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

RAUL ARELLANO, JR.,  
CDCR #AH-1995,  
  
Plaintiff,  
  
vs.  
  
COUNTY OF SAN DIEGO; GUERRERO  
BAIL BOND; OFFICER GUERRERO;  
VIOLENT CRIME TASK FORCE,  
  
Defendants.

Civil No. 14-CV-2404 JLS (KSC)

**ORDER:(1) GRANTING  
MOTION TO PROCEED IN  
FORMA PAUPERIS [ECF 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)**

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

Plaintiff did not prepay the civil filing fees required by 28 U.S.C. § 1914(a) at the time he filed his Complaint; instead he has filed a Motion to Proceed IFP (ECF Doc. No. 2).

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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).<sup>1</sup> An action may proceed despite a plaintiff’s failure to  
5 prepay the entire fee only if he 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). However, a  
7 prisoner granted leave to proceed IFP remains obligated to pay the entire fee in  
8 installments, regardless of whether his action is ultimately dismissed. *See* 28 U.S.C.  
9 § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

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

23 In support of his IFP Motion, Plaintiff has submitted a certified copy of his trust  
24 account statement pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2.  
25 *Andrews*, 398 F.3d at 1119. The Court has reviewed Plaintiff’s trust account statement,

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26  
27 <sup>1</sup> 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 as well as the attached prison certificate verifying his available balances. Plaintiff's  
2 statements show he has insufficient funds in his prisoner trust account during the 6-  
3 month period preceding the filing of this action, and no available funds from which to  
4 pay any initial partial filing fee at this time. *See* 28 U.S.C. § 1915(b)(4) (providing that  
5 “[i]n no event shall a prisoner be prohibited from bringing a civil action or appealing a  
6 civil action or criminal judgment for the reason that the prisoner has no assets and no  
7 means by which to pay the initial partial filing fee.”); *Taylor*, 281 F.3d at 850 (finding  
8 that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve” preventing dismissal of a prisoner’s  
9 IFP case based solely on a “failure to pay . . . due to the lack of funds available to him  
10 when payment is ordered.”).

11 Therefore, the Court **GRANTS** Plaintiff’s Motion to Proceed IFP (ECF Doc. No.  
12 2) and assesses no initial partial filing fee per 28 U.S.C. § 1915(b)(1). However, the  
13 entire \$350 balance of the filing fees mandated will be collected by the California  
14 Department of Corrections and Rehabilitation (“CDCR”) and forwarded to the Clerk of  
15 the Court pursuant to the installment payment provisions set forth in 28 U.S.C.  
16 § 1915(b)(1).

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

18 The PLRA also requires review of complaints filed by all persons proceeding IFP,  
19 and by those, like Plaintiff, who are “incarcerated or detained in any facility [and]  
20 accused of, sentenced for, or adjudicated delinquent for, violations of criminal law or the  
21 terms or conditions of parole, probation, pretrial release, or diversionary program,” “as  
22 soon as practicable after docketing.” *See* 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under  
23 these statutes, the Court must sua sponte dismiss complaints, or any portions thereof,  
24 which are frivolous, malicious, fail to state a claim, or which seek damages from  
25 defendants who are immune. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A; *Lopez*, 203  
26 F.3d at 1126-27; *Rhodes*, 621 F.3d at 1004.

27 “[W]hen determining whether a complaint states a claim, a court must accept as  
28 true all allegations of material fact and must construe those facts in the light most

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

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

#### 17 **IV. CONCLUSION AND ORDER**

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

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

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

3 3. The Clerk of the Court is directed to serve a copy of this Order on Jeffrey  
4 A. 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 is **DIRECTED** to issue a summons as to Plaintiff's Complaint  
8 (ECF Doc. No. 1) upon Defendants and forward it to Plaintiff along with a blank U.S.  
9 Marshal Form 285 for each Defendant. In addition, the Clerk is **DIRECTED** provide  
10 Plaintiff with a certified copy of this Order and a certified copy of his Complaint 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  
13 accurately as possible, and to return them to the United States Marshal according to the  
14 instructions provided by the Clerk in the letter accompanying his IFP package. Upon  
15 receipt, the U.S. Marshal is **ORDERED** to serve a copy of the Complaint and summons  
16 upon each Defendant as directed by Plaintiff on the USM Form 285s. All costs of  
17 service will be advanced by the United States. *See* 28 U.S.C. § 1915(d); FED.R.CIV.P.  
18 4(c)(3).

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

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