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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 KELVIN X. SINGLETON,  
12 CDCR #34318,

13 Plaintiff,

14 vs.

15 SCOTT KERNAN; G. HERNANDEZ; A.  
16 SANCHEZ; C. MARTINEZ; K. HURM;  
17 N. BEDUHI

18 Defendants.  
19  
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Case No. 16-cv-02462-BAS-NLS

**ORDER:**

- 1) **GRANTING MOTION TO PROCEED IN FORMA PAUPERIS;**  
2) **DENYING MOTION FOR PRELIMINARY INJUNCTION; AND**  
3) **DIRECTING U.S. MARSHAL TO EFFECT SERVICE PURSUANT TO 28 U.S.C. § 1915(d) AND Fed. R. Civ. P. 4(c)(3)**

22 Kelvin X. Singleton (“Plaintiff”) is incarcerated at the California State Prison,  
23 Sacramento, located in Represa, California. He is proceeding pro se, and has filed a civil  
24 Complaint pursuant to 42 U.S.C. § 1983 (ECF No. 1). Plaintiff requests leave to proceed  
25 in forma pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a) (ECF No. 2). Plaintiff has also  
26 filed a motion for a preliminary injunction (ECF. No. 4).

27 **Background**

28 Plaintiff claims that when he was incarcerated at the Richard J. Donovan

1 Correctional Facility (“RJD”) from 2012 to 2016, he was subjected to retaliation for  
2 exercising his constitutional right to file grievances, as well as being subjected to cruel and  
3 unusual punishment.

4 He seeks declaratory and preliminary injunctive relief, as well as general and  
5 punitive damages. (ECF No. 1 at 21-22, 25.)

## 6 Discussion

### 7 **A. IFP Motion**

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.<sup>1</sup> *See* 28 U.S.C. § 1914(a). The 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, a prisoner who is granted leave to  
14 proceed IFP remains obligated to pay the entire fee in “increments” or “installments,”  
15 *Bruce v. Samuels*, \_\_\_ U.S. \_\_\_, 136 S. Ct. 627, 629 (2016); *Williams v. Paramo*, 775 F.3d  
16 1182, 1185 (9th Cir. 2015), and regardless of whether his action is ultimately dismissed.  
17 *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

18 Section 1915(a)(2) requires prisoners seeking leave to proceed IFP to submit a  
19 “certified copy of the trust fund account statement (or institutional equivalent) for . . . the  
20 6-month period immediately preceding the filing of the complaint.” 28 U.S.C.  
21 § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified  
22 trust account statement, the Court assesses an initial payment of 20% of (a) the average  
23 monthly deposits in the account for the past six months, or (b) the average monthly balance  
24 in the account for the past six months, whichever is greater, unless the prisoner has no  
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27 <sup>1</sup> In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$50. *See*  
28 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14 (eff.  
Dec. 1, 2014)). The additional \$50 administrative fee does not apply to persons granted leave to proceed  
IFP. *Id.*

1 assets. *See* 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having custody  
2 of the prisoner then collects subsequent payments, assessed at 20% of the preceding  
3 month's income, in any month in which his account exceeds \$10, and forwards those  
4 payments to the Court until the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2).

5 In support of his IFP motion, Plaintiff has submitted a copy of his CDCR Inmate  
6 Statement Report and a certificate issued by an accounting officer attesting to his balances  
7 and deposits over the 6-month period preceding the filing of his Complaint. (ECF No. 2  
8 at 4-7). These documents show that Plaintiff's current available balance is zero (ECF No.  
9 2 at 4). Therefore, the Court grants Plaintiff leave to proceed IFP, (ECF No. 2), and declines  
10 to "exact" any initial filing fee because his trust account statement shows he "has no means  
11 to pay it." *Bruce*, 136 S. Ct. at 629; 28 U.S.C. § 1915(b)(4) (providing that "[i]n no event  
12 shall 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"). The Secretary of the CDCR is directed to collect the  
15 entire \$350 balance of the filing fees required by 28 U.S.C. § 1914 and forward them to  
16 the Clerk of the Court pursuant to the installment payment provisions set forth in 28 U.S.C.  
17 § 1915(b)(1). *See id.*

18 **B. Screening of Complaint pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)**

