1 2 3 4 5 6 7 8 9 SOUTHERN DISTRICT OF CALIFORNIA 10 11 11 ERIC LINDFORS, CDCR #P-36975; 12 Civil No. 10-2120 MMA (AJB) 13 Plaintiff, 14 vs. 15 vs. 16 (1) DENYING PLAINTIFF'S MOTION TO PROCEED IN FORMA PAUPERIS [Doc. No. 2]; AND 16 (3) DISMISSING ACTION PURSUANT TO 28 U.S.C. § 1915A 17 LARRY SMALL, et al., 18 Defendants. 19 Defendants. 111 Plaintiff, a state inmate currently incarcerated at the California State Prison located in Lancaster, California, and proceeding pro se, has filed a civil action pursuant to 42 U.S.C. § 1983. Plaintiff has not prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a); instead the has filed a Motion to Proceed In Forma Pauperis ("IFP") pursuant to 28 U.S.C. § 1915(a)				
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 [Doc. No. 2]. Initially, Plaintiff filed this action along with another inmate Ruben Davis. See 	25 26			
20 27 Davis v. Small, et al., S.D. Cal. Civil Case No. 10cv1606 MMA (AJB). Plaintiff Lindfors				
$\frac{27}{28}$ claims were severed from that action and re-filed in the action currently before the Court.				

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Thus, the Court also determined that while it was practical to sever the two actions due
 to the difficulties of two inmates pursuing the same claims in the same action, the Court would
 "low number" Plaintiff Lindfors action. *See* Report of Clerk and Order of Transfer pursuant to
 "Low-Number" Rule [Doc. No. 3].

I.

MOTION TO PROCEED IFP

7 All parties instituting any civil action, suit or proceeding in a district court of the United 8 States, except an application for writ of habeas corpus, must pay a filing fee of \$350. See 28 9 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay only if the party is 10 granted leave to proceed in forma pauperis ("IFP") pursuant to 28 U.S.C. § 1915(a). See 11 Andrews v. Cervantes, 493 F.3d 1047, 1051 (9th Cir. 2007); Rodriguez v. Cook, 169 F.3d 1176, 12 1177 (9th Cir. 1999). "Under the PLRA, all prisoners who file IFP civil actions must pay the 13 full amount of the filing fee," regardless of whether the action is ultimately dismissed for any 14 reason. See Taylor v. Delatoore, 281 F.3d 844, 847 (9th Cir. 2002) (citing 28 U.S.C. 15 § 1915(b)(1) & (2)).

16 In order to comply with the PLRA, prisoners seeking leave to proceed IFP must also 17 submit a "certified copy of the trust fund account statement (or institutional equivalent) for the 18 prisoner for the 6-month period immediately preceding the filing of the complaint...." 28 U.S.C. 19 § 1915(a)(2). From the certified trust account statement, the Court assesses an initial payment 20of 20% of (a) the average monthly deposits in the account for the past six months, or (b) the 21 average monthly balance in the account for the past six months, whichever is greater, unless the 22 prisoner has no assets. See 28 U.S.C. § 1915(b)(1), (4); see Taylor, 281 F.3d at 850. Thereafter, 23 the institution having custody of the prisoner must collect subsequent payments, assessed at 20% 24 of the preceding month's income, in any month in which the prisoner's account exceeds \$10, and 25 forward those payments to the Court until the entire filing fee is paid. See 28 U.S.C. § 1915(b)(2). 26

In this matter, Plaintiff has submitted a certified copy of his inmate trust account.However, as stated above, this trust account statement must include the 6-month period

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immediately preceding the filing of the complaint. *See* 28 U.S.C. § 1915(a)(2). Here, Plaintiff's
 trust account statement is for a period from October 2008 to July 2009. This action was filed
 on July 29, 2010. Thus, Plaintiff's Motion to Proceed *IFP* is **DENIED**.

III.

