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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY:  DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

CARLOS RIOS,  
CDCR #E-52249,

Plaintiff,

vs.

DAVID STRAYHORN, Correctional  
Officer; JONES, Correctional Officer;  
S. RUTLEDGE, Correctional Sergeant;  
A. ALLAMBY, Correctional Lieutenant;  
CAMPOS, Licensed Vocational Nurse;  
ESTRADA, Registered Nurse;  
G. STRATTON, Chief Deputy Warden;  
Defendants.

Case No.: 3:17-cv-00049-BEN-BGS

**ORDER:**

**1) GRANTING MOTION TO  
PROCEED IN FORMA PAUPERIS  
[ECF NO. 2]**

**AND**

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

CARLOS RIOS (“Plaintiff”), currently incarcerated at Richard J. Donovan  
Correctional Facility (“RJD”), and proceeding pro se, has filed a civil rights complaint  
pursuant to 42 U.S.C. § 1983 (ECF No. 1). Plaintiff did not prepay the civil filing fee  
required by 28 U.S.C. § 1914(a) when he filed his Complaint; instead, he filed a Motion

1 to Proceed In Forma Pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a) (ECF No. 2),  
2 followed by an addendum which includes his most recent prison trust account statements  
3 (ECF No. 3).<sup>1</sup>

4 **I. Motion 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 \$400.<sup>2</sup> See 28 U.S.C. § 1914(a). The 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 *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007). However,  
10 prisoners who are granted leave to proceed IFP remain obligated to pay the entire fee in  
11 “increments” or “installments,” *Bruce v. Samuels*, 136 S. Ct. 627, 629 (2016); *Williams v.*  
12 *Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), and regardless of whether their action is  
13 ultimately dismissed, see 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d  
14 844, 847 (9th Cir. 2002).

15 Section 1915(a)(2) also requires prisoners seeking leave to proceed IFP to submit a  
16 “certified copy of the trust fund account statement (or institutional equivalent) for . . . the  
17 6-month period immediately preceding the filing of the complaint.” 28 U.S.C.  
18 § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified  
19 trust account statement, the Court assesses an initial payment of 20% of (a) the average

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22 <sup>1</sup> Plaintiff has also filed a copy of a letter he wrote to RJD’s Warden Daniel Paramo on  
23 February 7, 2017, requiring an inquiry into alleged acts of “harassment” and “retaliation”  
24 committed by RJD officials who are not named as Defendants in Plaintiff’s Complaint. See  
25 ECF No. 5. Because the Court has no jurisdiction over non-parties, and Plaintiff does not  
request any relief from the Court, it has directed the Clerk to file Plaintiff’s letter (ECF No.  
4), but takes no action with regard to it.

26 <sup>2</sup> In addition to the \$350 statutory fee, civil litigants must pay an additional administrative  
27 fee of \$50. See 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court  
28 Misc. Fee Schedule, § 14 (eff. June 1, 2016)). The additional \$50 administrative fee does  
not apply to persons 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 having  
4 custody of the prisoner then collects subsequent payments, assessed at 20% of the  
5 preceding month's income, in any month in which his account exceeds \$10, and forwards  
6 those payments to the Court until the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2);  
7 *Bruce*, 136 S. Ct. at 629.

8 In support of his IFP Motion, Plaintiff has submitted CDCR Inmate Statement  
9 Reports dated December 8, 2016, and January 10, 2017, together with a prison certificate  
10 completed by a RJD accounting official attesting to his trust account activity and  
11 balances for the six months preceding the filing of his Complaint. *See* ECF No. 2 at 5-8;  
12 ECF No. 3 at 5-7; 28 U.S.C. § 1915(a)(2); S.D. Cal. CivLR 3.2; *Andrews*, 398 F.3d at  
13 1119. These statements show that Plaintiff had an average monthly balance of \$17.89,  
14 and average monthly deposits of \$12.50 to his account over the six-month period  
15 immediately preceding the filing of his Complaint, as well as an available balance of  
16 \$39.66 at the time of filing. *See* ECF No. 3 at 7. Based on this financial information, the  
17 Court GRANTS Plaintiff's Motion to Proceed IFP (ECF No. 2), and assesses his initial  
18 partial filing fee to be \$3.57 pursuant to 28 U.S.C. § 1915(b)(1).

