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

LEON ANTHONY DONNAN,  
CDCR #T-73830,

Plaintiff,

vs.

COUNTY OF SAN DIEGO; EDNA  
MILLOY; STEVEN MANNIS;  
JOHN GILL,

Defendants.

Civil No. 11cv0315 MMA (BGS)

**ORDER:**

**(1) GRANTING PLAINTIFF’S  
MOTION TO PROCEED IN  
FORMA PAUPERIS, IMPOSING  
NO PARTIAL FILING FEE AND  
GARNISHING \$ 350 BALANCE  
FROM PRISONER’S TRUST  
ACCOUNT PURSUANT  
TO 28 U.S.C. § 1915(a)  
[ECF No. 2]; and**

**(2) DISMISSING COMPLAINT FOR  
FAILING TO STATE A CLAIM AND  
AS FRIVOLOUS PURSUANT TO  
28 U.S.C. §§ 1915(e)(2)(B) & 1915A(b)**

Leon Anthony Donnan (“Plaintiff”), a state prisoner currently incarcerated at the Richard J. Donovan Correctional Facility located in San Diego, California, and proceeding in pro se, has filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. Plaintiff alleges that his civil rights were violated when he was housed at the Vista Detention Facility.

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

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

11 Under 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act (“PLRA”), a  
12 prisoner seeking leave to proceed IFP must submit a “certified copy of the trust fund account  
13 statement (or institutional equivalent) for the prisoner for the six-month period immediately  
14 preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113,  
15 1119 (9th Cir. 2005). From the certified trust account statement, the Court must assess an initial  
16 payment of 20% of (a) the average monthly deposits in the account for the past six months, or  
17 (b) the average monthly balance in the account for the past six months, whichever is greater,  
18 unless the prisoner has no assets. *See* 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The  
19 institution having custody of the prisoner must collect subsequent payments, assessed at 20%  
20 of the preceding month’s income, in any month in which the prisoner’s account exceeds \$10, and  
21 forward those payments to the Court until the entire filing fee is paid. *See* 28 U.S.C.  
22 § 1915(b)(2).

23 The Court finds that Plaintiff has no available funds from which to pay filing fees at this  
24 time. *See* 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event shall a prisoner be prohibited  
25 from bringing a civil action or appealing a civil action or criminal judgment for the reason that  
26 the prisoner has no assets and no means by which to pay the initial partial filing fee.”); *Taylor*,  
27 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve” preventing  
28 dismissal of a prisoner’s IFP case based solely on a “failure to pay ... due to the lack of funds

1 available to him when payment is ordered.”). Therefore, the Court **GRANTS** Plaintiff’s Motion  
2 to Proceed IFP [ECF No. 2] and assesses no initial partial filing fee per 28 U.S.C. § 1915(b)(1).  
3 However, the entire \$350 balance of the filing fees mandated shall be collected and forwarded  
4 to the Clerk of the Court pursuant to the installment payment provisions set forth in 28 U.S.C.  
5 § 1915(b)(1).

### 6 **III.**

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

8 The PLRA also obligates the Court to review complaints filed by all persons proceeding  
9 IFP and by those, like Plaintiff, who are “incarcerated or detained in any facility [and] accused  
10 of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or  
11 conditions of parole, probation, pretrial release, or diversionary program,” “as soon as  
12 practicable after docketing.” See 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under these  
13 provisions of the PLRA, the Court must sua sponte dismiss complaints, or any portions thereof,  
14 which are frivolous, malicious, fail to state a claim, or which seek damages from defendants who  
15 are immune. See 28 U.S.C. §§ 1915(e)(2)(B) and 1915A; *Lopez v. Smith*, 203 F.3d 1122, 1126-  
16 27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Resnick v. Hayes*, 213 F.3d 443, 446 (9th Cir. 2000)  
17 (§ 1915A); see also *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (discussing  
18 § 1915A).

