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

LONZO D. LIGGONS,  
CDC# H-87043,

Plaintiff,

vs.

WARDEN HERNANDEZ; CAPTAIN  
COTA; ASSOCIATE WARDEN  
CONTREAS,

Defendants.

Civil No. 07-0801 BTM (POR)

**ORDER:**

**(1) GRANTING MOTION TO  
PROCEED *IN FORMA PAUPERIS*,  
IMPOSING NO INITIAL PARTIAL  
FILING FEE AND GARNISHING  
\$350.00 BALANCE FROM INMATES'S  
TRUST ACCOUNT;**

**(2) DISMISSING ACTION  
WITHOUT PREJUDICE FOR  
FAILING TO STATE A  
CLAIM PURSUANT TO  
28 U.S.C. §§ 1915(e)(2)(b) & 1915A(b)**

Plaintiff, a state inmate currently incarcerated at the Richard J. Donovan Correctional Facility ("Donovan") in San Diego, California, proceeding pro se, has filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. In his Complaint, Plaintiff alleges that his Sixth, Eighth, Ninth and Fourteenth Amendment rights have been violated by Donovan prison officials. (See Compl. at 3-6.) Plaintiff's Complaint is nearly devoid of any specific factual allegations but he does refer to a "felony battery" which occurred on January 5, 2007. (*Id.* at 1.)

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1 Plaintiff has not prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a); instead,  
2 he has filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a)  
3 [Doc. No. 2].

4 **I. Motion to Proceed IFP [Doc. No. 2]**

5 All parties instituting any civil action, suit or proceeding in a district court of the United  
6 States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28  
7 U.S.C. § 1914(a). An action may proceed despite a party’s failure to prepay the entire fee only  
8 if that party is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v.*  
9 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). Prisoners granted leave to proceed IFP however,  
10 remain obligated to pay the entire fee in installments, regardless of whether their action is  
11 ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847  
12 (9th Cir. 2002).

13 The Court finds that Plaintiff has submitted an affidavit which complies with 28 U.S.C.  
14 § 1915(a)(1), and that he has attached a certified copy of his trust account statement pursuant to  
15 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2. Plaintiff’s trust account statement indicates  
16 that he has insufficient funds from which to pay the filing fee at this time. *See* 28 U.S.C.  
17 § 1915(b)(4) (providing that “[i]n no event shall a prisoner be prohibited from bringing a civil  
18 action or appealing a civil action or criminal judgment for the reason that the prisoner has no  
19 assets and no means by which to pay the initial partial filing fee.”). Therefore, the Court  
20 **GRANTS** Plaintiff’s Motion to Proceed IFP [Doc. No. 2] and assesses no initial partial filing  
21 fee per 28 U.S.C. § 1915(b)(1). However, the entire \$350 balance of the filing fee mandated  
22 shall be collected and forwarded to the Clerk of the Court pursuant to the installment payment  
23 provisions set forth in 28 U.S.C. § 1915(b)(1).

24 **II. Sua Sponte Screening Pursuant to 28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

25 Notwithstanding payment of any filing fee or portion thereof, the Prison Litigation  
26 Reform Act (“PLRA”) requires courts to review complaints filed by prisoners against officers  
27 or employees of governmental entities and dismiss those or any portion of those found frivolous,  
28 malicious, failing to state a claim upon which relief may be granted, or seeking monetary relief

1 from a defendant immune from such relief. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A; *Lopez*  
2 *v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Resnick v. Hayes*, 213  
3 F.3d 443, 446 (9th Cir. 2000) (§ 1915A).

4 Prior to the PLRA, the former 28 U.S.C. § 1915(d) permitted sua sponte dismissal of only  
5 frivolous and malicious claims. *Lopez*, 203 F.3d at 1126, 1130. However 28 U.S.C.  
6 §§ 1915(e)(2) and 1915A now mandate that the court reviewing a prisoner's suit make and rule  
7 on its own motion to dismiss before directing that the complaint be served by the U.S. Marshal  
8 pursuant to FED. R. CIV. P. 4(c)(2). *Id.* at 1127 (“[S]ection 1915(e) not only permits, but requires  
9 a district court to dismiss an in forma pauperis complaint that fails to state a claim.”); *Barren v.*  
10 *Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998). The district court should grant leave to  
11 amend, however, unless it determines that “the pleading could not possibly be cured by the  
12 allegation of other facts” and if it appears “at all possible that the plaintiff can correct the  
13 defect.” *Lopez*, 203 F.3d at 1130-31 (citing *Doe v. United States*, 58 F.3d 494, 497 (9th Cir.  
14 1995); *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 701 (9th Cir. 1990)).

