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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 LEANDRO LEONEL GONZALEZ
11 CASTILLO,
12 CDCR #V-74928,

Plaintiff,

13 vs.
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15 A. RENTERIA; L. ROMERO; R.
16 SEGOVIA,

17 Defendants.
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19
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Case No.: 3:17-cv-2104-CAB-WVG

ORDER:

**1) GRANTING MOTION TO
PROCEED IN FORMA PAUPERIS
[ECF No. 6]**

AND

**2) DIRECTING UNITED STATES
MARSHAL SERVICE TO EFFECT
SERVICE OF COMPLAINT**

21 Leandro Leonel Gonzalez Castillo (“Plaintiff”), proceeding pro se, is currently
22 incarcerated at Mule Creek State Prison located in Ione, California, has filed a civil rights
23 Complaint pursuant to 42 U.S.C. § 1983 (ECF No. 1). Plaintiff did not prepay the civil
24 filing fee required by 28 U.S.C. § 1914(a) at the time of filing, but instead has filed a
25 Motion to Proceed In Forma Pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a) (ECF No.
26 6).

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1 **I. IFP Motion**

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 \$400.¹ See 28 U.S.C. § 1914(a). The 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 *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007). However,
7 prisoners who are granted leave to proceed IFP remain obligated to pay the entire fee in
8 “increments” or “installments,” *Bruce v. Samuels*, __ U.S. __, 136 S. Ct. 627, 629
9 (2016); *Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), and regardless of
10 whether their action is ultimately dismissed. See 28 U.S.C. § 1915(b)(1) & (2); *Taylor v.*
11 *Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

12 Section 1915(a)(2) also requires prisoners seeking leave to proceed IFP to submit a
13 “certified copy of the trust fund account statement (or institutional equivalent) for ... the
14 6-month period immediately preceding the filing of the complaint.” 28 U.S.C.
15 § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified
16 trust account statement, the Court assesses an initial payment of 20% of (a) the average
17 monthly deposits in the account for the past six months, or (b) the average monthly
18 balance in the account for the past six months, whichever is greater, unless the prisoner
19 has no assets. See 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having
20 custody of the prisoner then collects subsequent payments, assessed at 20% of the
21 preceding month’s income, in any month in which his account exceeds \$10, and forwards
22 those payments to the Court until the entire filing fee is paid. See 28 U.S.C. § 1915(b)(2);
23 *Bruce*, 136 S. Ct. at 629.

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26 ¹ 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 In support of his IFP Motion, Plaintiff has submitted a CDCR Inmate Statement
2 Report. *See* ECF No. 6 at 5-6; 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2; *Andrews*,
3 398 F.3d at 1119. The Court has reviewed Plaintiff’s trust account statement, but it shows
4 that he has a current available balance of zero. *See* 28 U.S.C. § 1915(b)(4) (providing
5 that “[i]n no event shall a prisoner be prohibited from bringing a civil action or appealing
6 a 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.”).

8 Therefore, the Court **GRANTS** Plaintiff’s Motion to Proceed IFP (**ECF No. 6**) and
9 assesses no initial partial filing fee per 28 U.S.C. § 1915(b)(1). However, the entire \$350
10 balance of the filing fees mandated will be collected by the California Department of
11 Corrections and Rehabilitation (“CDCR”) and forwarded to the Clerk of the Court
12 pursuant to the installment payment provisions set forth in 28 U.S.C. § 1915(b)(1).

13 **II. Initial Screening per 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)**

14 Notwithstanding Plaintiff’s IFP status or the payment of any partial filing fees, the
15 PLRA also obligates the Court to review complaints filed by all persons proceeding IFP
16 and by those, like Plaintiff, who are “incarcerated or detained in any facility [and]
17 accused of, sentenced for, or adjudicated delinquent for, violations of criminal law or the
18 terms or conditions of parole, probation, pretrial release, or diversionary program,” “as
19 soon as practicable after docketing.” *See* 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under
20 these statutes, the Court must sua sponte dismiss complaints, or any portions thereof,
21 which are frivolous, malicious, fail to state a claim, or which seek damages from
22 defendants who are immune. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b); *Lopez v.*
23 *Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Rhodes v.*
24 *Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing 28 U.S.C. § 1915A(b)).