SUA SPONTE SCREENING PURSUANT TO 28 U.S.C. § 1915A(b)

6 The Prison Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915A, obligates the Court to 7 review complaints filed by anyone "incarcerated or detained in any facility who is accused of, 8 sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or conditions 9 of parole, probation, pretrial release, or diversionary program," "as soon as practicable after 10 docketing" and regardless of whether the prisoner prepays filing fees or moves to proceed IFP. 11 See 28 U.S.C. § 1915A(a), (c). The Court must sua sponte dismiss prisoner complaints, or any 12 portions thereof, which are frivolous, malicious, or fail to state a claim upon which relief may 13 be granted. 28 U.S.C. § 1915A(b); Resnick v. Hayes, 213 F.3d 443, 446-47 (9th Cir. 2000).

Section 1983 imposes two essential proof requirements upon a claimant: (1) that a person
acting under color of state law committed the conduct at issue, and (2) that the conduct deprived
the claimant of some right, privilege, or immunity protected by the Constitution or laws of the
United States. *See* 42 U.S.C. § 1983; *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), *overruled on other grounds by Daniels v. Williams*, 474 U.S. 327, 328 (1986); *Haygood v. Younger*, 769 F.2d
1350, 1354 (9th Cir. 1985) (en banc).

20 The Court finds that Plaintiff's Complaint fails to comply with Rule 8. Specifically, 21 Rule 8 provides that in order to state a claim for relief in a pleading it must contain "a short and 22 plain statement of the grounds for the court's jurisdiction" and "a short and plain statement of 23 the claim showing that the pleader is entitled to relief." FED.R.CIV.P. 8(a)(1) & (2). Plaintiff's 24 Complaint is nearly one hundred pages long and is often rambling. If Plaintiff chooses to file 25 an Amended Complaint, he must comply with Rule 8. He is further cautioned that he must also 26 comply with Local Rule 8.2 which provides, in part, that prisoners must use the Court's form 27 complaints and any additional pages are "not to exceed fifteen (15) in number." S.D. CIVLR 8.2.

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1	IV.		
2	CONCLUSION AND ORDER		
3	For the reasons set forth above, IT IS ORDERED that:		
4	(1) Plaintiff's Motion to Proceed IFP [Doc. No. 2] is DENIED .		
5	(2) This action is DISMISSED without prejudice for failure to prepay the \$350 filing		
6	fee mandated by 28 U.S.C. § 1914(a) and for failure to successfully move to proceed IFP		
7	pursuant to 28 U.S.C. § 1915(a).		
8	(3) Plaintiff is GRANTED forty five (45) days from the date this Order is Filed to		
9	either: (1) pay the entire \$350 filing fee, or (2) file a new Motion to Proceed IFP, which		
10	includes a certified copy of his trust account statement for the 6-month period preceding the		
11	filing of his Complaint pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2(b).		
12	IT IS FURTHER ORDERED that:		
13	(4) Plaintiff's Complaint is DISMISSED without prejudice pursuant to 28 U.S.C.		
14	§ 1915A(b). However, Plaintiff is GRANTED forty five (45) days leave from the date this		
15	Order is "Filed" in which to file a First Amended Complaint which cures all the deficiencies of		
16	pleading noted above. Plaintiff's Amended Complaint must be complete in itself without		
17	reference to the superseded pleading. <i>See</i> S.D. Cal. Civ. L. R. 15.1. Defendants not named and		
18	all claims not re-alleged in the Amended Complaint will be deemed to have been waived. See		
19	King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Further, if Plaintiff's Amended Complaint		
20	fails to state a claim upon which relief may be granted, it may be dismissed without further		
21	leave to amend and may hereafter be counted as a "strike" under 28 U.S.C. § 1915(g). See		
22	McHenry v. Renne, 84 F.3d 1172, 1177-79 (9th Cir. 1996).		
23	The Clerk of Court is directed to mail a Court approved civil rights complaint form to		
24	Plaintiff.		
25	IT IS SO ORDERED.		
26	DATED: November 30, 2010 Michael Tu - Chello		
27			
28	Hon. Michael M. Anello United States District Judge		
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