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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 LANCE MURSCHEL,  
12 CDCR #P-04895,

13 Plaintiff,

14 vs.

15 DANIEL PARAMO, et al.,  
16

17 Defendants.  
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Case No.: 3:17-cv-1142-BTM-AGS

**ORDER:**

- 1) **GRANTING MOTION TO PROCEED IN FORMA PAUPERIS;**
- 2) **DENYING MOTION FOR APPOINTMENT OF COUNSEL; and**
- 3) **ORDERING RESPONSE TO MOTION FOR TEMPORARY RESTRAINING ORDER**

23 Lance Murschel (“Plaintiff”), a prisoner incarcerated the Richard J. Donovan  
24 Correctional Facility (“RJD”) located in San Diego, California, and proceeding pro se,  
25 has filed a civil rights complaint (“Compl.”) pursuant to 42 U.S.C. § 1983. (See ECF No.  
26 1.) Plaintiff has also filed a Motion to Proceed In Forma Pauperis (“IFP”) pursuant to 28  
27 U.S.C. § 1915(a) (ECF No. 2), a “Motion for a Temporary Restraining Order and  
28 Preliminary Injunction” (ECF No. 3) and a “Motion to Appoint Counsel” (ECF No. 4).

1 As an initial matter, the Court notes that Plaintiff failed to comply with the Court's  
2 General Order 653 which requires that initial filings by incarcerated plaintiffs at RJD  
3 brought pursuant to 42 U.S.C. § 1983 must be electronically filed. *See* S.D. Cal. GO 653.  
4 While the Court accepted Plaintiff's filing, *see* ECF No. 6, the Court cautions Plaintiff  
5 that if he initiates other civil actions in the future while housed at RJD and does not  
6 comply with GO 653, those actions may be rejected by the Court.

7 **I. Plaintiff's 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.  
18 2002).

19 Section 1915(a)(2) requires prisoners seeking leave to proceed IFP to submit a  
20 "certified copy of the trust fund account statement (or institutional equivalent) for . . . the  
21 6-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  
24 monthly deposits in the account for the past six months, or (b) the average monthly  
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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 balance in the account for the past six months, whichever is greater, unless the prisoner  
2 has no assets. *See* 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having  
3 custody of the prisoner then collects subsequent payments, assessed at 20% of the  
4 preceding month’s income, in any month in which his account exceeds \$10, and forwards  
5 those payments to the Court until the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2);  
6 *Bruce*, 136 S. Ct. at 629.

7 In support of his IFP motion, Plaintiff has submitted a certified copy of his prison  
8 trust account statement at RJD pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR  
9 3.2.; *Andrews*, 398 F.3d at 1119. This statement shows that Plaintiff has an available  
10 balance of zero in his inmate trust account at the time of filing. Therefore, the Court  
11 assesses no initial partial filing fee pursuant to 28 U.S.C. § 1915(b)(1) because it appears  
12 Plaintiff is unable to pay any initial fee. *See* 28 U.S.C. § 1915(b)(4) (providing that “[i]n  
13 no event shall a prisoner be prohibited from bringing a civil action or appealing a civil  
14 action or criminal judgment for the reason that the prisoner has no assets and no means  
15 by which to pay the initial partial filing fee.”); *Bruce*, 136 S. Ct. at 630; *Taylor*, 281 F.3d  
16 at 850 (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve” preventing dismissal  
17 of a prisoner’s IFP case based solely on a “failure to pay . . . due to the lack of funds  
18 available to him when payment is ordered.”).

19 Accordingly, the Court **GRANTS** Plaintiff’s Motion to Proceed IFP (ECF No. 2),  
20 declines to “exact” any initial filing fee because his prison certificate shows he “has no  
21 means to pay it,” *Bruce*, 136 S. Ct. at 629, and directs the Secretary of the CDCR, or his  
22 designee, to collect the entire \$350 balance of the filing fees required by 28 U.S.C.  
23 § 1914 and to forward them to the Clerk of the Court pursuant to the installment payment  
24 provisions set forth in 28 U.S.C. § 1915(b)(1). *See id.*

## 25 **II. Motion to Appoint Counsel**

26 Plaintiff seeks appointment of counsel to assist him in this matter. (ECF No. 4.)  
27 However, there is no constitutional right to counsel in a civil case. *Lassiter v. Dept. of*  
28 *Social Services*, 452 U.S. 18, 25 (1981). While under 28 U.S.C. § 1915(e)(1), district

1 courts have some limited discretion to “request” that an attorney represent an indigent  
2 civil litigant, *Agyeman v. Corr. Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004),  
3 this discretion is rarely exercised and only under “exceptional circumstances.” *Id.*; *see*  
4 *also Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). A finding of exceptional  
5 circumstances requires “an evaluation of the likelihood of the plaintiff’s success on the  
6 merits and an evaluation of the plaintiff’s ability to articulate his claims ‘in light of the  
7 complexity of the legal issues involved.’” *Agyeman*, 390 F.3d at 1103, quoting *Wilborn*  
8 *v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

9 Applying these factors to Plaintiff’s case, the Court **DENIES** his Motion to  
10 Appoint Counsel because a liberal construction of his original pleadings shows he is  
11 capable of articulating the factual basis for his claims. All documents filed by pro se  
12 litigants are construed liberally, and “a *pro se* complaint, however inartfully pleaded,  
13 must be held to less stringent standards than formal pleadings drafted by lawyers.”  
14 *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Moreover, FED. R. CIV. P. 8(e) requires that  
15 “[p]leadings . . . be construed so as to do justice.”

16 The pleadings filed by Plaintiff to date demonstrate that while Plaintiff may not be  
17 a trained in law, he is capable of legibly articulating the facts and circumstances relevant  
18 to his claims, which are typical, straightforward, and not legally “complex.” *Agyeman*,  
19 390 F.3d at 1103. Therefore, neither the interests of justice nor any exceptional  
20 circumstances warrant the appointment of counsel in this case at this time. *LaMere v.*  
21 *Risley*, 827 F.2d 622, 626 (9th Cir. 1987); *Terrell*, 935 F.2d at 1017.

## 22 **II. Motion for Restraining Order**

23 Plaintiff has filed a “Motion for a Temporary Restraining Order and Preliminary  
24 Injunction” pursuant to FED. R. CIV. P. 65. (ECF No. 3.) Plaintiff seeks an order “to  
25 ensure that he is not transferred out of Richard J. Donovan Correctional Facility.” (*Id.* at  
26 1.) Plaintiff claims that Defendants are retaliating against him for filing this lawsuit by  
27 “recommending that the Plaintiff be transferred out of [RJD] to another institution [in]  
28

1 Northern California.” (*Id.* at 3-4.) Plaintiff further claims that this transfer will  
2 “significantly put his life on danger or risk of serious harm or injury.” (*Id.* at 4.)

3 Defendants are hereby ordered to respond to Plaintiff’s motion by June 23, 2017.

4 **IV. Conclusion and Order**

5 Good cause appearing, the Court:

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

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

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

17 4) **ORDERS** Defendants to file a response to Plaintiff’s Motion for Restraining  
18 Order and Preliminary Injunction (ECF No. 3) by June 23, 2017.

19 5) **DENIES** Plaintiff’s Motion for Appointment of Counsel (ECF No. 4).

20 A separate Order screening Plaintiff’s Complaint pursuant to 28 U.S.C.  
21 § 1915(e)(2) & § 1915A will issue at a later time.

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23 **IT IS SO ORDERED.**

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25 Dated: June 14, 2017



26 Hon. Barry Ted Moskowitz, Chief Judge  
27 United States District Court  
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