19 Pursuant to the Prison Litigation Reform Act ("PLRA"), the Court is required to  
20 conduct a sua sponte screening of Plaintiff's Complaint. 28 U.S.C. § 1915(e)(2);  
21 § 1915A(b). Under these statutes, the Court must dismiss a prisoner's IFP complaint, or  
22 any portion of it, which is frivolous, malicious, fails to state a claim, or seeks damages  
23 from defendants who are immune. *See Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir.  
24 2010) (discussing 28 U.S.C. § 1915A(b)); *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th  
25 Cir. 2000) (en banc) (discussing 28 U.S.C. § 1915(e)(2)). "The purpose of [screening] is  
26 'to ensure that the targets of frivolous or malicious suits need not bear the expense of  
27 responding.'" *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir. 2014) (quoting *Wheeler*  
28 *v. Wexford Health Sources, Inc.*, 689 F.3d 680, 681 (7th Cir. 2012)).

1           “The standard for determining whether a plaintiff has failed to state a claim upon  
2 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of  
3 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668 F.3d  
4 1108, 1112 (9th Cir. 2012); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir.  
5 2012) (noting that screening pursuant to § 1915A “incorporates the familiar standard  
6 applied in the context of failure to state a claim under Federal Rule of Civil Procedure  
7 12(b)(6)”). Rule 12(b)(6) requires a complaint “contain sufficient factual matter, accepted  
8 as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S.  
9 662, 678 (2009) (internal quotation marks omitted).

10           Detailed factual allegations are not required, but “[t]hreadbare recitals of the  
11 elements of a cause of action, supported by mere conclusory statements, do not suffice.”  
12 *Iqbal*, 556 U.S. at 678. “Determining whether a complaint states a plausible claim for relief  
13 [is] . . . a context-specific task that requires the reviewing court to draw on its judicial  
14 experience and common sense.” *Id.* The “mere possibility of misconduct” or “unadorned,  
15 the defendant-unlawfully-harmed me accusation[s]” fall short of meeting this plausibility  
16 standard. *Id.*; *see also Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).

17           Based on the allegations in Plaintiff’s Complaint, the Court finds that while Plaintiff  
18 has not shown, for the reasons discussed below, that he is entitled to preliminary injunctive  
19 relief, his Complaint nevertheless contains factual content sufficient to survive the “low  
20 threshold” for proceeding past the sua sponte screening required by 28 U.S.C. §§  
21 1915(e)(2) and 1915A(b). This is because Plaintiff’s Complaint alleges retaliation and  
22 Eighth Amendment claims that are plausible on their face. *See Wilhelm*, 680 F.3d at 1123.  
23 *See Iqbal*, 556 U.S. at 678.

24           Accordingly, the Court will direct the U.S. Marshal to effect service upon the  
25 Defendants on Plaintiff’s behalf. *See* 28 U.S.C. § 1915(d) (“The officers of the court shall  
26 issue and serve all process, and perform all duties in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3)  
27 (“[T]he court may order that service be made by a United States marshal or deputy marshal  
28 . . . if the plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. § 1915.”).

1 **C. Motion for Preliminary Injunction**

2 Plaintiff also seeks immediate injunctive relief “requesting the Court to Order  
3 Defendants to cease and desist in demanding a [urinalysis] weekly from Plaintiff.” (*See*  
4 ECF No. 4 at 2.)

5 As a preliminary matter, however, a federal district court may issue emergency  
6 injunctive relief only if it has personal jurisdiction over the parties and subject matter  
7 jurisdiction over the lawsuit. *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526  
8 U.S. 344, 350 (1999) (noting that one “becomes a party officially, and is required to take  
9 action in that capacity, only upon service of summons or other authority-asserting measure  
10 stating the time within which the party served must appear to defend”). The court may not  
11 attempt to determine the rights of persons not before it. *See, e.g., Hitchman Coal & Coke*  
12 *Co. v. Mitchell*, 245 U.S. 229, 234-35 (1916); *Zepeda v. INS*, 753 F.2d 719, 727-28 (9th  
13 Cir. 1983). Under Federal Rule of Civil Procedure 65(d)(2) an injunction binds only “the  
14 parties to the action,” their “officers, agents, servants, employees, and attorneys,” and  
15 “other persons who are in active concert or participation.” Fed. R. Civ. P. 65(d)(2)(A)-(C).