25 All complaints must contain “a short and plain statement of the claim showing that
26 the pleader is entitled to relief.” Fed.R.Civ.P. 8(a)(2). Detailed factual allegations are
27 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by
28 mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)

1 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “Determining
2 whether a complaint states a plausible claim for relief [is] . . . a context-specific task that
3 requires the reviewing court to draw on its judicial experience and common sense.” *Id.*
4 The “mere possibility of misconduct” falls short of meeting this plausibility standard.
5 *Id.*; see also *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).

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

13 However, while the court “ha[s] an obligation where the petitioner is pro se,
14 particularly in civil rights cases, to construe the pleadings liberally and to afford the
15 petitioner the benefit of any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir.
16 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)), it may not
17 “supply essential elements of claims that were not initially pled.” *Ivey v. Board of*
18 *Regents of the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

19 As currently pleaded, the Court finds allegations in Plaintiff’s Complaint which are
20 sufficient to survive the sua sponte screening required by 28 U.S.C. §§ 1915(e)(2) and
21 1915A(b). Accordingly, the Court will direct the U.S. Marshal to effect service on
22 Plaintiff’s behalf. See 28 U.S.C. § 1915(d) (“The officers of the court shall issue and
23 serve all process, and perform all duties in [IFP] cases.”); Fed.R.Civ.P. 4(c)(3) (“[T]he
24 court may order that service be made by a United States marshal or deputy marshal . . . if
25 the plaintiff is authorized to proceed *in forma pauperis* under 28 U.S.C. § 1915.”).

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1 **III. Conclusion and Order**

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

3 1. Plaintiff's Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a) (**ECF No.**
4 **6**) is **GRANTED**.

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

12 3. The Clerk of the Court is directed to serve a copy of this Order on Scott
13 Kernan, Secretary, California Department of Corrections and Rehabilitation, P.O. Box
14 942883, Sacramento, California, 94283-0001.

15 **IT IS FURTHER ORDERED** that:

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

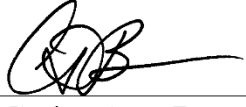
24 5. Upon receipt, the U.S. Marshal is **ORDERED** to serve a copy of the
25 Complaint and summons upon the named Defendants as directed by Plaintiff on the USM
26 Form 285s. All costs of service will be advanced by the United States. *See* 28 U.S.C.
27 § 1915(d); Fed.R.Civ.P. 4(c)(3).
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1 6. Defendants are thereafter **ORDERED** to reply to Plaintiff’s Complaint
2 within the time provided by the applicable provisions of Federal Rule of Civil Procedure
3 12(a). *See* 42 U.S.C. § 1997e(g)(2) (while a defendant may occasionally be permitted to
4 “waive the right to reply to any action brought by a prisoner confined in any jail, prison,
5 or other correctional facility under section 1983,” once the Court has conducted its sua
6 sponte screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b), and thus, has made
7 a preliminary determination based on the face on the pleading alone that Plaintiff has a
8 “reasonable opportunity to prevail on the merits,” the defendant is required to respond).

9 7. Plaintiff must serve upon the Defendants or, if appearance has been entered
10 by counsel, upon Defendants’ counsel, a copy of every further pleading or other
11 document submitted for consideration by the Court. Plaintiff must include with the
12 original paper to be filed with the Clerk of the Court, a certificate stating the manner in
13 which a true and correct copy of the document was served on the Defendants, or counsel
14 for Defendants, and the date of that service. Any paper received by the Court which has
15 not been properly filed with the Clerk, or which fails to include a Certificate of Service,
16 may be disregarded.

17 **IT IS SO ORDERED.**

18 Dated: January 17, 2018

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21 Hon. Cathy Ann Bencivengo
22 United States District Judge
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