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

EDWARD JONES,
CDCR #K-52736,

Plaintiff,

vs.

MRS. NICHOLS, Correctional Counselor,

Defendant.

Civil No. 12cv1039 BTM (BLM)

**(1) GRANTING MOTION TO
PROCEED *IN FORMA PAUPERIS*; 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)**

Edward Jones (“Plaintiff”), an inmate currently incarcerated at Centinela State Prison located in Imperial, California, and proceeding pro se, has submitted a civil rights Complaint pursuant to 28 U.S.C. § 1983. In addition, Plaintiff has filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) [ECF No. 2].

I. Motion to Proceed IFP [ECF No. 2]

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a party’s failure to prepay the entire fee only if that party is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v.*

1 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). Prisoners granted leave to proceed IFP however,
2 remain obligated to pay the entire fee in installments, regardless of whether their action is
3 ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847
4 (9th Cir. 2002).

5 The Court finds that Plaintiff has submitted an affidavit which complies with 28 U.S.C.
6 § 1915(a)(1), and that he has attached a certified copy of his trust account statement pursuant to
7 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2. Plaintiff's trust account statement indicates
8 that he has insufficient funds from which to pay filing fees at this time. *See* 28 U.S.C.
9 § 1915(b)(4).

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

14 **II. Sua Sponte Screening Pursuant to 28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

15 Notwithstanding payment of any filing fee or portion thereof, the Prison Litigation
16 Reform Act ("PLRA") requires courts to review complaints filed by prisoners against officers
17 or employees of governmental entities and dismiss those or any portion of those found frivolous,
18 malicious, failing to state a claim upon which relief may be granted, or seeking monetary relief
19 from a defendant immune from such relief. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A; *Lopez*
20 *v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Resnick v. Hayes*, 213
21 F.3d 443, 446 (9th Cir. 2000) (§ 1915A).

22 As currently pleaded, the Court finds Plaintiff's allegations are sufficient to survive the
23 sua sponte screening required by 28 U.S.C. §§ 1915(e)(2) and 1915A(b).¹ Accordingly, the
24 Court finds Plaintiff is entitled to U.S. Marshal service on his behalf. *See* 28 U.S.C. § 1915(d);
25 FED.R.CIV.P. 4(c)(3).

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28 ¹ Plaintiff is cautioned that "the sua sponte screening and dismissal procedure is cumulative of,
and not a substitute for, any subsequent Rule 12[] motion that [a defendant] may choose to bring."
Teahan v. Wilhelm, 481 F. Supp. 2d 1115, 1119 (S.D. Cal. 2007).

1 **III. Conclusion**

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

3 1. Plaintiff's Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a) [ECF No. 2] is

4 **GRANTED.**

5 2. The Secretary of the California Department of Corrections and Rehabilitation, or
6 his designee, is ordered to collect from Plaintiff's prison trust account the \$350 balance of the
7 filing fee owed in this case by collecting monthly payments from the trust account in an amount
8 equal to twenty percent (20%) of the preceding month's income credited to the account and
9 forward payments to the Clerk of the Court each time the amount in the account exceeds \$10 in
10 accordance with 28 U.S.C. § 1915(b)(2). ALL PAYMENTS SHALL BE CLEARLY
11 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, P.O. Box 942883,
14 Sacramento, California, 94283-0001.

15 **IT IS FURTHER ORDERED** that:

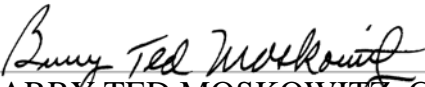
16 4. The Clerk shall issue a summons as to Plaintiff's Complaint [Doc. No. 1] upon
17 Defendants and shall forward it to Plaintiff along with a blank U.S. Marshal Form 285 for
18 each Defendant. In addition, the Clerk shall provide Plaintiff with a copy of this Order and a
19 copies of his Complaint and summons so that he may serve Defendants. Upon receipt of this
20 "IFP Package," Plaintiff is directed to complete the Form 285s as completely and accurately as
21 possible, and to return them to the United States Marshal according to the instructions provided
22 by the Clerk in the letter accompanying his IFP package. Upon receipt, the U.S. Marshal shall
23 serve a copy of the Complaint and summons upon Defendants as directed by Plaintiff on the
24 USM Form 285s. All costs of service shall be advanced by the United States. See 28 U.S.C.
25 § 1915(d); FED.R.CIV.P. 4(c)(3).

26 5. Plaintiff shall serve upon the Defendants or, if appearance has been entered by
27 counsel, upon Defendants' counsel, a copy of every further pleading or other document
28 submitted for consideration of the Court. Plaintiff shall include with the original paper to be

1 filed with the Clerk of the Court a certificate stating the manner in which a true and correct copy
2 of any document was served on Defendants, or counsel for Defendants, and the date of service.
3 Any paper received by the Court which has not been filed with the Clerk or which fails to
4 include a Certificate of Service will be disregarded.

5
6 IT IS SO ORDERED.

7 DATED: June 18, 2012

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9 BARRY TED MOSKOWITZ, Chief Judge
10 United States District Court
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