16 On the merits, “[a] plaintiff seeking a preliminary injunction must establish that he  
17 is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence  
18 of preliminary relief, that the balance of equities tips in his favor, and that an injunction is  
19 in the public interest.” *Glossip v. Gross*, \_\_\_ U.S. \_\_\_, 135 S. Ct. 2726, 2736-37 (2015)  
20 (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). “Under *Winter*,  
21 plaintiffs must establish that irreparable harm is likely, not just possible, in order to obtain  
22 a preliminary injunction.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th  
23 Cir. 2011).

24 Finally, the PLRA further requires prisoners to satisfy additional requirements when  
25 seeking preliminary injunctive relief against prison officials:

26 Preliminary injunctive relief must be narrowly drawn, extend no further than  
27 necessary to correct the harm the court finds requires preliminary relief, and be the  
28 least intrusive means necessary to correct that harm. The court shall give substantial  
weight to any adverse impact on public safety or the operation of a criminal justice

1 system caused by the preliminary relief and shall respect the principles of comity . .  
2 . in tailoring any preliminary relief.

3 18 U.S.C. § 3626(a)(2). Section 3626(a)(2) places significant limits upon a court’s power  
4 to grant preliminary injunctive relief to inmates, and “operates simultaneously to restrict  
5 the equity jurisdiction of federal courts and to protect the bargaining power of prison  
6 administrators—no longer may courts grant or approve relief that binds prison  
7 administrators to do more than the constitutional minimum.” *Gilmore v. People of the State*  
8 *of California*, 220 F.3d 987, 998-99 (9th Cir. 2000).

9 Having outlined the relevant legal standard, the Court finds Plaintiff’s arguments in  
10 support of a preliminary injunction unpersuasive.

11 First, because Plaintiff’s case is still in its preliminary screening stage, the United  
12 States Marshal has yet to effect service on his behalf, Defendants have no actual notice,  
13 and the Court has no personal jurisdiction over any Defendant at this time. *See* Fed. R. Civ.  
14 P. 65(d)(2); *Murphy Bros., Inc.*, 526 U.S. at 350; *Zepeda*, 753 F.2d at 727-28. Moreover,  
15 Plaintiff is no longer housed in the same institution where most of the Defendants are  
16 alleged to be employed. Plaintiff is located in a different prison and there are no facts to  
17 show that the Defendants named in the Complaint play any role in Plaintiff’s current  
18 conditions of confinement or whether any of these Defendants are directing these weekly  
19 tests to occur. While Plaintiff names the Director of the CDCR as a Defendant, there are  
20 insufficient allegations that this Defendant is personally aware of these weekly tests or  
21 plays any role in deciding whether they must continue.

22 Second, even if the Court had personal jurisdiction over the Defendants Plaintiff  
23 seeks to enjoin, he has failed to establish the imminent irreparable harm required to support  
24 a preliminary injunction. *See Winter*, 555 U.S. at 20; *Alliance for the Wild Rockies*, 632  
25 F.3d at 1131. This is because where immediate injunctive relief is sought based on claims  
26 that governmental actors or agencies have violated the law in the *past*, as is the case here,  
27 Plaintiff must establish that the threat of future or repeated injury is both “real and  
28 immediate,” not just “conjectural” or “hypothetical.” *City of Los Angeles v. Lyons*, 461

1 U.S. 95, 102 (1983).

2 Plaintiff claims that he is concerned that Defendants will “set him up” and  
3 contaminate the urine samples he provides. (Pl.’s Mot., ECF No. 4 at 7.) However, as  
4 stated above Plaintiff is no longer housed in the same prison where the named Defendants  
5 are alleged to be currently employed. “The fact that plaintiff has met the pleading  
6 requirements allowing him to proceed with the complaint does not, ipso facto, entitle him  
7 to a preliminary injunction.” *Claiborne v. Blauser*, No. CIV S-10-2427 LKK, 2011 WL  
8 3875892, at \*8 (E.D. Cal. Aug. 31, 2011), *report and recommendation adopted*, No. CIV  
9 S-10-2427 LKK, 2011 WL 4765000 (E.D. Cal. Sept. 29, 2011). Instead, to meet the  
10 “irreparable harm” requirement, Plaintiff must do more than simply *allege* imminent harm;  
11 he must demonstrate it. *Caribbean Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d 668, 674  
12 (9th Cir. 1988). This requires Plaintiff to demonstrate by specific facts that there is a  
13 credible threat of immediate and irreparable harm. Fed. R. Civ. P. 65(b). Mere  
14 “[s]peculative injury does not constitute irreparable injury sufficient to warrant granting a  
15 preliminary injunction.” *Caribbean Marine*, 844 F.2d at 674-75.

