in severe pain and “deformed.”

1 (Id. at 3-4.) Plaintiff claims Newton told him to “man up” after the surgery, denied him  
2 adequate pain medication, as well as a disability vest, and later confiscated his crutches.  
3 (Id. at 4.) After Plaintiff appealed, he alleges to have again been interviewed by Newton  
4 who was “very angry.” Plaintiff claims Newton prescribed anti-depressants and  
5 orthopedic shoes; but she refused pain medication and a cane, in contravention to  
6 Plaintiff’s surgeon’s recommendations. (Id. at 3-5.)

7       Based on these allegations, the Court finds Plaintiff’s Complaint sufficient to  
8 survive the “low threshold” for proceeding past the sua sponte screening required by 28  
9 U.S.C. §§ 1915(e)(2) and 1915A(b). See *Wilhelm v. Rotman*, 680 F.3d 1113, 1123 (9th  
10 Cir. 2012; *Iqbal*, 556 U.S. at 678; *Estelle v. Gamble*, 429 U.S. 97, 105-06 (1976) (prison  
11 officials are liable if they act with deliberate indifference to a prisoner’s serious medical  
12 needs); *id.* at 104 (deliberate indifference “is manifested by prison [officials] intentionally  
13 denying or delaying access to medical care,” or “intentionally interfering with the  
14 treatment once prescribed” by a physician); *Rhodes v. Robinson*, 408 F.3d 559, 567-68  
15 (9th Cir. 2005) (First Amendment retaliation claim requires prisoner to allege: “(1) ... a  
16 state actor took some adverse action against [him] (2) because of (3) that prisoner’s  
17 protected conduct, and that such action (4) chilled the inmate’s exercise of his First  
18 Amendment rights, and (5) the action did not reasonably advance a legitimate  
19 correctional goal.”).

20       Therefore, the Court will order U.S. Marshal service on Plaintiff’s behalf. See 28  
21 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process, and perform  
22 all duties in [IFP] cases.”); FED. R. CIV. P. 4(c)(3) (“[T]he court may order that service be  
23 made by a United States marshal or deputy marshal . . . if the plaintiff is authorized to  
24 proceed in forma pauperis under 28 U.S.C. § 1915.”).

### 25 **III. Conclusion and Order**

26       For the reasons explained, the Court:

27       1.     **GRANTS** Plaintiff’s Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a)  
28 (ECF No. 2);

1           2.     **DIRECTS** the Secretary of the CDCR, or his designee, to collect from  
2 Plaintiff's prison trust account the \$350 filing fee owed in this case by garnishing  
3 monthly payments from his account in an amount equal to twenty percent (20%) of the  
4 preceding month's income and forwarding those payments to the Clerk of the Court each  
5 time the amount in the account exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2). ALL  
6 PAYMENTS MUST BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER  
7 ASSIGNED TO THIS ACTION;

8           3.     **DIRECTS** the Clerk of the Court to serve a copy of this Order on Scott  
9 Kernan, Secretary, CDCR, P.O. Box 942883, Sacramento, California, 94283-0001;

10          4.     **DIRECTS** the Clerk to issue a summons as to Plaintiff's Complaint (ECF  
11 No. 1) and forward it to Plaintiff along with a blank U.S. Marshal Form 285 for  
12 Defendant PATRICIA NEWTON. In addition, the Clerk will provide Plaintiff with a  
13 certified copy of this Order, a certified copy of his Complaint, and the summons so that  
14 he may serve Defendant NEWTON. Upon receipt of this "IFP Package," Plaintiff must  
15 complete the Form 285 as completely and accurately as possible, include an address  
16 where Defendant NEWTON may be found and/or subject to service, and return it to the  
17 United States Marshal according to the instructions the Clerk provides in the letter  
18 accompanying his IFP package;

19          5.     **ORDERS** the U.S. Marshal to serve a copy of the Complaint and summons  
20 upon Defendant NEWTON as directed by Plaintiff on the USM Form 285 provided to  
21 him. All costs of that service will be advanced by the United States. See 28 U.S.C.  
22 § 1915(d); FED. R. CIV. P. 4(c)(3);

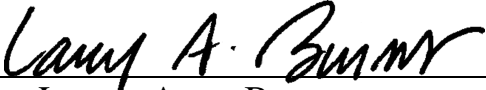
23          6.     **ORDERS** Defendant NEWTON to reply to Plaintiff's Complaint within the  
24 time provided by the applicable provisions of Federal Rule of Civil Procedure 12(a). See  
25 42 U.S.C. § 1997e(g)(2) (while a defendant may occasionally be permitted to "waive the  
26 right to reply to any action brought by a prisoner confined in any jail, prison, or other  
27 correctional facility under section 1983," once the Court has conducted its sua sponte  
28 screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b), and thus, has made a

1 preliminary determination based on the face on the pleading alone that Plaintiff has a  
2 “reasonable opportunity to prevail on the merits,” defendant is required to respond); and

3       7.     **ORDERS** Plaintiff, after service has been effected by the U.S. Marshal, to  
4 serve upon Defendant NEWTON, or, if appearance has been entered by counsel, upon  
5 Defendant’s counsel, a copy of every further pleading, motion, or other document  
6 submitted for the Court’s consideration pursuant to FED. R. CIV. P. 5(b). Plaintiff must  
7 include with every original document he seeks to file with the Clerk of the Court, a  
8 certificate stating the manner in which a true and correct copy of that document has been  
9 was served on Defendant or her counsel, and the date of that service. See S.D. CAL.  
10 CivLR 5.2. Any document received by the Court which has not been properly filed with  
11 the Clerk or which fails to include a Certificate of Service upon Defendant NEWTON, or  
12 her counsel, may be disregarded.

13           **IT IS SO ORDERED.**

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15 Dated: January 11, 2017

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18 HON. LARRY ALAN BURNS  
19 United States District Judge  
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