19 However, the Court will direct the Secretary of the California Department of  
20 Corrections and Rehabilitation ("CDCR"), or his designee, to collect this initial fee only  
21 if sufficient funds are available in Plaintiff's account at the time this Order is executed.  
22 *See* 28 U.S.C. § 1915(b)(4) (providing that "[i]n no event shall a prisoner be prohibited  
23 from bringing a civil action or appealing a civil action or criminal judgment for the  
24 reason that the prisoner has no assets and no means by which to pay the initial partial  
25 filing fee"); *Bruce*, 136 S. Ct. at 630; *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C.  
26 § 1915(b)(4) acts as a "safety-valve" preventing dismissal of a prisoner's IFP case based  
27 solely on a "failure to pay . . . due to the lack of funds available to him when payment is  
28

1 ordered”). The remaining balance of the \$350 total fee owed in this case must be  
2 collected and forwarded to the Clerk of the Court pursuant to 28 U.S.C. § 1915(b)(1).

3 **II. Screening Pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)**

4 A. Standard of Review

5 Because Plaintiff is a prisoner and is proceeding IFP, his Complaint also requires a  
6 pre-answer screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b). Under these  
7 statutes, the Court must sua sponte dismiss a prisoner’s IFP complaint, or any portion of  
8 it, which is frivolous, malicious, fails to state a claim, or seeks damages from defendants  
9 who are immune. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)  
10 (discussing 28 U.S.C. § 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir.  
11 2010) (discussing 28 U.S.C. § 1915A(b)). “The purpose of [screening] is ‘to ensure that  
12 the targets of frivolous or malicious suits need not bear the expense of responding.’”  
13 *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir. 2014) (quoting *Wheeler v. Wexford*  
14 *Health Sources, Inc.*, 689 F.3d 680, 681 (7th Cir. 2012)).

15 “The standard for determining whether a plaintiff has failed to state a claim upon  
16 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of  
17 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668  
18 F.3d 1108, 1112 (9th Cir. 2012); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th  
19 Cir. 2012) (noting that screening pursuant to § 1915A “incorporates the familiar standard  
20 applied in the context of failure to state a claim under Federal Rule of Civil Procedure  
21 12(b)(6)”). Rule 12(b)(6) requires a complaint “contain sufficient factual matter, accepted  
22 as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S.  
23 662, 678 (2009) (internal quotation marks omitted); *Wilhelm*, 680 F.3d at 1121.

24 Detailed factual allegations are not required, but “[t]hreadbare recitals of the  
25 elements of a cause of action, supported by mere conclusory statements, do not suffice.”  
26 *Iqbal*, 556 U.S. at 678. “Determining whether a complaint states a plausible claim for  
27 relief [is] . . . a context-specific task that requires the reviewing court to draw on its  
28 judicial experience and common sense.” *Id.* The “mere possibility of misconduct” or

1 “unadorned, the defendant-unlawfully-harmed me accusation[s]” fall short of meeting  
2 this plausibility standard. *Id.*; *see also Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th  
3 Cir. 2009).

4 Finally, in deciding whether Plaintiff has stated a plausible claim for relief, the  
5 Court may consider exhibits attached to his Complaint. *See Fed. R. Civ. P. 10(c)* (“A  
6 copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all  
7 purposes.”); *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1555  
8 n.19 (9th Cir. 1990) (citing *Amfac Mortg. Corp. v. Ariz. Mall of Tempe, Inc.*, 583 F.2d  
9 426 (9th Cir. 1978) (“[M]aterial which is properly submitted as part of the complaint may  
10 be considered” in ruling on a Rule 12(b)(6) motion to dismiss.)).

11 B. Plaintiff’s Allegations

12 Plaintiff claims that on January 13, 2015, RJD Correctional Officer Strayhorn used  
13 unnecessary and unreasonable force against him “without need or provocation” after  
14 Plaintiff called Strayhorn by his first name in RJD’s Facility C Medical Clinic. (ECF No.  
15 1 at 12-13, 17, 19-20.) Plaintiff claims Correctional Officer Jones, Sergeant Rutledge,  
16 and Registered Nurse Estrada observed the battery and “had the opportunity” but did not  
17 intervene (*id.* at 8, 14, 20), Licensed Vocational Nurse Campos failed to provide him  
18 necessary medical care and/or adequately record his injuries (*id.* at 17, 20), and Rutledge,  
19 Correctional Lieutenant Allamby, and RJD’s Chief Deputy Warden G. Stratton, all failed  
20 to take disciplinary action against and/or document Strayhorn’s use of force as part of a  
21 conspiracy to retaliate against him for having filed a previous lawsuit, *Rios v. Paramo*,  
22 S.D. Cal. Civil Case No. 3:14-cv-01073-WQH-DHB, in which both Allamby and  
23 Rutledge had been named as Defendants. (*Id.* at 13, 18, 50-66.) Plaintiff seeks a  
24 declaratory judgment, as well as compensatory and punitive damages. (*Id.* at 22-23.)

