

1  
2  
3  
4  
5 UNITED STATES DISTRICT COURT  
6 SOUTHERN DISTRICT OF CALIFORNIA  
7

8 RAYON JONES,  
9 CDCR #G-35669,

10 Plaintiff,

11 vs.

12 RAYMON MADDEN, et al.,

13 Defendants.  
14  
15  
16  
17  
18  
19  
20

Case No.: 3:22-cv-1244-RSH-BLM

**ORDER:**

**(1) GRANTING MOTION TO  
PROCEED IN FORMA PAUPERIS  
[ECF No. 18]**

**(2) DIRECTING U.S. MARSHAL TO  
SERVE DEFENDANTS;**

**AND**

**(3) SETTING BRIEFING SCHEDULE  
REGARDING MOTION FOR  
TEMPORARY RESTRAINING  
ORDER [ECF No. 9]**

21 On August 4, 2022, Plaintiff, a prisoner currently incarcerated at Richard J. Donovan  
22 Correctional Facility (“RJD”) and proceeding *pro se*, filed a complaint pursuant to 42  
23 U.S.C. § 1983 and a motion for a temporary restraining order (“TRO”) in the U.S. District  
24 Court for the Northern District of California. ECF Nos. 5, 9. The case was subsequently  
25 transferred to this District Court on August 23, 2022. ECF No. 13. On September 19, 2022,  
26 Plaintiff filed a motion to proceed *in forma pauperis* (“IFP”) pursuant to 28 U.S.C. §  
27 1915(a). ECF No. 18.

28 For the following reasons, the Court GRANTS Plaintiff’s motion for IFP status and

1 directs the U.S. Marshal to serve Defendants. The Court also sets a briefing schedule  
2 regarding Plaintiff's TRO application.

3 **I. MOTION TO PROCEED IFP**

4 "Plaintiffs normally must pay \$350<sup>1</sup> to file a civil complaint in federal district court,  
5 28 U.S.C. § 1914(a), but 28 U.S.C. § 1915(a)(1) allows the district court to waive the fee,  
6 for most individuals unable to afford it, by granting IFP status." *Andrews v. Cervantes*, 493  
7 F.3d 1047, 1051 (9th Cir. 2007); *see* 28 U.S.C. § 1915(a)(1) (authorizing commencement  
8 of suit without prepayment of fees "by a person who submits an affidavit that includes a  
9 statement of all assets such prisoner possesses that the person is unable to pay such fees or  
10 give security therefor"). Plaintiff submitted an affidavit indicating he is incarcerated, is  
11 unemployed, and has no assets or recent income. ECF No. 18.

12 A prisoner who is granted IFP status, however, remains obligated to pay the entire  
13 fee in "installments," or "increments," *Bruce v. Samuels*, 577 U.S. 82, 84 (2016); *Williams*  
14 *v. Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), regardless of whether his action is  
15 ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844,  
16 847 (9th Cir. 2002).

17 Section 1915(a)(2) requires prisoners seeking leave to proceed IFP to "submit a  
18 certified copy of the trust fund account statement (or institutional equivalent) for . . . the 6-  
19 month period immediately preceding the filing of the complaint." 28 U.S.C. § 1915(a)(2).  
20 From the certified trust account statement, the Court assesses an initial payment of 20% of  
21 (a) the average monthly deposits in the account for the past six months, or (b) the average  
22 monthly balance in the account for the past six months, whichever is greater, unless the  
23 prisoner has no assets. *See* 28 U.S.C. §§ 1915(b)(1), (b)(4). The institution having custody  
24 of the prisoner then collects subsequent payments, assessed at 20% of the preceding  
25

---

26  
27 <sup>1</sup> In addition to the \$350 statutory fee, civil litigants ordinarily must pay an additional administrative fee  
28 of \$52. *See* 28 U.S.C. § 1914(b); J. Conference Sched. of Fees, D. Ct. Misc. Fee Sched., § 14 (eff. Dec. 1,  
2020). The additional administrative fee, however, does not apply to persons granted leave to proceed  
IFP. *Id.*

1 month's income, in any month in which his account exceeds \$10, and forwards those  
2 payments to the Court until the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2); *see*  
3 *also Bruce*, 577 U.S. at 83-84.

4 In support of his IFP application, Plaintiff filed a copy of his inmate trust account  
5 statement, as well as a prison certificate signed by an RJD accounting official. *See* ECF  
6 No. 19. Plaintiff's average monthly balance was \$979.60, and his average monthly deposits  
7 totaled \$578.42 for the six months immediately preceding the filing of the Complaint. *Id.*  
8 at 1.

9 The Court therefore GRANTS Plaintiff's Motion to Proceed IFP, ECF No. 18, and  
10 assesses an initial partial filing fee of \$195.92 pursuant to 28 U.S.C. § 1915(b)(1)(A). The  
11 Court directs the Secretary of the CDCR, or their designee, to collect this initial filing fee  
12 only if sufficient funds are available in Plaintiff's account at the time this Order is executed.  
13 *See* 28 U.S.C. § 1915(b)(4) ("In no event shall a prisoner be prohibited from bringing a  
14 civil action or appealing a civil action or criminal judgment for the reason that the prisoner  
15 has no assets and no means by which to pay the initial partial filing fee."); *Bruce*, 577 U.S.  
16 at 86; *Taylor*, 281 F.3d at 850 (noting that 28 U.S.C. § 1915(b)(4) acts as a "safety-valve"  
17 preventing dismissal of a prisoner's IFP case based solely on a "failure to pay [] due to the  
18 lack of funds available to him when payment is ordered."). The Court further directs the  
19 Secretary of the CDCR, or its designee, to collect the remaining balance of the filing fees  
20 required by 28 U.S.C. § 1914 and to forward it to the Clerk of the Court pursuant to the  
21 installment payment provisions set forth in 28 U.S.C. § 1915(b)(1).

