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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 ELVIS JONES  
12 G-41716,

13 Plaintiff,

14 v.

15 DR. KROLL; DR. DAUBS,

16 Defendants.  
17

Case No.: 3:16-cv-02370-LAB-JLB

**ORDER:**

1) **GRANTING PLAINTIFF'S  
MOTION TO PROCEED IN FORMA  
PAUPERIS PURSUANT TO 28 U.S.C.  
§ 1915(a) (ECF No. 2)**

**AND**

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

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24 Elvis Jones ("Plaintiff"), currently incarcerated at Corcoran State Prison located in  
25 Corcoran, California, and proceeding pro se, has filed a civil rights complaint ("Compl.")  
26 pursuant to 42 U.S.C. § 1983 (ECF No. 1). In his Complaint, Plaintiff alleges that his  
27 Eighth Amendment rights were violated when prison officials failed to protect him from

1 an attack by another inmate when he was housed at the Richard J. Donovan Correctional  
2 Facility in 2014. (See Compl. at 5-6.)

3 Plaintiff did not prepay the civil filing fee required by 28 U.S.C. § 1914(a);  
4 instead, he has filed a certified copy of his inmate trust account certificate which the  
5 Court has construed as a Motion to Proceed In Forma Pauperis (“IFP”) pursuant to 28  
6 U.S.C. § 1915(a) (**ECF No. 2**).

7 **I. Plaintiff’s Motion to Proceed IFP**

8 All parties instituting any civil action, suit or proceeding in a district court of the  
9 United States, except an application for writ of habeas corpus, must pay a filing fee of  
10 \$400. See 28 U.S.C. § 1914(a).<sup>1</sup> An action may proceed despite a plaintiff’s failure to  
11 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.  
12 § 1915(a). See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*  
13 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, if a prisoner, like Plaintiff, is  
14 granted leave to proceed IFP, he remains obligated to pay the entire fee in “increments,”  
15 see *Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), regardless of whether his  
16 action is ultimately dismissed. See 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*,  
17 281 F.3d 844, 847 (9th Cir. 2002).

18 Under 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act  
19 (“PLRA”), a prisoner seeking leave to proceed IFP must submit a “certified copy of the  
20 trust fund account statement (or institutional equivalent) for the prisoner for the six-  
21 month period immediately preceding the filing of the complaint.” 28 U.S.C.  
22 § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified  
23 trust account statement, the Court assesses an initial payment of 20% of (a) the average  
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26 <sup>1</sup> In addition to the \$350 statutory fee, all parties filing civil actions on or after May 1, 2013, must pay  
27 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 monthly deposits in the account for the past six months, or (b) the average monthly  
2 balance in the account for the past six months, whichever is greater, unless the prisoner  
3 has no assets. See 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution  
4 having custody of the prisoner then collects subsequent payments, assessed at 20% of the  
5 preceding month’s income, in any month in which the prisoner’s account exceeds \$10,  
6 and forwards those payments to the Court until the entire filing fee is paid. See 28 U.S.C.  
7 § 1915(b)(2).

8 Plaintiff has submitted a certified copy of his trust account statement pursuant to  
9 28 U.S.C. § 1915(a)(2) and S.D. Cal. CivLR 3.2. Andrews, 398 F.3d at 1119. The Court  
10 has reviewed Plaintiff’s trust account statement, but it shows that he has a current  
11 available balance of zero. See 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event shall  
12 a prisoner be prohibited from bringing a civil action or appealing a civil action or  
13 criminal judgment for the reason that the prisoner has no assets and no means by which to  
14 pay the initial partial filing fee.”); Taylor, 281 F.3d at 850 (finding that 28 U.S.C. §  
15 1915(b)(4) acts as a “safety-valve” preventing dismissal of a prisoner’s IFP case based  
16 solely on a “failure to pay . . . due to the lack of funds available to him when payment is  
17 ordered.”).

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

## 23 **II. Initial Screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A**

24 Notwithstanding Plaintiff’s IFP status or the payment of any partial filing fees, the  
25 PLRA also obligates the Court to review complaints filed by all persons proceeding IFP  
26 and by those, like Plaintiff, who are “incarcerated or detained in any facility [and]  
27 accused of, sentenced for, or adjudicated delinquent for, violations of criminal law or the

1 terms or conditions of parole, probation, pretrial release, or diversionary program,” “as  
2 soon as practicable after docketing.” See 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under  
3 these statutes, the Court must sua sponte dismiss complaints, or any portions thereof,  
4 which are frivolous, malicious, fail to state a claim, or which seek damages from  
5 defendants who are immune. See 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b); *Lopez v.*  
6 *Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Rhodes v.*  
7 *Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing 28 U.S.C. § 1915A(b)).