19 “[W]hen determining whether a complaint states a claim, a court must accept as true all  
20 allegations of material fact and must construe those facts in the light most favorable to the  
21 plaintiff.” *Resnick*, 213 F.3d at 447; *Barren*, 152 F.3d at 1194 (noting that § 1915(e)(2)  
22 “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”). In addition, the Court’s  
23 duty to liberally construe a pro se’s pleadings, see *Karim-Panahi v. Los Angeles Police Dept.*,  
24 839 F.2d 621, 623 (9th Cir. 1988), is “particularly important in civil rights cases.” *Ferdik v.*  
25 *Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992). However, in giving liberal interpretation to a  
26 pro se civil rights complaint, the court may not “supply essential elements of claims that were  
27 not initially pled.” *Ivey v. Board of Regents of the University of Alaska*, 673 F.2d 266, 268 (9th  
28 Cir. 1982). “Vague and conclusory allegations of official participation in civil rights violations

1 are not sufficient to withstand a motion to dismiss.” *Id.*

2 **A. 42 U.S.C. § 1983 Liability**

3 Section 1983 imposes two essential proof requirements upon a claimant: (1) that a person  
4 acting under color of state law committed the conduct at issue, and (2) that the conduct deprived  
5 the claimant of some right, privilege, or immunity protected by the Constitution or laws of the  
6 United States. *See* 42 U.S.C. § 1983; *Nelson v. Campbell*, 541 U.S. 637, 124 S. Ct. 2117, 2122  
7 (2004); *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985) (en banc).

8 **B. Access to Courts claim**

9 Plaintiff claims that while he was housed at the Vista Detention Facility, jail officials  
10 failed to provide him with adequate access to the jail’s law library. Prisoners do “have a  
11 constitutional right to petition the government for redress of their grievances, which includes a  
12 reasonable right of access to the courts.” *O’Keefe v. Van Boening*, 82 F.3d 322, 325 (9th Cir.  
13 1996); *accord Bradley v. Hall*, 64 F.3d 1276, 1279 (9th Cir. 1995). In *Bounds*, 430 U.S. at 817,  
14 the Supreme Court held that “the fundamental constitutional right of access to the courts requires  
15 prison authorities to assist inmates in the preparation and filing of meaningful legal papers by  
16 providing prisoners with adequate law libraries or adequate assistance from persons who are  
17 trained in the law.” *Bounds v. Smith*, 430 U.S. 817, 828 (1977). To establish a violation of the  
18 right to access to the courts, however, a prisoner must allege facts sufficient to show that: (1)  
19 a nonfrivolous legal attack on his conviction, sentence, or conditions of confinement has been  
20 frustrated or impeded, and (2) he has suffered an actual injury as a result. *Lewis v. Casey*, 518  
21 U.S. 343, 353-55 (1996). An “actual injury” is defined as “actual prejudice with respect to  
22 contemplated or existing litigation, such as the inability to meet a filing deadline or to present  
23 a claim.” *Id.* at 348; *see also Vandelft v. Moses*, 31 F.3d 794, 796 (9th Cir. 1994); *Sands v.*  
24 *Lewis*, 886 F.2d 1166, 1171 (9th Cir. 1989); *Keenan v. Hall*, 83 F.3d 1083, 1093 (9th Cir. 1996).

25 Here, Plaintiff has failed to alleged any actions with any particularity that have *precluded*  
26 his pursuit of a non-frivolous direct or collateral attack upon either his criminal conviction or  
27 sentence or the conditions of his current confinement. *See Lewis*, 518 U.S. at 355 (right to  
28 access to the courts protects only an inmate’s need and ability to “attack [his] sentence[], directly

1 or collaterally, and ... to challenge the conditions of [his] confinement.”); *see also Christopher*  
2 *v. Harbury*, 536 U.S. 403, 415 (2002) (the non-frivolous nature of the “underlying cause of  
3 action, whether anticipated or lost, is an element that must be described in the complaint, just as  
4 much as allegations must describe the official acts frustrating the litigation.”). Moreover,  
5 Plaintiff has not alleged facts sufficient to show that he has been actually injured by any specific  
6 defendant’s actions. *Lewis*, 518 U.S. at 351.

