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

STUART SANDROCK,  
CDCR #F-77645,  
  
Plaintiff,

vs.

I CHOO, M.D.; S. DING, M.D.; N. LIND,  
M.D.; J. LEE, M.D.; E. GUENTHER, R.N.;  
J. RIVERA; L. BLAIR; THE  
CALIFORNIA DEP'T OF  
CORRECTIONS; THE STATE OF  
CALIFORNIA; DOES 1-10,  
  
Defendants.

Civil No. 11cv1448 IEG (WMc)

**ORDER:**

**(1) GRANTING MOTION TO  
PROCEED *IN FORMA PAUPERIS*,  
[ECF 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)**

Plaintiff, Stuart J. Sandrock, a state prisoner currently incarcerated at Ironwood State Prison (“Ironwood”) located in Blythe California and proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff alleges that he has been denied adequate medical care when he was housed at the Richard J. Donovan Correctional Facility (“Donovan”) and his current place of incarceration, Ironwood. Plaintiff seeks injunctive relief as well as general and punitive damages.

1 Plaintiff has not prepaid the \$350 civil filing fee required 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 [ECF No.2].

4 **I.**

5 **MOTION TO PROCEED IFP [ECF No.2]**

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

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

24 The Court finds that Plaintiff has submitted an affidavit which complies with 28 U.S.C.  
25 § 1915(a)(1), and that he has attached a certified copy of his trust account statement pursuant to  
26 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2. Plaintiff’s trust account statement shows that  
27 he has a current balance of zero and therefore insufficient funds from which to pay filing fees  
28 at this time. *See* 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event shall a prisoner be

1 prohibited from bringing a civil action or appealing a civil action or criminal judgment for the  
2 reason that the prisoner has no assets and no means by which to pay the initial partial filing  
3 fee.”); *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve”  
4 preventing dismissal of a prisoner’s IFP case based solely on a “failure to pay . . . due to the lack  
5 of funds available to him when payment is ordered.”).

6 Accordingly, the Court **GRANTS** Plaintiff’s Motion to Proceed IFP [ECF No.2] and  
7 assesses no initial partial filing fee per 28 U.S.C. § 1915(b)(1). However, the entire \$350  
8 balance of the filing fees mandated shall be collected and forwarded to the Clerk of the Court  
9 pursuant to the installment payment provisions set forth in 28 U.S.C. § 1915(b)(1).

## 10 **II.**

### 11 **SUA SPONTE SCREENING PER 28 U.S.C. § 1915(e)(2) AND § 1915A**

#### 12 **A. Standard**

13 The PLRA also obligates the Court to review complaints filed by all persons proceeding  
14 IFP and by those, like Plaintiff, who are “incarcerated or detained in any facility [and] accused  
15 of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or  
16 conditions of parole, probation, pretrial release, or diversionary program,” “as soon as  
17 practicable after docketing.” *See* 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under these  
18 provisions, the Court must sua sponte dismiss any IFP or prisoner complaint, or any portion  
19 thereof, which is frivolous, malicious, fails to state a claim, or which seeks damages from  
20 defendants who are immune. *See* 28 U.S.C. § 1915(e)(2)(B) and § 1915A; *Lopez v. Smith*, 203  
21 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Resnick v. Hayes*, 213 F.3d 443,  
22 446 (9th Cir. 2000) (§ 1915A).

23 Before amendment by the PLRA, the former 28 U.S.C. § 1915(d) permitted sua sponte  
24 dismissal of only frivolous and malicious claims. *Lopez*, 203 F.3d at 1126, 1130. An action is  
25 frivolous if it lacks an arguable basis in either law or fact. *Neitzke v. Williams*, 490 U.S. 319,  
26 324 (1989). However 28 U.S.C. §§ 1915(e)(2) and 1915A now mandate that the court reviewing  
27 an IFP or prisoner’s suit make and rule on its own motion to dismiss before effecting service of  
28 the Complaint by the U.S. Marshal pursuant to FED.R.CIV.P. 4(c)(2). *Id.* at 1127 (“[S]ection

1 1915(e) not only permits, but requires a district court to dismiss an in forma pauperis complaint  
2 that fails to state a claim.”); *see also Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998)  
3 (discussing 28 U.S.C. § 1915A).