8 All complaints must contain “a short and plain statement of the claim showing that  
9 the pleader is entitled to relief.” Fed.R.Civ.P. 8(a)(2). Detailed factual allegations are  
10 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by  
11 mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)  
12 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “Determining  
13 whether a complaint states a plausible claim for relief [is] . . . a context-specific task that  
14 requires the reviewing court to draw on its judicial experience and common sense.” *Id.*  
15 The “mere possibility of misconduct” falls short of meeting this plausibility standard.  
16 *Id.*; see also *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).

17 “When there are well-pleaded factual allegations, a court should assume their  
18 veracity, and then determine whether they plausibly give rise to an entitlement to relief.”  
19 *Iqbal*, 556 U.S. at 679; see also *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000)  
20 (“[W]hen determining whether a complaint states a claim, a court must accept as true all  
21 allegations of material fact and must construe those facts in the light most favorable to  
22 the plaintiff.”); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (noting that §  
23 1915(e)(2) “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”).

24 However, while the court “ha[s] an obligation where the petitioner is pro se,  
25 particularly in civil rights cases, to construe the pleadings liberally and to afford the  
26 petitioner the benefit of any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir.  
27 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)), it may not

1 “supply essential elements of claims that were not initially pled.” Ivey v. Board of  
2 Regents of the University of Alaska, 673 F.2d 266, 268 (9th Cir. 1982).

3 As currently pleaded, the Court finds Eighth Amendment failure to protect  
4 allegations in Plaintiff’s Complaint which are sufficient to survive the sua sponte  
5 screening required by 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Accordingly, the Court  
6 will direct the U.S. Marshal to effect service on Plaintiff’s behalf. See 28 U.S.C.  
7 § 1915(d) (“The officers of the court shall issue and serve all process, and perform all  
8 duties in [IFP] cases.”); Fed.R.Civ.P. 4(c)(3) (“[T]he court may order that service be  
9 made by a United States marshal or deputy marshal . . . if the plaintiff is authorized to  
10 proceed in forma pauperis under 28 U.S.C. § 1915.”).

11 **III. Conclusion and Order**

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

13 1. Plaintiff’s Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a) (**ECF No.**  
14 **2**) is **GRANTED**.

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

22 3. The Clerk of the Court is directed to serve a copy of this Order on Scott  
23 Kernan, Secretary, California Department of Corrections and Rehabilitation, P.O. Box  
24 942883, Sacramento, California, 94283-0001.

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1           **IT IS FURTHER ORDERED** that:

2           4.       The Clerk is **DIRECTED** to issue a summons as to Plaintiff's Complaint  
3 (ECF No. 1) upon Defendants and forward it to Plaintiff along with blank U.S. Marshal  
4 Form 285s for each named Defendant. In addition, the Clerk is directed provide Plaintiff  
5 with a certified copy of this Order and a certified copy of his Complaint (ECF No. 1) and  
6 the summons so that he may serve each named Defendant. Upon receipt of this "IFP  
7 Package," Plaintiff is directed to complete the Form 285s as completely and accurately as  
8 possible, and to return them to the United States Marshal according to the instructions  
9 provided by the Clerk in the letter accompanying his IFP package.

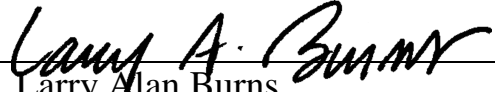
10          5.       Upon receipt, the U.S. Marshal is **ORDERED** to serve a copy of the  
11 Complaint and summons upon the named Defendants as directed by Plaintiff on the USM  
12 Form 285s. All costs of service will be advanced by the United States. See 28 U.S.C.  
13 § 1915(d); Fed.R.Civ.P. 4(c)(3).

14          6.       Defendants are thereafter **ORDERED** to reply to Plaintiff's Complaint  
15 within the time provided by the applicable provisions of Federal Rule of Civil Procedure  
16 12(a). See 42 U.S.C. § 1997e(g)(2) (while a defendant may occasionally be permitted to  
17 "waive the right to reply to any action brought by a prisoner confined in any jail, prison,  
18 or other correctional facility under section 1983," once the Court has conducted its sua  
19 sponte screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b), and thus, has made  
20 a preliminary determination based on the face on the pleading alone that Plaintiff has a  
21 "reasonable opportunity to prevail on the merits," the defendant is required to respond).

22          7.       Plaintiff must serve upon the Defendants or, if appearance has been entered  
23 by counsel, upon Defendants' counsel, a copy of every further pleading or other  
24 document submitted for consideration by the Court. Plaintiff must include with the  
25 original paper to be filed with the Clerk of the Court, a certificate stating the manner in  
26 which a true and correct copy of the document was served on the Defendants, or counsel  
27 for Defendants, and the date of that service.

1 Any paper received by the Court which has not been properly filed with the Clerk,  
2 or which fails to include a Certificate of Service, may be disregarded.

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4 Dated: October 12, 2016

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6 Hon. Larry Alan Burns  
7 United States District Judge

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