16 The Court finds Plaintiff’s conclusory assertions of future incidents of potential  
17 retaliation “conjectural” and thus insufficient to make the required showing to justify  
18 injunctive relief. *Lyons*, 461 U.S. at 102; *see also Dymo Indus. v. Tapeprinter, Inc.*, 326  
19 F.2d 141, 143 (9th Cir. 1964) (“The grant of a preliminary injunction is the exercise of a  
20 very far reaching power never to be indulged in except in a case clearly warranting it.”).

21 Thus, for these reasons, the Court denies Plaintiff’s Motion for Preliminary  
22 Injunction at this time. (ECF No. 4.)

23 **Conclusion**

24 For the foregoing reasons, the Court:

- 25 1. **GRANTS** Plaintiff’s Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a)  
26 (ECF No. 2);
- 27 2. **DIRECTS** the Secretary of the CDCR, or his designee, to collect from  
28 Plaintiff’s prison trust account the \$350 filing fee owed in this case by garnishing monthly

1 payments from his account in an amount equal to twenty percent (20%) of the preceding  
2 month's income and forwarding those payments to the Clerk of the Court each time the  
3 amount in the account exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2). ALL  
4 PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER  
5 ASSIGNED TO THIS ACTION;

6 3. **DIRECTS** the Clerk of the Court to serve a copy of this Order on Scott  
7 Kernan, Secretary, CDCR, P.O. Box 942883, Sacramento, California, 94283-0001;

8 4. **DENIES** Plaintiff's Motion for Preliminary Injunction (ECF No. 4);

9 5. **DIRECTS** the Clerk to issue a summons as to Plaintiff's Complaint (ECF  
10 No. 1) and forward it to Plaintiff along with a blank U.S. Marshal Form 285 for each named  
11 Defendant. In addition, the Clerk will provide Plaintiff with a certified copy of this Order,  
12 a certified copy of his Complaint and the summons so that he may serve the Defendants.  
13 Upon receipt of this "IFP Package," Plaintiff must complete the Form 285s as completely  
14 and accurately as possible, and return them to the United States Marshal according to the  
15 instructions the Clerk provides in the letter accompanying his IFP package;

16 6. **ORDERS** the U.S. Marshal to serve a copy of the Complaint and summons  
17 upon the named Defendants as directed by Plaintiff on the USM Form 285s provided to  
18 him. All costs of that service will be advanced by the United States. See 28 U.S.C.  
19 § 1915(d); Fed. R. Civ. P. 4(c)(3);

20 7. **ORDERS** the served Defendants to reply to Plaintiff's Complaint within the  
21 time provided by the applicable provisions of Federal Rule of Civil Procedure 12(a). *See*  
22 42 U.S.C. § 1997e(g)(2) (once the Court has conducted its sua sponte screening pursuant  
23 to 28 U.S.C. § 1915(e)(2) and § 1915A(b), and has made a preliminary determination based  
24 on the face on the pleading alone that Plaintiff has a "reasonable opportunity to prevail on  
25 the merits," the defendant is required to respond); and

26 8. **ORDERS** Plaintiff, after service has been effected by the U.S. Marshal, to  
27 serve upon the named Defendants, or, if appearance has been entered by counsel, upon  
28 Defendants' counsel, a copy of every further pleading, motion, or other document

1 submitted for the Court's consideration pursuant to Fed. R. Civ. P. 5(b). Plaintiff must  
2 include with every original document he seeks to file with the Clerk of the Court, a  
3 certificate stating the manner in which a true and correct copy of that document has been  
4 was served on Defendants or their counsel, and the date of that service. *See* CivLR 5.2.  
5 Any document received by the Court which has not been properly filed with the Clerk or  
6 which fails to include a Certificate of Service upon Defendants may be disregarded.

7 **IT IS SO ORDERED.**

8  
9 **DATED: January 13, 2017**

10   
11 **Hon. Cynthia Bashant**  
12 **United States District Judge**