15 “[W]hen determining whether a complaint states a claim, a court must accept as true all  
16 allegations of material fact and must construe those facts in the light most favorable to the  
17 plaintiff.” *Resnick*, 213 F.3d at 447. However, while liberal construction is “particularly  
18 important in civil rights cases,” *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992), the  
19 court may nevertheless not “supply essential elements of the claim that were not initially pled.”  
20 *Ivey v. Board of Regents of the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

21 As currently pleaded, it is clear that Plaintiff's Complaint fails to state a cognizable claim  
22 under 42 U.S.C. § 1983. Section 1983 imposes two essential proof requirements upon a  
23 claimant: (1) that a person acting under color of state law committed the conduct at issue, and  
24 (2) that the conduct deprived the claimant of some right, privilege, or immunity protected by the  
25 Constitution or laws of the United States. *See* 42 U.S.C. § 1983; *Parratt v. Taylor*, 451 U.S.  
26 527, 535 (1981), *overruled on other grounds by Daniels v. Williams*, 474 U.S. 327, 328 (1986);  
27 *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985) (en banc).

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1 A majority of Plaintiff's Complaint refers to his contention that the California Department  
2 of Corrections and Rehabilitation has violated his Eighth Amendment right to be free from cruel  
3 and unusual punishment because they have failed to provide programs that would provide a  
4 "conducive environment for learning and adapting to program certifiable social reentry skills."  
5 (Compl. at 4.) Because Plaintiff fails to provide any specific facts, the Court construes this claim  
6 to be a conditions of confinement claim under the Eighth Amendment.

7 To state a claim for cruel and unusual punishment, Plaintiff must allege facts sufficient  
8 to show that the conditions at Donovan subject him to "unquestioned and serious deprivations  
9 of basic human needs." *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981); *Wilson v. Seiter*, 501  
10 U.S. 294, 298-300 (1991). "To be cruel and unusual punishment, conduct that does not purport  
11 to be punishment at all must involve more than ordinary lack of due care for the prisoners'  
12 interest or safety." *Whitely v. Albers*, 475 U.S. 312, 319 (1986). To assert an Eighth  
13 Amendment claim for deprivation of humane conditions of confinement, a prisoner must allege  
14 facts sufficient to fulfill two requirements: one objective and one subjective. *Farmer v.*  
15 *Brennan*, 511 U.S. 825, 834 (1994); *Allen v. Sakai*, 48 F.3d 1082, 1087 (9th Cir. 1994). Under  
16 the objective requirement, the prisoner must allege facts sufficient to show that the prison  
17 official's acts or omissions deprived him of the "minimal civilized measure of life's necessities."  
18 *Rhodes*, 452 U.S. at 347; *Farmer*, 511 U.S. at 834. Under the subjective requirement, the  
19 prisoner must allege facts that show that the Defendants acted with "deliberate indifference."  
20 *Wilson*, 501 U.S. at 303; *Allen*, 48 F.3d at 1087.

21 "The Eighth Amendment does not outlaw cruel and unusual 'conditions'; it outlaws cruel  
22 and unusual punishments." *Farmer*, 511 U.S. at 837. Thus, "a prison official cannot be found  
23 liable for denying an inmate humane conditions of confinement unless the official knows of and  
24 disregards an excessive risk to inmate health or safety; the official must be both aware of facts  
25 from which the inference could be drawn that a substantial risk of serious harm exists, and he  
26 must also draw the inference." *Id.*

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1 Here, Plaintiff has failed to allege sufficient facts to show that any of the prison officials'  
2 acts or omissions deprived him of the "minimal civilized measure of life's necessities." *Rhodes*,  
3 452 U.S. at 347; *Farmer*, 511 U.S. at 834. Nor has Plaintiff alleged facts sufficient to show that  
4 Defendants have been "deliberately indifferent" to his needs, thus depriving him of "life's  
5 necessities" with the "obduracy and wantonness that characterize the conduct which is  
6 prohibited by the Cruel and Unusual Punishments Clause." *Whitley v. Albers*, 475 U.S. 312, 319  
7 (1981); *Farmer*, 511 U.S. at 837; *Rhodes*, 452 U.S. at 347.

