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

ELVIS JONES, JR.,
CDCR #G-41716,

Plaintiff,

vs.

DR. ANTHONY VAIL; M. GLYNN;
L.D. ZAMARA; CLIFF ALLENBY,

Defendants.

Civil No. 11-cv-2144 BEN (JMA)

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, Elvis Jones, Jr., a state prisoner currently incarcerated at the Richard J. Donovan Correctional Facility located in San Diego, California, and proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has not prepaid the \$350 civil filing fee required by 28 U.S.C. § 1914(a); instead he has filed a certified copy of his inmate trust account which the Court construes to be Plaintiff's Motion to Proceed In Forma Pauperis ("IFP") pursuant to 28 U.S.C. § 1915(a) [ECF No.2].

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I.

MOTION TO PROCEED IFP [ECF No. 2]

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

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

20 The Court finds that Plaintiff has submitted a certified copy of his trust account statement
21 pursuant to 28 U.S.C. § 1915(a)(2) and Civil Local Rule 3.2. Plaintiff's trust account statement shows
22 that he has a current balance of zero and therefore has insufficient funds from which to pay filing fees
23 at this time. *See* 28 U.S.C. § 1915(b)(4) (providing that "[i]n no event shall a prisoner be prohibited
24 from bringing a civil action or appealing a civil action or criminal judgment for the reason that the
25 prisoner has no assets and no means by which to pay the initial partial filing fee."); *Taylor*, 281 F.3d at
26 850 (finding that 28 U.S.C. § 1915(b)(4) acts as a "safety-valve" preventing dismissal of a prisoner's
27 IFP case based solely on a "failure to pay . . . due to the lack of funds available to him when payment
28 is ordered.").

1 pleadings, *see Karim-Panahi v. L.A. Police Dept.*, 839 F.2d 621, 623 (9th Cir. 1988), is “particularly
2 important in civil rights cases.” *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992).

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

12 III.

13 CONCLUSION AND ORDER

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

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

17 2. The Secretary of the California Department of Corrections and Rehabilitation, or his
18 designee, is ordered to collect from Plaintiff’s prison trust account the \$350 balance of the filing fee
19 owed in this case by collecting monthly payments from the trust account in an amount equal to twenty
20 percent (20%) of the preceding month’s income credited to the account and forward payments to the
21 Clerk of the Court each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. §
22 1915(b)(2). ALL PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER
23 ASSIGNED TO THIS ACTION.

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

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1 **IT IS FURTHER ORDERED** that:

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

12 5. Defendants are thereafter **ORDERED** to reply to Plaintiff's Complaint within the time
13 provided by the applicable provisions of Federal Rule of Civil Procedure 12(a). *See* 42 U.S.C. §
14 1997e(g)(2) (while Defendants may occasionally be permitted to "waive the right to reply to any action
15 brought by a prisoner confined in any jail, prison, or other correctional facility under section 1983," once
16 the Court has conducted its sua sponte screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b),
17 and thus, has made a preliminary determination based on the face on the pleading alone that Plaintiff has
18 a "reasonable opportunity to prevail on the merits," Defendants are required to respond).

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

25 **IT IS SO ORDERED.**

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27 DATED: November 4, 2011

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HON. ROGER T. BENITEZ
United States District Court Judge