25 Based on these allegations, the Court finds Plaintiff’s Complaint sufficient to  
26 survive the “low threshold” for proceeding past the sua sponte screening required by 28  
27 U.S.C. §§ 1915(e)(2) and 1915A(b). *See Wilhelm*, 680 F.3d at 1123; *Iqbal*, 556 U.S. at  
28 678; *Hudson v. McMillian*, 503 U.S. 1, 6-7 (1992) (explaining that when prison officials

1 stand accused of using excessive force in violation of the Eighth Amendment, the core  
2 judicial inquiry is “whether force was applied in a good-faith effort to maintain or restore  
3 discipline, or maliciously and sadistically to cause harm”); *Robins v. Meecham*, 60 F.3d  
4 1436, 1442 (9th Cir.1995) (holding that “a prison official can violate a prisoner’s Eighth  
5 Amendment rights by failing to intervene”); *Estelle v. Gamble*, 429 U.S. 97, 105-06  
6 (1976) (prison officials are liable if they act with deliberate indifference to a prisoner’s  
7 serious medical needs); *id.* at 104 (deliberate indifference “is manifested by prison  
8 [officials] intentionally denying or delaying access to medical care”); *Rhodes v.*  
9 *Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005) (First Amendment retaliation claim  
10 requires prisoner to allege: “(1) . . . a state actor took some adverse action against [him]  
11 (2) because of (3) that prisoner’s protected conduct, and that such action (4) chilled the  
12 inmate’s exercise of his First Amendment rights, and (5) the action did not reasonably  
13 advance a legitimate correctional goal.”).

14 Therefore, the Court will direct the U.S. Marshal to effect service of summons of  
15 Plaintiff’s Complaint on his behalf. *See* 28 U.S.C. § 1915(d) (“The officers of the court  
16 shall issue and serve all process, and perform all duties in [IFP] cases.”); Fed. R. Civ. P.  
17 4(c)(3) (“[T]he court may order that service be made by a United States marshal or  
18 deputy marshal . . . if the plaintiff is authorized to proceed in forma pauperis under 28  
19 U.S.C. § 1915.”).

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1 **III. Conclusion and Order**

2 For the reasons explained, the Court:

3 1. **GRANTS** Plaintiff's Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a)  
4 (ECF No. 2).

5 2. **ORDERS** the Secretary of the CDCR, or his designee, to collect from  
6 Plaintiff's trust account the \$3.57 initial filing fee assessed, if those funds are available at  
7 the time this Order is executed, and to forward whatever balance remains of the full \$350  
8 owed in monthly payments in an amount equal to twenty percent (20%) of the preceding  
9 month's income to the Clerk of the Court each time the amount in Plaintiff's account  
10 exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2). ALL PAYMENTS MUST BE  
11 CLEARLY IDENTIFIED BY THE NAME AND NUMBER ASSIGNED TO THIS  
12 ACTION.

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

15 4. **DIRECTS** the Clerk to issue a summons as to Plaintiff's Complaint (ECF  
16 No. 1) and forward it to Plaintiff along with a blank U.S. Marshal Form 285 for each  
17 Defendant. In addition, the Clerk will provide Plaintiff with a certified copy of this Order,  
18 certified copies of his Complaint, and the summons so that he may serve Defendants.  
19 Upon receipt of this "IFP Package," Plaintiff must complete the USM Form 285s as  
20 completely and accurately as possible, *include an address where each named Defendant*  
21 *may be found and/or subject to service*, and return them to the United States Marshal  
22 according to the instructions the Clerk provides in the letter accompanying his IFP  
23 Package.

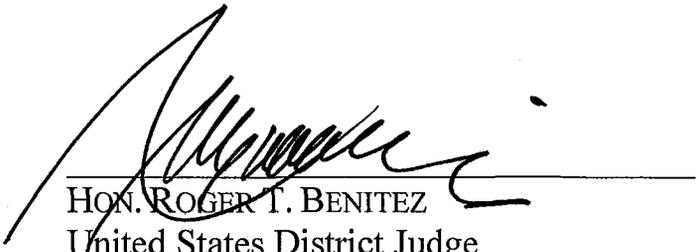
24 5. **ORDERS** the U.S. Marshal to serve a copy of the Complaint and summons  
25 upon the Defendants as directed by Plaintiff on the USM Form 285s provided to him. All  
26 costs of that service will be advanced by the United States. *See* 28 U.S.C. § 1915(d); Fed.  
27 R. Civ. P. 4(c)(3).

28 6. **ORDERS** Plaintiff, after service has been effected by the U.S. Marshal, to

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

10 **IT IS SO ORDERED.**

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12 Dated: April 18, 2017

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14 HON. ROGER T. BENITEZ  
15 United States District Judge  
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