4 “[W]hen determining whether a complaint states a claim, a court must accept as true all  
5 allegations of material fact and must construe those facts in the light most favorable to the  
6 plaintiff.” *Resnick*, 213 F.3d at 447; *Barren*, 152 F.3d at 1194 (noting that § 1915(e)(2)  
7 “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”). In addition, the Court’s  
8 duty to liberally construe a pro se’s pleadings, *see Karim-Panahi v. Los Angeles Police Dept.*,  
9 839 F.2d 621, 623 (9th Cir. 1988), is “particularly important in civil rights cases.” *Ferdik v.*  
10 *Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992).

11 The Court finds that Plaintiff’s claims are sufficiently pleaded to survive the sua sponte  
12 screening required by 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Therefore, Plaintiff is entitled to  
13 U.S. Marshal service on his behalf. *See Lopez*, 203 F.3d at 1126-27; 28 U.S.C. § 1915(d) (“The  
14 officers of the court shall issue and serve all process, and perform all duties in [IFP] cases.”);  
15 FED.R.CIV.P. 4(c)(3) (“[T]he court may order that service be made by a United States marshal  
16 or deputy marshal ... if the plaintiff is authorized to proceed *in forma pauperis* under 28 U.S.C.  
17 § 1915.”). Plaintiff is cautioned, however, that “the sua sponte screening and dismissal  
18 procedure is cumulative of, and not a substitute for, any subsequent Rule 12(b)(6) motion that  
19 [a defendant] may choose to bring.” *Teahan v. Wilhelm*, 481 F. Supp. 2d 1115, 1119 (S.D. Cal.  
20 2007).

### 21 III.

#### 22 CONCLUSION AND ORDER

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

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

26 2. The Secretary of the California Department of Corrections and Rehabilitation, or  
27 his designee, is ordered to collect from Plaintiff’s prison trust account the \$350 balance of the  
28 filing fee owed in this case by collecting monthly payments from the trust account in an amount

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

5 3. The Clerk of the Court is directed to serve a copy of this Order on Matthew Cate,  
6 Secretary, California Department of Corrections and Rehabilitation, P.O. Box 942883,  
7 Sacramento, California, 94283-0001.

8 **IT IS FURTHER ORDERED** that:

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

20 5. Defendants are thereafter **ORDERED** to reply to Plaintiff's Complaint within the  
21 time provided by the applicable provisions of Federal Rule of Civil Procedure 12(a). *See* 42  
22 U.S.C. § 1997e(g)(2) (while Defendants may occasionally be permitted to "waive the right to  
23 reply to any action brought by a prisoner confined in any jail, prison, or other correctional  
24 facility under section 1983," once the Court has conducted its sua sponte screening pursuant to  
25 28 U.S.C. § 1915(e)(2) and § 1915A(b), and thus, has made a preliminary determination based  
26 on the face on the pleading alone that Plaintiff has a "reasonable opportunity to prevail on the  
27 merits," Defendants are required to respond).

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6. Plaintiff shall serve upon Defendants or, if appearance has been entered by counsel, upon Defendants' counsel, a copy of every further pleading or other document submitted for consideration of the Court. Plaintiff shall include with the original paper to be filed with the Clerk of the Court a certificate stating the manner in which a true and correct copy of any document was served on Defendants, or counsel for Defendants, and the date of service. Any paper received by the Court which has not been filed with the Clerk or which fails to include a Certificate of Service will be disregarded.

**IT IS SO ORDERED.**

DATED: 7/28/11



HON. IRMA E. GONZALEZ, Chief Judge  
United States District Court