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

RACHEE A. WILLIS,  
CDCR #F-91221,

Plaintiff,

vs.

MS. McEWEN; G.J. JANDA;  
N.E. LANDERROS; CERROS,

Defendant.

Civil No. 11-1683 LAB (RBB)

**ORDER:**

**(1) GRANTING MOTION TO PROCEED  
IN FORMA PAUPERIS, IMPOSING NO  
INITIAL PARTIAL FILING FEE,  
GARNISHING \$350 FROM PRISONER'S  
TRUST ACCOUNT [ECF No. 3];**

**(2) SUA SPONTE DISMISSING  
COMPLAINT FOR FAILING TO STATE  
A CLAIM PURSUANT TO  
28 U.S.C. §§ 1915(e)(2) and 1915A(b)**

Plaintiff, Rachee A. Willis, a state prisoner currently incarcerated at Calipatria State Prison located in Calipatria, California and proceeding pro se, has filed a civil rights action filed pursuant to 42 U.S.C. § 1983. 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].

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1 **I. Motion to Proceed IFP [ECF 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); *Taylor v. Delatoore*, 281 F.3d  
9 844, 847 (9th Cir. 2002).

10 Section 1915, as amended by the Prison Litigation Reform Act (“PLRA”), further  
11 requires that each prisoner seeking leave to proceed IFP submit a “certified copy of [his] trust  
12 fund account statement (or institutional equivalent) ... for the six-month period immediately  
13 preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2). Using these certified trust  
14 account statements, the Court must assess an initial payment of 20% of (a) the average monthly  
15 deposit, or (b) the average monthly balance in the account for the past six months, whichever is  
16 greater, and collect that amount as the prisoner’s initial partial filing fee, unless he has no current  
17 assets with which to pay. *See* 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4); *Taylor*, 281 F.3d  
18 at 850. Thereafter, the institution having custody of the prisoner must collect subsequent  
19 payments, assessed at 20% of the preceding month’s income, in any month in which his account  
20 exceeds \$10, and forward those payments to the Court until the entire filing fee is paid. *See* 28  
21 U.S.C. § 1915(b)(2); *Taylor*, 281 F.3d at 847.

22 The Court finds that Plaintiff has submitted an affidavit that complies with 28 U.S.C.  
23 § 1915(a)(1) [ECF No. 2] as well as a certified copy of his prison trust account statement  
24 pursuant to 28 U.S.C. § 1915(a)(2) and Civil Local Rule 3.2. Plaintiff’s trust account currently  
25 indicates that he has insufficient funds from which to pay an initial partial filing fee.

26 Accordingly, the Court hereby **GRANTS** Plaintiff’s Motion to Proceed IFP [ECF No. 2],  
27 and assesses no initial partial filing fee at this time. *See* 28 U.S.C. § 1915(b)(1) (court shall  
28 assess initial partial filing fee only “when funds exist”); 28 U.S.C. § 1915(b)(4) (“In no event

1 shall a prisoner be prohibited from bringing a civil action . . . for the reason that the prisoner has  
2 no assets and no means by which to pay the initial partial filing fee.”); *Taylor*, 281 F.3d at 850  
3 (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve” preventing dismissal of a prisoner’s  
4 IFP case based solely on a “failure to pay . . . due to the lack of funds available to him when  
5 payment is ordered.”). However, Plaintiff is required to pay the full \$350 filing fee mandated  
6 by 28 U.S.C. §§ 1914(a) and 1915(b)(1), by subjecting any future funds credited to his prison  
7 trust account to the installment payment provisions set forth in 28 U.S.C. § 1915(b)(2).

8 **II. Sua Sponte Screening per 28 U.S.C. § 1915(e)(2) and § 1915A**

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

19 Before amendment by the PLRA, the former 28 U.S.C. § 1915(d) permitted sua sponte  
20 dismissal of only frivolous and malicious claims. *Lopez*, 203 F.3d at 1126, 1130. An action is  
21 frivolous if it lacks an arguable basis in either law or fact. *Neitzke v. Williams*, 490 U.S. 319,  
22 324 (1989). However 28 U.S.C. §§ 1915(e)(2) and 1915A now mandate that the court reviewing  
23 an IFP or prisoner’s suit make and rule on its own motion to dismiss before effecting service of  
24 the Complaint by the U.S. Marshal pursuant to FED.R.CIV.P. 4(c)(2). *Id.* at 1127 (“[S]ection  
25 1915(e) not only permits, but requires a district court to dismiss an in forma pauperis complaint  
26 that fails to state a claim.”); see also *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998)  
27 (discussing 28 U.S.C. § 1915A).

