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CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY  DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

WILLIE L. HARRIS,  
CDCR #D-93469,

Plaintiff,

vs.

A. BUENO; B. BLIGH;  
CITY OF SAN DIEGO;

Defendants.

Civil No. 10cv0450 BTM (BLM)

**ORDER:**

(1) GRANTING MOTION TO  
PROCEED *IN FORMA PAUPERIS*,  
IMPOSING NO PARTIAL FILING  
FEE, GARNISHING \$350 BALANCE  
FROM PRISONER'S TRUST  
ACCOUNT [Doc. No. 2];

(2) DENYING MOTION FOR  
APPOINTMENT OF COUNSEL  
[Doc. No. 3]

AND

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

Willie Harris ("Plaintiff"), a state prisoner currently incarcerated at the Sierra Conservation Center, and proceeding pro se, has submitted a civil action pursuant to 42 U.S.C. § 1983. Plaintiff has filed a Motion to Proceed *In Forma Pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a) [Doc. No. 2], along with a Motion for Appointment of Counsel [Doc. No. 3].

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1 **I. MOTION TO PROCEED IFP [DOC. NO. 2]**

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

9 The Court finds that Plaintiff has submitted an affidavit which complies with 28 U.S.C.  
10 § 1915(a)(1), and that he has attached a certified copy of his trust account statement pursuant to  
11 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2. Plaintiff's trust account statement shows that  
12 he has no available funds from which to pay filing fees at this time. *See* 28 U.S.C. § 1915(b)(4).  
13 Therefore, the Court **GRANTS** Plaintiff's Motion to Proceed IFP [Doc. No. 2] and assesses no  
14 initial partial filing fee per 28 U.S.C. § 1915(b)(1). However, the entire \$350 balance of the  
15 filing fee mandated shall be collected and forwarded to the Clerk of the Court pursuant to the  
16 installment payment provisions set forth in 28 U.S.C. § 1915(b)(1).

17 **II. MOTION FOR APPOINTMENT OF COUNSEL [DOC. NO. 3]**

18 Plaintiff also requests the appointment of counsel to assist him in prosecuting this civil  
19 action. The Constitution provides no right to appointment of counsel in a civil case, however,  
20 unless an indigent litigant may lose his physical liberty if he loses the litigation. *Lassiter v. Dept.*  
21 *of Social Services*, 452 U.S. 18, 25 (1981). Nonetheless, under 28 U.S.C. § 1915(e)(1), district  
22 courts are granted discretion to appoint counsel for indigent persons. This discretion may be  
23 exercised only under "exceptional circumstances." *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th  
24 Cir. 1991). "A finding of exceptional circumstances requires an evaluation of both the  
25 'likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se  
26 in light of the complexity of the legal issues involved.' Neither of these issues is dispositive and  
27 both must be viewed together before reaching a decision." *Id.* (quoting *Wilborn v. Escalderon*,  
28 789 F.2d 1328, 1331 (9th Cir. 1986)).

1 The Court denies Plaintiff's request without prejudice, as neither the interests of justice  
2 nor exceptional circumstances warrant appointment of counsel at this time. *LaMere v. Risley*,  
3 827 F.2d 622, 626 (9th Cir. 1987); *Terrell*, 935 F.2d at 1017.

4 **III. Initial Screening per 28 U.S.C. §§ 1915(e)(2)(b)(ii) and 1915A(b)(1)**

5 Notwithstanding IFP status or the payment of any partial filing fee, the Court must subject  
6 each civil action commenced pursuant to 28 U.S.C. § 1915(a) to mandatory screening and order  
7 the sua sponte dismissal of any case it finds "frivolous, malicious, failing to state a claim upon  
8 which relief may be granted, or seeking monetary relief from a defendant immune from such  
9 relief." 28 U.S.C. § 1915(e)(2)(B); *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en  
10 banc) (noting that 28 U.S.C. § 1915(e) "not only permits but requires" the court to sua sponte  
11 dismiss an *in forma pauperis* complaint that fails to state a claim).

12 "[W]hen determining whether a complaint states a claim, a court must accept as true all  
13 allegations of material fact and must construe those facts in the light most favorable to the  
14 plaintiff." *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). In addition, the Court has a duty  
15 to liberally construe a pro se's pleadings, see *Karim-Panahi v. Los Angeles Police Dep't*, 839  
16 F.2d 621, 623 (9th Cir. 1988), which is "particularly important in civil rights cases." *Ferdik v.*  
17 *Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992).

18 Here, the Court finds Plaintiff's Complaint survives the sua sponte screening required  
19 by 28 U.S.C. §§ 1915(e)(2) and 1915A(b). See *Lopez*, 203 F.3d at 1126-27. Accordingly, the  
20 Court finds Plaintiff is entitled to U.S. Marshal service on his behalf. See 28 U.S.C. § 1915(d);  
21 FED.R.CIV.P. 4(c)(3).

22 **IV. Conclusion and Order**

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

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

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1           2.     The Secretary of California Department of Corrections and Rehabilitation, or his  
2     designee, shall collect from Plaintiff's prison trust account the \$350 balance of the filing fee  
3     owed in this case by collecting monthly payments from the account in an amount equal to twenty  
4     percent (20%) of the preceding month's income and forward payments to the Clerk of the Court  
5     each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2).  
6     ALL PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER  
7     ASSIGNED TO THIS ACTION.

8           3.     The Clerk of the Court is directed to serve a copy of this Order on Matthew Cate,  
9     Secretary, California Department of Corrections and Rehabilitation, 1515 S Street, Suite 502,  
10    Sacramento, California 95814.

11           **IT IS FURTHER ORDERED** that:

12           4.     Plaintiff's Motion for Appointment of Counsel [Doc. No. 3] is **DENIED** without  
13    prejudice.

14           5.     The Clerk shall issue a summons as to Plaintiff's Complaint [Doc. No. 1] upon the  
15    Defendants and shall forward it to Plaintiff along with a blank U.S. Marshal Form 285 for  
16    each Defendant. In addition, the Clerk shall provide Plaintiff with a certified copy of this Order  
17    and a certified copy of his Complaint and the summons for purposes of serving the Defendants.  
18    Upon receipt of this "IFP Package," Plaintiff is directed to complete the Form 285 as completely  
19    and accurately as possible, and to return it to the United States Marshal according to the  
20    instructions provided by the Clerk in the letter accompanying his IFP package. Thereafter, the  
21    U.S. Marshal shall serve a copy of the Complaint and summons upon the Defendants as directed  
22    by Plaintiff on the USM Form 285. All costs of service shall be advanced by the United States.  
23    *See* 28 U.S.C. § 1915(d); FED.R.CIV.P. 4(c)(3).

24           6.     Plaintiff shall serve upon the Defendants or, if appearance has been entered by  
25    counsel, upon Defendants' counsel, a copy of every further pleading or other document  
26    submitted for consideration of the Court. Plaintiff shall include with the original paper to be  
27    filed with the Clerk of the Court a certificate stating the manner in which a true and correct copy  
28    of any document was served on the Defendants, or counsel for Defendants, and the date of

1 service. Any paper received by the Court which has not been filed with the Clerk or which fails  
2 to include a Certificate of Service will be disregarded.

3 IT IS SO ORDERED.

4 DATED: April 21, 2010 Barry Ted Moskowitz

5 HON. BARRY TED MOSKOWITZ  
6 United States District Judge  
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