7 In short, Plaintiff has not alleged that “a complaint he prepared was dismissed,” or that  
8 he was “so stymied” by any individual defendant’s actions that “he was unable to even file a  
9 complaint,” direct appeal or petition for writ of habeas corpus that was not “frivolous.” *Lewis*,  
10 518 U.S. at 351; *Christopher*, 536 U.S. at 416 (“like any other element of an access claim[,] ...  
11 the predicate claim [must] be described well enough to apply the ‘nonfrivolous’ test and to show  
12 that the ‘arguable’ nature of the underlying claim is more than hope.”). Therefore, Plaintiff’s  
13 access to courts claims must be dismissed for failing to state a claim upon which section 1983  
14 relief can be granted. *See Lopez*, 203 F.3d at 1126-27; *Resnick*, 213 F.3d at 446.

### 15 C. Inadequate medical care claims

16 Plaintiff also alleges that jail officials denied him adequate medical care for his Hepatitis  
17 and a nail fungus problem. (*See Compl.* at 3-5.) A court “may take notice of proceedings in  
18 other courts, both within and without the federal judicial system, if those proceedings have a  
19 direct relation to matters at issue.” *United States ex rel. Robinson Rancheria Citizens Council*  
20 *v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992). The Court finds that Plaintiff has already  
21 litigated these claims in *Donnan v. Cook, et al.*, S.D. Cal. Civil Case No. 08cv2157 DMS (AJB).  
22 A prisoner’s complaint is considered frivolous under 28 U.S.C. § 1915A(b)(1) if it “merely  
23 repeats pending or previously litigated claims.” *Cato v. United States*, 70 F.3d 1103, 1105 n.2  
24 (9th Cir. 1995) (construing former 28 U.S.C. § 1915(d)) (citations and internal quotations  
25 omitted). Because Plaintiff has already litigated the same claims presented in the instant action  
26 in *Donnan v. Cook, et al.*, S.D. Cal. Civil Case No. 08cv2157 DMS (AJB), the Court hereby  
27 **DISMISSES** Plaintiff’s inadequate medical care claims. *See Cato*, 70 F.3d at 1105 n.2; *Resnick*,  
28 213 F.3d at 446 n.1.

1 **III.**

2 **CONCLUSION AND ORDER**

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

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

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

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

15 **IT IS FURTHER ORDERED** that:

16 4. Plaintiff's Complaint is **DISMISSED** without prejudice pursuant to 28 U.S.C.  
17 §§ 1915(e)(2)(b) and 1915A(b). However, Plaintiff is **GRANTED** forty five (45) days leave from the  
18 date this Order is "Filed" in which to file a First Amended Complaint which cures all the deficiencies  
19 of pleading noted above. Plaintiff's Amended Complaint must be complete in itself without reference  
20 to the superseded pleading. *See* S.D. Cal. Civ. L. R. 15.1. Defendants not named and all claims not re-  
21 alleged in the Amended Complaint will be deemed to have been waived. *See King v. Atiyeh*, 814 F.2d  
22 565, 567 (9th Cir. 1987). Further, if Plaintiff's Amended Complaint fails to state a claim upon which  
23 relief may be granted, it may be dismissed without further leave to amend and may hereafter be  
24 counted as a "strike" under 28 U.S.C. § 1915(g). *See McHenry v. Renne*, 84 F.3d 1172, 1177-79 (9th  
25 Cir. 1996).

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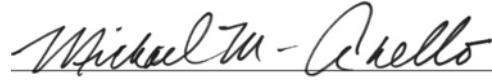
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5. The Clerk of Court is directed to mail a form § 1983 complaint to Plaintiff.

**IT IS SO ORDERED.**

DATED: March 30, 2011



Hon. Michael M. Anello  
United States District Judge