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

JAMES MAXWELL GREEN,
CDCR #F-16348,

Plaintiff,

vs.

DIRECTOR/SECRETARY, CALIFORNIA
DEPARTMENT OF CORRECTIONS
AND REHABILITATION; D. PARAMO,
Warden; W. EDROZO, Correctional
Officer; R. JOHNSON, Correctional
Officer; A. ALANIZ, Correctional Officer;
WHITING, Correctional Sgt.; DAVIS,
Correctional Lt.; JOHN and JANE DOES,

Defendants.

Civil No. 14cv0965 LAB (BGS)

ORDER:

**(1) GRANTING PLAINTIFF'S
MOTION TO PROCEED
IN FORMA PAUPERIS
[Doc. No. 2]**

AND

**(2) DIRECTING U.S. MARSHAL
TO EFFECT SERVICE OF
COMPLAINT PURSUANT TO
FED.R.Civ.P. 4(c)(3) AND
28 U.S.C. § 1915(d)**

James Maxwell Green (“Plaintiff”), who is currently incarcerated at Richard J. Donovan Correctional Facility (“RJD”) in San Diego, California, and proceeding pro se, has filed a civil rights complaint (“Compl.”) pursuant to 42 U.S.C. § 1983 (Doc No. 1).

Plaintiff claims Defendants have violated his right to free exercise of his Native American religion by denying him “access to a sweat lodge and/or place” in which to practice his faith, and have “intimidated [him] with acts of violence” and subjected him

1 to “racial discrimination” and “harassment” by “placing him in a cage” and confiscating
2 religious items he claims are necessary to his religious practice. *See* Compl. at 3-5. He
3 seeks injunctive relief as well as “further damages of [the] cost of . . . filing.” *Id.* at 6.

4 Plaintiff has not prepaid the civil filing fee; instead he has filed a Motion to
5 Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) (Doc. No. 2).

6 **I. MOTION TO PROCEED IFP**

7 All parties instituting any civil action, suit or proceeding in a district court of the
8 United States, except an application for writ of habeas corpus, must pay a filing fee of
9 \$400. *See* 28 U.S.C. § 1914(a).¹ An action may proceed despite a plaintiff’s failure to
10 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.
11 § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, a
12 prisoner granted leave to proceed IFP remains obligated to pay the entire fee in
13 installments, regardless of whether his action is ultimately dismissed. *See* 28 U.S.C.
14 § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

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

26
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)
(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 \$10, and forwards those payments to the Court until the entire filing fee is paid. *See* 28
2 U.S.C. § 1915(b)(2).

3 In support of his IFP Motion, Plaintiff has submitted a certified copy of his trust
4 account statement pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2.
5 *Andrews*, 398 F.3d at 1119. The Court has reviewed Plaintiff’s trust account statement,
6 as well as the attached prison certificate issued by an accounting trainee at RJD verifying
7 his available balances, and has determined that while he has had an average monthly
8 balance of \$13.73 in his account for the 6-month period preceding the filing of this
9 action, Plaintiff has no available funds from which to pay an initial partial filing fee at
10 this time. *See* 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event shall a prisoner be
11 prohibited from bringing a civil action or appealing a civil action or criminal judgment
12 for the reason that the prisoner has no assets and no means by which to pay the initial
13 partial filing fee.”); *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4) acts as
14 a “safety-valve” preventing dismissal of a prisoner’s IFP case based solely on a “failure
15 to pay . . . due to the lack of funds available to him when payment is ordered.”).

16 Therefore, the Court **GRANTS** Plaintiff’s Motion to Proceed IFP (Doc. No. 2) and
17 assesses no initial partial filing fee per 28 U.S.C. § 1915(b)(1). However, the entire \$350
18 balance of the filing fees mandated will be collected by the CDCR and forwarded to the
19 Clerk of the Court pursuant to the installment payment provisions set forth in 28 U.S.C.
20 § 1915(b)(1).

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

22 The PLRA also requires that the Court review complaints filed by all persons
23 proceeding IFP and by those, like Plaintiff, who are “incarcerated or detained in any
24 facility [and] accused of, sentenced for, or adjudicated delinquent for, violations of
25 criminal law or the terms or conditions of parole, probation, pretrial release, or
26 diversionary program,” “as soon as practicable after docketing.” *See* 28 U.S.C.
27 §§ 1915(e)(2) and 1915A(b). Under these statutes, the Court must sua sponte dismiss
28 complaints, or any portions thereof, which are frivolous, malicious, fail to state a claim,

1 or which seek damages from defendants who are immune. See 28 U.S.C.
2 §§ 1915(e)(2)(B) and 1915A; *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000)
3 (en banc) (§ 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010)
4 (discussing 28 U.S.C. § 1915A(b)).

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

16 As currently pleaded, the Court finds Plaintiff’s free exercise of religion claims
17 are sufficient to survive the sua sponte screening required by 28 U.S.C. §§ 1915(e)(2)
18 and 1915A(b).² See *Shakur v. Schriro*, 514 F.3d 878, 884-85 (9th Cir. 2008) (a
19 prisoner’s First Amendment right to free exercise is triggered when prison officials are
20 alleged to have substantially burden the practice of an inmate’s religion by preventing
21 him from engaging in conduct which he sincerely believes is consistent with his faith)
22 (citing *Malik v. Brown*, 16 F.3d 330, 333 (9th Cir. 1994)).

23 Accordingly, the Court will direct U.S. Marshal service on Plaintiff’s behalf. See
24 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process, and
25 perform all duties in [IFP] cases.”); FED.R.CIV.P. 4(c)(3) (“[T]he court may order that
26

27 ² Plaintiff is cautioned that “the sua sponte screening and dismissal procedure is
28 cumulative of, and not a substitute for, any subsequent Rule 12(b)(6) motion that [a
defendant] may choose to bring.” *Teahan v. Wilhelm*, 481 F. Supp. 2d 1115, 1119 (S.D.
Cal. 2007).

1 service be made by a United States marshal or deputy marshal . . . if the plaintiff is
2 authorized to proceed *in forma pauperis* under 28 U.S.C. § 1915.”).

3 **III. CONCLUSION AND ORDER**

4 Good cause appearing, **IT IS HEREBY ORDERED** that:

5 1. Plaintiff’s Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a) (Doc. No.
6 2) is **GRANTED**.

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

14 3. The Clerk of the Court is directed to serve a copy of this Order on Jeffrey
15 A. Beard, Secretary, California Department of Corrections and Rehabilitation, P.O. Box
16 942883, Sacramento, California, 94283-0001.

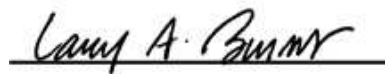
17 **IT IS FURTHER ORDERED** that:

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

1 5. Defendants are thereafter **ORDERED** to reply to Plaintiff's Complaint
2 within the time provided by the applicable provisions of Federal Rule of Civil Procedure
3 12(a). *See* 42 U.S.C. § 1997e(g)(2) (while a defendant may occasionally be permitted
4 to "waive the right to reply to any action brought by a prisoner confined in any jail,
5 prison, or other correctional facility under section 1983," once the Court has conducted
6 its sua sponte screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b), and thus,
7 has made a preliminary determination based on the face on the pleading alone that
8 Plaintiff has a "reasonable opportunity to prevail on the merits," the defendant is required
9 to respond).

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

18
19 DATED: August 29, 2014

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21 **HONORABLE LARRY ALAN BURNS**
22 United States District Judge