

1 **I. MOTION TO PROCEED IFP**

2 All parties instituting any civil action, suit, or proceeding in a district court of the
3 United States, except an application for writ of habeas corpus, must pay a filing fee of
4 \$400. *See* 28 U.S.C. § 1914(a).¹ An action may proceed despite a plaintiff’s failure to
5 prepay the entire fee only if she is granted leave to proceed IFP pursuant to 28 U.S.C.
6 § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). A federal
7 court may authorize the commencement of an action without the prepayment of fees if
8 the party submits an affidavit, including a statement of assets, showing that she is
9 unable to pay the required filing fee. 28 U.S.C. § 1915(a).

10 Upon review of the Plaintiff’s motion, the Court finds that Plaintiff has made a
11 sufficient showing of inability to pay the required filing fees. Accordingly, good cause
12 appearing, the Court **GRANTS** Plaintiff leave to proceed in forma pauperis.

13 **II. INITIAL SCREENING PURSUANT TO 28 U.S.C. § 1915(e)(2)(B)**

14 Notwithstanding IFP status, the Court must subject each civil action commenced
15 pursuant to 28 U.S.C. § 1915(a) to mandatory screening and order the sua sponte
16 dismissal of any case it finds “frivolous or malicious,” “fails to state a claim on which
17 relief may be granted,” or “seeks monetary relief against a defendant who is immune
18 from such relief.” 28 U.S.C. § 1915(e)(2)(B); *see also Calhoun v. Stahl*, 254 F.3d 845,
19 845 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to
20 prisoners.”); *Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc) (noting
21 that 28 U.S.C. § 1915(e) “not only permits but requires” the court to sua sponte dismiss
22 an IFP complaint that fails to state a claim).

23 Before its amendment by the PLRA, former 28 U.S.C. § 1915(d) permitted sua
24 sponte dismissal of only frivolous and malicious claims. *Lopez*, 203 F.3d at 1130.
25 However, as amended, 28 U.S.C. § 1915(e)(2) mandates that the court reviewing an

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27 ¹ In addition to the \$350 statutory fee, all parties filing civil actions on or after
28 May 1, 2013, must pay an additional administrative fee of \$50. *See* 28 U.S.C. §
1914(a), (b); Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule,
eff. May 1, 2013. However, the additional \$50 administrative fee is waived if the
plaintiff is granted leave to proceed IFP. *Id.*

1 action filed pursuant to the IFP provisions of § 1915 make and rule on its own motion
2 to dismiss before directing the U.S. Marshal to effect service pursuant to Federal Rule
3 of Civil Procedure 4(c)(3). *See id.* at 1127; *Calhoun*, 254 F.3d at 845; *McGore v.*
4 *Wrigglesworth*, 114 F.3d 601, 604–05 (6th Cir. 1997) (stating that sua sponte screening
5 pursuant to § 1915 should occur “before service of process is made on the opposing
6 parties”).

7 “[W]hen determining whether a complaint states a claim, a court must accept as
8 true all allegations of material fact and must construe those facts in the light most
9 favorable to the plaintiff.” *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000); *see*
10 *also Andrews v. King*, 398 F.3d 1113, 1121 (9th Cir. 2005); *Barren v. Harrington*, 152
11 F.3d 1193, 1194 (9th Cir. 1998) (noting that § 1915(e)(2) “parallels the language of
12 Federal Rule of Civil Procedure 12(b)(6)”).

13 As currently pleaded, the Court finds that Plaintiff’s complaint fails to state a
14 cognizable negligence claim against Defendant. In California, a claim for negligence
15 must be brought within three years of the alleged incident. Cal. Civ. P. Code § 338.
16 Where the running of the statute of limitations is apparent on the face of the complaint,
17 dismissal for failure to state a claim is proper. *See Cervantes v. City of San Diego*, 5
18 F.3d 1273, 1276 (9th Cir. 1993). Plaintiff appears to be contending that Defendant has
19 breached his parental duty to support Plaintiff, his child, as a minor.² (ECF No. 1 at 4-
20 8.) Pursuant to California Family Code § 3901(a), the duty of support “continues as to
21 an unmarried child who has attained the age of 18 years, is a full time high school
22 student, and who is not self-supporting, until the time the child completes the 12th
23 grade or attains the age of 19 years, whichever comes first.” As Plaintiff was born on
24 May 25, 1988, Plaintiff would have attained the age of 19 years on May 25, 2007. (*Id.*
25 at 2.) As Plaintiff appears to be basing his negligence claim upon actions that took
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28 ²The Court further notes that it is unclear from Plaintiff’s vague complaint
whether Defendant’s paternity was ever established, or if child support was ever
mandated.

1 place while Plaintiff was a minor,³ any such negligence action should have been filed
2 by May 25, 2010. Accordingly, because the running of the applicable statutes is
3 apparent on the face of the complaint, the Court **DISMISSES** Plaintiff's negligence
4 claim **WITHOUT PREJUDICE**.


5 Plaintiff's second cause of action for physical abuse, emotional abuse, and
6 abandonment is similarly deficient. Plaintiff's vague allegations fail to identify which,
7 if any, of Defendant's actions purportedly caused Plaintiff any harm. Plaintiff further
8 fails to identify what, if any, damages he may have suffered. Accordingly, the Court
9 **DISMISSES** Plaintiff's second cause of action **WITHOUT PREJUDICE**.

10 **III. CONCLUSION**

11 For the reasons stated above, Plaintiff's motion for leave to proceed IFP is
12 **GRANTED**. Plaintiff's complaint is further **DISMISSED WITHOUT PREJUDICE**
13 pursuant to 28 U.S.C. §§ 1915(e)(2)(b) and 1915A(b). Plaintiff is **GRANTED** thirty
14 (30) days leave from the date this Order is filed in which to file a First Amended
15 Complaint which cures all the deficiencies of pleading noted above. Plaintiff's
16 Amended Complaint must be complete in itself without reference to the superseded
17 pleading. *See* S.D. Cal. CivLR 15.1. Defendants not named and all claims not
18 re-alleged in the Amended Complaint will be considered waived. *See King v. Atiyeh*,
19 814 F.2d 565, 567 (9th Cir. 1987).

20 **IT IS SO ORDERED.**

21 DATED: August 28, 2013

22 
23 Honorable Janis L. Sammartino
24 United States District Judge

25 ³Plaintiff provides no dates for any specific actions taken by Defendant. Indeed,
26 Plaintiff's complaint is primarily composed of conclusory allegations that Defendant
27 failed to perform general tasks when Plaintiff was a minor, speculation as to how
28 Plaintiff's life would have been different if he had spent time with Defendant, anecdotal
stories such as how a stranger helped Plaintiff tie his tie, and numerous lists of parental
guides that Defendant allegedly failed to follow, such as "8 Essential Parental
Responsibilities," "28 Rules for Fathers of Sons," "A Guide to Biblical Manhood," and
"25 Things I Think Every Dad Should Teach His Kids." (*See generally* ECF No. 1.)