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

WILLIAM CECIL THORNTON,
CDCR #V-64547,

Plaintiff,

vs.

ARNOLD SCHWARZENEGGER;
MATTHEW CATE; LEWIS, MARK
JOSEPH; CHRISTINE CAVALIN; JOHN
DOE #1,

Defendants.

Civil No. 10cv1583 BTM (RBB)

ORDER:

- (1) GRANTING PLAINTIFF’S MOTION TO PROCEED *IN FORMA PAUPERIS*, IMPOSING NO INITIAL PARTIAL FILING FEE AND GARNISHING BALANCE FROM PRISONER’S TRUST ACCOUNT PURSUANT TO 28 U.S.C. § 1915(a) [Doc. No. 2];**
- AND**
- (2) DIRECTING U.S. MARSHAL TO EFFECT SERVICE OF COMPLAINT PURSUANT TO FED.R.CIV.P. 4(c)(3) & 28 U.S.C. § 1915(d)**

William Cecil Thornton (“Plaintiff”), a state prisoner currently incarcerated at the California Correctional Institution in Tehachapi, California, and proceeding in pro se, has filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. In addition, Plaintiff has filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) [Doc. No. 2].

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1 **I.**

2 **MOTION TO PROCEED IFP**

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 party’s failure to prepay the entire fee only
6 if that party is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v.*
7 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). Prisoners granted leave to proceed IFP however,
8 remain obligated to pay the entire fee in installments, regardless of whether their action is
9 ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847
10 (9th Cir. 2002).

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

19 **II.**

20 **SCREENING PURSUANT TO 28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

21 The PLRA also obligates the Court to review complaints filed by all persons proceeding
22 IFP and by those, like Plaintiff, who are “incarcerated or detained in any facility [and] accused
23 of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or
24 conditions of parole, probation, pretrial release, or diversionary program,” “as soon as
25 practicable after docketing.” *See* 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under these
26 provisions of the PLRA, the Court must sua sponte dismiss complaints, or any portions thereof,
27 which are frivolous, malicious, fail to state a claim, or which seek damages from defendants who
28 are immune. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A.

1 Here, Plaintiff appears to be challenging parole conditions that were placed on him
2 following his release from prison in 2009. Specifically, Plaintiff appears to be challenging the
3 constitutionality of the Sexual Predator Punishment and Control Act (“SPPCA”) which is also
4 referred to as “Jessica’s Law.” CAL. PEN. CODE § 3003.5(b).

5 As currently pleaded, the Court finds Plaintiff’s allegations sufficient to survive the sua
6 sponte screening required by 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Accordingly, the Court
7 finds Plaintiff is entitled to U.S. Marshal service on his behalf. *See* 28 U.S.C. § 1915(d) (“The
8 officers of the court shall issue and serve all process, and perform all duties in [IFP] cases.”);
9 FED.R.CIV.P. 4(c)(3) (“[T]he court may order that service be made by a United States marshal
10 or deputy marshal ... if the plaintiff is authorized to proceed *in forma pauperis* under 28 U.S.C.
11 § 1915.”). Plaintiff is cautioned that “the sua sponte screening and dismissal procedure is
12 cumulative of, and not a substitute for, any subsequent Rule 12[] motion that [a defendant] may
13 choose to bring.” *Teahan v. Wilhelm*, 481 F. Supp. 2d 1115, 1119 (S.D. Cal. 2007).

14 The Court takes notice that Plaintiff is currently incarcerated. However, it is not clear
15 from the face of Plaintiff’s Complaint whether he is incarcerated as a result of a parole
16 revocation hearing following a violation of the parole conditions he seeks to have this Court
17 deem unconstitutional. If Plaintiff is currently incarcerated as a result of a parole revocation
18 based on an alleged violation of his parole conditions involving “Jessica’s Law,” this § 1983
19 action may ultimately be dismissed. *See Wilkinson v. Dotson*, 544 U.S. 74 (2005) (When a
20 prisoner challenges the legality or duration of his custody, or raises a constitutional challenge
21 which could entitle him to an earlier release, his sole federal remedy is a petition for writ of
22 habeas corpus.”)

23 **III.**

24 **CONCLUSION AND ORDER**

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

- 26 1. Plaintiff’s Motion to proceed IFP pursuant to 28 U.S.C. § 1915(a) [Doc. No. 2] is
27 **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. The Clerk shall issue a summons as to Plaintiff's Complaint [Doc. No. 1] upon
13 Defendants and shall forward it to Plaintiff along with a blank U.S. Marshal Form 285 for
14 each Defendant. In addition, the Clerk shall provide Plaintiff with a certified copy of this Order
15 and a certified copy of his Complaint and the summons so that he may serve Defendants. Upon
16 receipt of this "IFP Package," Plaintiff is directed to complete the Form 285s as completely and
17 accurately as possible, and to return them to the United States Marshal according to the
18 instructions provided by the Clerk in the letter accompanying his IFP package. Upon receipt,
19 the U.S. Marshal shall serve a copy of the Complaint and summons upon Defendants as directed
20 by Plaintiff on the USM Form 285s. All costs of service shall be advanced by the United States.
21 *See* 28 U.S.C. § 1915(d); FED.R.CIV.P. 4(c)(3).

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

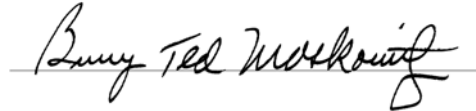
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1 Any paper received by the Court which has not been filed with the Clerk or which fails
2 to include a Certificate of Service will be disregarded.

3 **IT IS SO ORDERED.**

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5 DATED: August 23, 2010

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7 Honorable Barry Ted Moskowitz
8 United States District Judge

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