

FILED

14 MAY 13 PM 1:53

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY:

KCM

DEPUTY

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
10

11 JAMES E. FLORENCE,  
12 CDCR #P-05118,

13 Plaintiff,

14  
15 vs.  
16

17  
18 DANIEL PARAMO; S.A. SANCHEZ;  
19 LARA; DR. CASIAN; K. SEELEY;  
20 M. GLYNN,

21 Defendants.  
22

Civil No. 14cv0578 WQH (WVG)

**ORDER:**

(1) GRANTING PLAINTIFF'S  
MOTION TO PROCEED *IN*  
*FORMA PAUPERIS*, IMPOSING  
NO INITIAL PARTIAL FILING  
FEE AND GARNISHING  
BALANCE FROM PRISONER'S  
TRUST ACCOUNT PURSUANT  
TO 28 U.S.C. § 1915(a)  
[ECF No. 3]

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)

23 James E. Florence ("Plaintiff"), a prisoner currently incarcerated at the Richard J. Donovan  
24 Correctional Facility located in San Diego, California, and proceeding in pro se, has filed a civil  
25 rights Complaint pursuant to 42 U.S.C. § 1983. Plaintiff has not prepaid the \$350 filing fee  
26 mandated by 28 U.S.C. § 1914(a); instead he has filed a certified copy of his inmate trust account  
27 statement which the Court has construed as a Motion to Proceed *In Forma Pauperis* ("IFP")  
28 pursuant to 28 U.S.C. § 1915(a) (ECF No. 3).

1 **I. MOTIONS TO PROCEED IFP**

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 only  
5 if he is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169  
6 F.3d 1176, 1177 (9th Cir. 1999). However, a prisoner granted leave to proceed IFP remains  
7 obligated to pay the entire fee in installments, regardless of whether his action is ultimately  
8 dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir.  
9 2002).

10 Under 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act ("PLRA"), a  
11 prisoner seeking leave to proceed IFP must submit a "certified copy of the trust fund account  
12 statement (or institutional equivalent) for the prisoner for the six-month period immediately  
13 preceding the filing of the complaint." 28 U.S.C. § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113,  
14 1119 (9th Cir. 2005). From the certified trust account statement, the Court must assess an initial  
15 payment of 20% of (a) the average monthly deposits in the account for the past six months, or (b)  
16 the average monthly balance in the account for the past six months, whichever is greater, unless  
17 the prisoner has no assets. *See* 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution  
18 having custody of the prisoner must collect subsequent payments, assessed at 20% of the  
19 preceding month's income, in any month in which the prisoner's account exceeds \$10, and  
20 forward those payments to the Court until the entire filing fee is paid. *See* 28 U.S.C.  
21 § 1915(b)(2).

22 Plaintiff has submitted a certified copy of his trust account statement pursuant to 28 U.S.C.  
23 § 1915(a)(2) and S.D. CAL. CIVLR 3.2. *Andrews*, 398 F.3d at 1119. Plaintiff's trust account  
24 statement shows a current available balance of zero. *See* 28 U.S.C. § 1915(b)(4) (providing that  
25 "[i]n no event shall a prisoner be prohibited from bringing a civil action or appealing a civil  
26 action or criminal judgment for the reason that the prisoner has no assets and no means by which  
27 to pay [an] initial partial filing fee."); *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C.  
28 § 1915(b)(4) acts as a "safety-valve" preventing dismissal of a prisoner's IFP case based solely

1 on a “failure to pay ... due to the lack of funds available.”).

2 Therefore, the Court GRANTS Plaintiff’s Motion to Proceed IFP (ECF No. 3), and  
3 assesses no initial partial filing fee per 28 U.S.C. § 1915(b)(1). However, the entire \$350 balance  
4 of the filing fees mandated shall be collected and forwarded to the Clerk of the Court pursuant  
5 to the installment payment provisions set forth in 28 U.S.C. § 1915(b)(1).