## 22 **II. INITIAL SCREENING PER 28 U.S.C. §§ 1915(e)(2)(B) AND 1915A(b)**

23 "The court shall review, before docketing, if feasible or, in any event, as soon as  
24 practicable after docketing, a complaint in a civil action in which a prisoner seeks redress  
25 from a governmental entity or officer or employee of a governmental entity." 28 U.S.C. §  
26 1915A(b); *see also* 28 U.S.C. § 1915(e)(2). The Court must *sua sponte* dismiss complaints,  
27 or any portions thereof, which are frivolous, malicious, fail to state a claim, or which seek  
28 damages from defendants who are immune. *Id.*; *See Lopez v. Smith*, 203 F.3d 1122, 1126-

1 27 (9th Cir. 2000) (en banc). Upon review, the Court finds that the Complaint survives the  
2 initial screening phase, without prejudice to any motion to dismiss that may be filed in the  
3 future by Defendants.

#### 4 **IV. CONCLUSION**

5 For the foregoing reasons, the Court:

6 1. **GRANTS** Plaintiff's Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a),  
7 ECF No. 18.

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

15 3. **DIRECTS** the Clerk of the Court to serve a copy of this Order on Kathleen  
16 Allison, Secretary, CDCR, P.O. Box 942883, Sacramento, California, 94283-0001.

17 4. **DIRECTS** the Clerk to issue a summons for Plaintiff's Complaint [ECF No.  
18 5] and forward it to Plaintiff along with an "IFP Package" containing: a certified copy of  
19 Plaintiff's Complaint; a blank U.S. Marshal Form 285 for each remaining Defendant; a  
20 filed copy of this Order; and a cover letter with instructions. After receiving this "IFP  
21 Package," Plaintiff must complete the U.S. Marshal Form 285 for each Defendant as  
22 completely and accurately as possible, including an address where each Defendant may be  
23 served per CivLR 4.1(c); and return the completed forms to the U.S. Marshal according to  
24 the instructions the Clerk provides in the cover letter.

25 5. **ORDERS** the U.S. Marshal to serve a copy of the Complaint [ECF No. 5] and  
26 summons upon Defendants as Plaintiff directs on the USM Form 285 and to file with the  
27 Clerk of Court an executed waiver of personal service on Defendants per Rule 4(d). Should  
28 Defendants fail to return the U.S. Marshal's request for waiver of personal service, the U.S.

1 Marshal shall instead file the completed USM Form 285 Process Receipt and Return as to  
2 Defendants with the Clerk of Court, including the date that the summons, Complaint, and  
3 request for waiver was mailed to Defendants, as well as noting that service remains  
4 unexecuted. The United States will advance all costs of the U.S. Marshal's service. See 28  
5 U.S.C. § 1915(d); Fed. R. Civ. P. 4(c)(3). However, if Defendants fail to sign and return  
6 the waiver without good cause, the Court will impose on Defendants any expenses later  
7 incurred in making personal service. See 28 U.S.C. § 1915(d); Fed. R. Civ. P. 4(c)(3),  
8 (d)(2).

9         6.       **ORDERS** Defendants, once served, to respond to Plaintiff's Complaint and  
10 any subsequent pleading Plaintiff files in this case naming Defendants as a party, within  
11 the time Federal Rules of Civil Procedure 12(a) and 15(a)(3) provide. See 42 U.S.C. §  
12 1997e(g)(2) (requiring defendant to respond once a court has screened a complaint under  
13 28 U.S.C. §§ 1915(e)(2) and 1915A(b)).

14         7.       **ORDERS** Plaintiff to serve, pursuant to Federal Rule of Civil Procedure 5(b),  
15 on Defendants (or on Defendants' counsel, if represented) a copy of every further pleading,  
16 filing, or other document submitted for the Court's consideration. This obligation begins  
17 once the U.S. Marshal has served Defendants. Plaintiff must also include with every  
18 document he files with the Court, a Certificate of Service stating how and on what date a  
19 true and correct copy of that document was served on Defendants (or their counsel). See  
20 CivLR 5.2. The Court may disregard any document it receives which is not properly filed  
21 with the Clerk or does not include a Certificate of Service.

22         8.       **ORDERS** that Defendants may file and serve on all parties any opposition  
23 (including any supporting documents) to Plaintiff's TRO motion by **November 3, 2022**.  
24 No oral argument will be necessary, unless ordered by the Court.

25 //

26 //

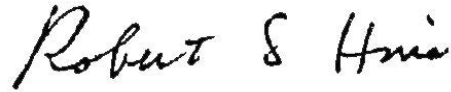
27 //

28 //

1           9.     **DIRECTS** the Clerk of Court to mail a copy of this Order to CDCR Office of  
2 Legal Affairs, P.O. Box 942882, Sacramento, California 94283-0001

3           **IT IS SO ORDERED.**

4 Dated: October 20, 2022



---

Hon. Robert S. Huie  
United States District Judge

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28