8 In addition, Plaintiff refers to a "[penal code] § 243 battery" that was "perpetrated upon  
9 my person." (Compl. at 3.) Plaintiff fails to provide any specific factual allegations from which  
10 the Court can discern whether or not a claim can be stated. If Plaintiff wishes to file an amended  
11 Complaint, he must comply with Rule 8 of the Federal Rules of Civil Procedure which provides  
12 that a complaint "shall contain (1) a short and plain statement of the grounds upon which the  
13 court's jurisdiction depends . . . (2) a short and plain statement of the claim showing that the  
14 pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks." FED.  
15 R. CIV. P. 8(a). Rule 8 is designed to provide defendants with fair notice of the claims against  
16 them and the grounds on which those claims rest. *McKeever v. Block*, 932 F.2d 795, 798 (9th  
17 Cir. 1991).

18 Accordingly, the Court finds that Plaintiff's Complaint fails to state a section 1983 claim  
19 upon which relief may be granted, and is therefore subject to dismissal pursuant to 28 U.S.C.  
20 §§ 1915(e)(2)(b) & 1915A(b). The Court will provide Plaintiff with an opportunity to amend  
21 his pleading to set forth specific factual allegations pertaining to the alleged civil rights  
22 violations.

### 23 **III. Conclusion and Order**

24 Good cause appearing therefor, **IT IS HEREBY ORDERED** that:

25 1. Plaintiff's Motion to proceed IFP pursuant to 28 U.S.C. § 1915(a) [Doc. No. 2] is  
26 **GRANTED**.

27 2. The Secretary of California Department of Corrections and Rehabilitation, or his  
28 designee, shall collect from Plaintiff's prison trust account the \$350 balance of the filing fee

1 owed in this case by collecting monthly payments from the account in an amount equal to twenty  
2 percent (20%) of the preceding month's income and forward payments to the Clerk of the Court  
3 each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2).  
4 ALL PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER  
5 ASSIGNED TO THIS ACTION.

6 3. The Clerk of the Court is directed to serve a copy of this Order on James Tilton,  
7 Secretary, California Department of Corrections and Rehabilitation, 1515 S Street, Suite 502,  
8 Sacramento, California 95814.

9 **IT IS FURTHER ORDERED** that:

10 4. Plaintiff's Complaint is **DISMISSED** without prejudice pursuant to 28 U.S.C.  
11 §§ 1915(e)(2)(b) and 1915A(b) for failing to state a claim upon which relief can be granted.  
12 However, Plaintiff is **GRANTED** forty five (45) days leave from the date this Order is "Filed"  
13 in which to file a First Amended Complaint which cures all the deficiencies of pleading noted  
14 above. Plaintiff's Amended Complaint must be complete in itself without reference to the  
15 superseded pleading. See S.D. Cal. Civ. L. R. 15.1. Defendants not named and all claims not  
16 re-alleged in the Amended Complaint will be deemed to have been waived. See *King v. Atiyeh*,  
17 814 F.2d 565, 567 (9th Cir. 1987).

18 Further, if Plaintiff's Amended Complaint fails to state a claim upon which relief may  
19 be granted, it may be dismissed without further leave to amend and may hereafter be counted  
20 as a "strike" under 28 U.S.C. § 1915(g). See *McHenry v. Renne*, 84 F.3d 1172, 1177-79 (9th Cir.  
21 1996).

22 5. The Clerk of Court is directed to mail a Court approved form § 1983 complaint  
23 to Plaintiff.

24 **IT IS SO ORDERED.**

25 DATED: August 27, 2007

26   
27 Honorable Barry Ted Moskowitz  
28 United States District Judge