6 **II. SCREENING PURSUANT TO 28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

7 The PLRA also obligates the Court to review complaints filed by all persons proceeding  
8 IFP and by those, like Plaintiff, who are “incarcerated or detained in any facility [and] accused  
9 of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or  
10 conditions of parole, probation, pretrial release, or diversionary program,” “as soon as practicable  
11 after docketing.” See 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under these provisions of the  
12 PLRA, the Court must sua sponte dismiss complaints, or any portions thereof, which are  
13 frivolous, malicious, fail to state a claim, or which seek damages from defendants who are  
14 immune. See 28 U.S.C. §§ 1915(e)(2)(B) and 1915A; *Lopez v. Smith*, 203 F.3d 1122, 1126-27  
15 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir.  
16 2010) (discussing 28 U.S.C. § 1915A(b)).

17 “[W]hen determining whether a complaint states a claim, a court must accept as true all  
18 allegations of material fact and must construe those facts in the light most favorable to the  
19 plaintiff.” *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000); see also *Barren v. Harrington*,  
20 152 F.3d 1193, 1194 (9th Cir. 1998) (noting that § 1915(e)(2) “parallels the language of Federal  
21 Rule of Civil Procedure 12(b)(6)”). In addition, courts “have an obligation where the petitioner  
22 is pro se, particularly in civil rights cases, to construe the pleadings liberally and to afford the  
23 petitioner the benefit of any doubt.” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010)  
24 (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)). The court may not, however,  
25 “supply essential elements of claims that were not initially pled.” *Ivey v. Board of Regents of the*  
26 *University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). “Vague and conclusory allegations of  
27 official participation in civil rights violations are not sufficient to withstand a motion to dismiss.”  
28 *Id.*

1 As currently pleaded, the Court finds Plaintiff's allegations sufficient to survive the sua  
2 sponte screening required by 28 U.S.C. §§ 1915(e)(2) and 1915A(b).<sup>1</sup> See *Lopez*, 203 F.3d at  
3 1126-27. Accordingly, the Court finds Plaintiff is entitled to U.S. Marshal service on his behalf.  
4 See 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process, and perform  
5 all duties in [IFP] cases."); FED.R.CIV.P. 4(c)(3) ("[T]he court may order that service be made  
6 by a United States marshal or deputy marshal ... if the plaintiff is authorized to proceed *in forma*  
7 *pauperis* under 28 U.S.C. § 1915.").

8 **III. CONCLUSION AND ORDER**

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

10 1. Plaintiff's Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a) (ECF No. 3) is  
11 **GRANTED.**

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

19 3. The Clerk of the Court is directed to serve a copy of this Order on Jeffrey A. Beard,  
20 Secretary, California Department of Corrections and Rehabilitation, P.O. Box 942883,  
21 Sacramento, California, 94283-0001.

22 **IT IS FURTHER ORDERED** that:

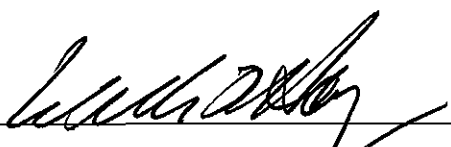
23 4. The Clerk shall issue a summons as to Plaintiff's Complaint (ECF No. 1) upon  
24 Defendants and shall forward it to Plaintiff along with a blank U.S. Marshal Form 285 for  
25 each Defendant. In addition, the Clerk shall provide Plaintiff with a certified copy of this Order,  
26 a certified copy of his Complaint (ECF No. 1), and the summons so that he may serve each named  
27

28 <sup>1</sup> 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 Defendant. Upon receipt of this "IFP Package," Plaintiff is directed to complete the Form 285s  
2 as completely and accurately as possible, and to return them to the United States Marshal  
3 according to the instructions provided by the Clerk in the letter accompanying his IFP package.  
4 Upon receipt, the U.S. Marshal shall serve a copy of the Complaint and summons upon each  
5 Defendant as directed by Plaintiff on the USM Form 285s. All costs of service shall be advanced  
6 by the United States. *See* 28 U.S.C. § 1915(d); FED.R.CIV.P. 4(c)(3).

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

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

22  
23 DATED: 5/12/14   
24 HON. WILLIAM O. HAYES  
25 United States District Judge  
26  
27  
28