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

8            Section 1983 imposes two essential proof requirements upon a claimant: (1) that a person  
9 acting under color of state law committed the conduct at issue, and (2) that the conduct deprived  
10 the claimant of some right, privilege, or immunity protected by the Constitution or laws of the  
11 United States. *See* 42 U.S.C. § 1983; *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), *overruled on*  
12 *other grounds by Daniels v. Williams*, 474 U.S. 327, 328 (1986); *Haygood v. Younger*, 769 F.2d  
13 1350, 1354 (9th Cir. 1985) (en banc).

14            In his Complaint, Plaintiff alleges that he suffered from serious injuries when he was  
15 involved in a riot between the Black and Hispanic inmates at Calipatria State Prison. (*See*  
16 *Compl.* at 10-13.) Prison officials have a duty to take reasonable steps to protect inmates from  
17 physical abuse. *Farmer v. Brennan*, 511 U.S. 825, 833 (1994). To establish a violation of this  
18 duty, the prisoner must establish that prison officials were “deliberately indifferent” to serious  
19 threats to the inmate’s safety. *See Farmer*, 511 U.S. at 834. To demonstrate a prison official  
20 was deliberately indifferent to a serious threat to the inmate’s safety, the prisoner must show that  
21 “the official [knew] of and disregard[ed] an excessive risk to inmate. . . safety; the official must  
22 both be aware of facts from which the inference could be drawn that a substantial risk of serious  
23 harm exists, and [the official] must also draw the inference.” *Id.*, at 837. To prove knowledge  
24 of the risk, however, the prisoner may rely on circumstantial evidence; in fact, the very  
25 obviousness of the risk may be sufficient to establish knowledge. *See Farmer*, 511 at 842.

26            While Plaintiff has alleged some serious allegations, he simply has not provided enough  
27 facts from which the Court can determine whether he has stated an Eighth Amendment claim.  
28 Specifically, it is not clear to the Court that Plaintiff has alleged sufficient facts to demonstrate

1 that any of the named Defendants knew of a serious threat to Plaintiff's safety. In order for the  
2 Court to find "deliberate indifference," Plaintiff has to show that the named Defendants "[knew]  
3 of and disregard[ed]] an excessive risk to inmate. . . safety." See *Farmer*, 511 U.S. at 837.  
4 Plaintiff does not allege any facts to demonstrate that the Defendants knew that a riot would  
5 occur or that Plaintiff would be injured as a result. Plaintiff's allegations reference negligent  
6 behavior on the part of Defendants which does not rise to the level of deliberate indifference.

7 Accordingly, Plaintiff's Eighth Amendment Failure to Protect claims are dismissed for  
8 failing to state a claim upon which § 1983 relief can be granted.

9 Finally, to the extent Plaintiff seek to sue Defendants based merely on their supervisory  
10 positions, such allegations are insufficient to state a claim against these Defendants because  
11 there is no respondeat superior liability under 42 U.S.C. § 1983. *Palmer v. Sanderson*, 9 F.3d  
12 1433, 1437-38 (9th Cir. 1993). Instead, "[t]he inquiry into causation must be individualized and  
13 focus on the duties and responsibilities of each individual defendant whose acts or omissions are  
14 alleged to have caused a constitutional deprivation." *Leer v. Murphy*, 844 F.2d 628, 633 (9th  
15 Cir. 1988) (citing *Rizzo v. Goode*, 423 U.S. 362, 370-71 (1976)). In order to avoid the  
16 respondeat superior bar, Plaintiff must allege personal acts by each individual Defendant which  
17 have a direct causal connection to the constitutional violation at issue. See *Sanders v. Kennedy*,  
18 794 F.2d 478, 483 (9th Cir. 1986); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

19 Supervisory prison officials may only be held liable for the allegedly unconstitutional  
20 violations of a subordinate if Plaintiff sets forth allegations which show: (1) how or to what  
21 extent they personally participated in or directed a subordinate's actions, and (2) in either acting  
22 or failing to act, they were an actual and proximate cause of the deprivation of Plaintiff's  
23 constitutional rights. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). As currently pleaded,  
24 however, Plaintiff's Complaint fails to set forth facts which might be liberally construed to  
25 support an individualized constitutional claim against Defendants McEwen or Janda.

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1 For these reasons, the Court finds that Complaint fails to state a section 1983 claim upon  
2 which relief may be granted, and is therefore subject to dismissal pursuant to 28 U.S.C.  
3 §§ 1915(e)(2)(b) & 1915A(b). The Court will provide Plaintiff with an opportunity to amend  
4 his pleading to cure the defects set forth above.

5 **III. Conclusion and Order**

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

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

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

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

19 **IT IS FURTHER ORDERED** that:

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

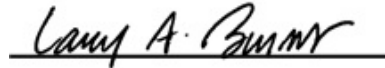
3 5. The Clerk of the Court is directed to mail a form § 1983 complaint to Plaintiff.

4 **IT IS SO ORDERED.**

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6 DATED: October 3, 2011

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**HONORABLE LARRY ALAN BURNS**  
United States District Judge

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