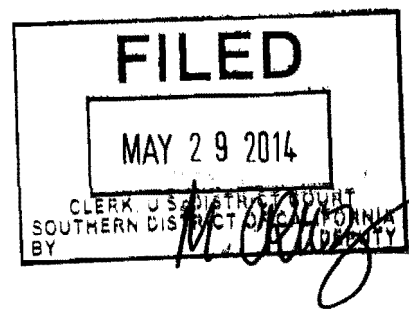


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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

RAMON MURILLO,  
CDCR #P-43503,

Plaintiff,

vs.

T. TAYLOR; RUCKER; OWENS;  
E. SOLIS; J. CEDANO; J. ELIAS;  
R. DAVIS; R. COBB; IVES;  
M. JANNUSH,

Defendants.

Civil 14cv0876 WQH (WVG)  
No.

**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. 4]; 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)**

Ramon Murillo ("Plaintiff"), a prisoner currently incarcerated at the California Substance Abuse Treatment Facility located in Corcoran, California, and proceeding in pro se, has filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. Plaintiff alleges his constitutional rights were violated when he was previously housed at the Richard J. Donovan Correctional Facility. (*See* Compl. at 1.)

1 Plaintiff has not prepaid the \$350 filing fee, along with the \$50 administrative fee,  
2 mandated by 28 U.S.C. § 1914(a); instead he has filed a Motion to Proceed *In Forma*  
3 *Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) (ECF No. 2).

4 **I. MOTIONS TO PROCEED IFP**

5 All parties instituting any civil action, suit or proceeding in a district court of the  
6 United States, except an application for writ of habeas corpus, must pay a filing fee of  
7 \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff’s failure to  
8 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.  
9 § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, a  
10 prisoner granted leave to proceed IFP remains obligated to pay the entire fee in  
11 installments, regardless of whether his action is ultimately dismissed. *See* 28 U.S.C. §  
12 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

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

25 In support of his IFP Motion, Plaintiff has submitted a certified copy of his trust  
26 account statement pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2.  
27 *Andrews*, 398 F.3d at 1119. Plaintiff’s trust account statement shows a current available  
28 balance of zero. *See* 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event shall a prisoner

1 be prohibited from bringing a civil action or appealing a civil action or criminal judgment  
2 for the reason that the prisoner has no assets and no means by which to pay [an] initial  
3 partial filing fee.”); *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4) acts as  
4 a “safety-valve” preventing dismissal of a prisoner’s IFP case based solely on a “failure  
5 to pay ... due to the lack of funds available.”).

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

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

11 The PLRA also obligates the Court to review complaints filed by all persons  
12 proceeding IFP and by those, like Plaintiff, who are “incarcerated or detained in any  
13 facility [and] accused of, sentenced for, or adjudicated delinquent for, violations of  
14 criminal law or the terms or conditions of parole, probation, pretrial release, or  
15 diversionary program,” “as soon as practicable after docketing.” *See* 28 U.S.C. §§  
16 1915(e)(2) and 1915A(b). Under these provisions of the PLRA, the Court must sua  
17 sponte dismiss complaints, or any portions thereof, which are frivolous, malicious, fail  
18 to state a claim, or which seek damages from defendants who are immune. *See* 28 U.S.C.  
19 §§ 1915(e)(2)(B) and 1915A; *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en  
20 banc) (§ 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010)  
21 (discussing 28 U.S.C. § 1915A(b)).

22 “[W]hen determining whether a complaint states a claim, a court must accept as  
23 true all allegations of material fact and must construe those facts in the light most  
24 favorable to the plaintiff.” *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000); *see also*  
25 *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (noting that § 1915(e)(2)  
26 “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”). In addition, courts  
27 “have an obligation where the petitioner is pro se, particularly in civil rights cases, to  
28 construe the pleadings liberally and to afford the petitioner the benefit of any doubt.”

1 *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (citing *Bretz v. Kelman*, 773  
2 F.2d 1026, 1027 n.1 (9th Cir. 1985)). The court may not, however, “supply essential  
3 elements of claims that were not initially pled.” *Ivey v. Board of Regents of the*  
4 *University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). “Vague and conclusory  
5 allegations of official participation in civil rights violations are not sufficient to withstand  
6 a motion to dismiss.” *Id.*

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

### 14 **III. CONCLUSION AND ORDER**

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

16 1. Plaintiff’s Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a) (ECF No.  
17 4) is **GRANTED**.

18 2. The Secretary of the California Department of Corrections and  
19 Rehabilitation, or his designee, shall collect from Plaintiff’s prison trust account the \$350  
20 filing fee<sup>2</sup> owed in this case by collecting monthly payments from the account in an  
21 amount equal to twenty percent (20%) of the preceding month’s income and forward  
22 payments to the Clerk of the Court each time the amount in the account exceeds \$10 in  
23

24  
25 <sup>1</sup> Plaintiff is cautioned that “the sua sponte screening and dismissal procedure is cumulative of,  
26 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).

27 <sup>2</sup> In addition to the \$350 statutory fee, all parties filing civil actions on or after May 1, 2013,  
28 must pay an additional administrative fee of \$50. *See* 28 U.S.C. § 1914(a) (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 accordance with 28 U.S.C. § 1915(b)(2). ALL PAYMENTS SHALL BE CLEARLY  
2 IDENTIFIED BY THE NAME AND NUMBER ASSIGNED TO THIS ACTION.

3 3. The Clerk of the Court is directed to serve a copy of this Order on Jeffrey A.  
4 Beard, Secretary, California Department of Corrections and Rehabilitation, P.O. Box  
5 942883, Sacramento, California, 94283-0001.

6 **IT IS FURTHER ORDERED** that:

7 4. The Clerk shall issue a summons as to Plaintiff's Complaint (ECF No. 1)  
8 upon Defendants and shall forward it to Plaintiff along with a blank U.S. Marshal  
9 Form 285 for each Defendant. In addition, the Clerk shall provide Plaintiff with a  
10 certified copy of this Order, a certified copy of his Complaint (ECF No. 1), and the  
11 summons so that he may serve each named Defendant. Upon receipt of this "IFP  
12 Package," Plaintiff is directed to complete the Form 285s as completely and accurately  
13 as possible, and to return them to the United States Marshal according to the instructions  
14 provided by the Clerk in the letter accompanying his IFP package. Upon receipt, the U.S.  
15 Marshal shall serve a copy of the Complaint and summons upon each Defendant as  
16 directed by Plaintiff on the USM Form 285s. All costs of service shall be advanced by  
17 the United States. *See* 28 U.S.C. § 1915(d); FED.R.CIV.P. 4(c)(3).

18 5. Defendants are thereafter **ORDERED** to reply to Plaintiff's Complaint  
19 within the time provided by the applicable provisions of Federal Rule of Civil Procedure  
20 12(a). *See* 42 U.S.C. § 1997e(g)(2) (while a defendant may occasionally be permitted to  
21 "waive the right to reply to any action brought by a prisoner confined in any jail, prison,  
22 or other correctional facility under section 1983," once the Court has conducted its sua  
23 sponte screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b), and thus, has made  
24 a preliminary determination based on the face on the pleading alone that Plaintiff has a  
25 "reasonable opportunity to prevail on the merits," the defendant is required to respond).

26 6. Plaintiff shall serve upon the Defendants or, if appearance has been entered  
27 by 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

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

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DATED: 5/27/14



HON. WILLIAM Q. HAYES  
United States District Judge