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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 DAVID RADEMAKER  
12 P-01361,

13 Plaintiff,

14 v.

15 D. PARAMO; G. STRATTON; J.  
16 JUAREZ; E. GAREZ,

17 Defendants.  
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Case No.: 3:17-cv-02406-BTM-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) DISMISSING CLAIMS AND  
DEFENDANTS FOR FAILING TO  
STATE A CLAIM**

22  
23 David Rademaker ("Plaintiff"), currently housed at Richard J. Donovan  
24 Correctional Facility located in San Diego, California, and proceeding pro se, has filed a  
25 civil rights complaint ("Compl.") pursuant to 42 U.S.C. § 1983 (ECF No. 1). Plaintiff  
26 has filed a Motion to Proceed In Forma Pauperis ("IFP") pursuant to 28 U.S.C. § 1915(a)  
27 (ECF No. 2).

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

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. *See* 28 U.S.C. § 1914(a).<sup>1</sup> An 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); *Rodriguez v.*  
7 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, if a prisoner, like Plaintiff, is  
8 granted leave to proceed IFP, he remains obligated to pay the entire fee in “increments,”  
9 *see Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), regardless of whether his  
10 action is ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2).

11 Under 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act  
12 (“PLRA”), a prisoner seeking leave to proceed IFP must submit a “certified copy of the  
13 trust fund account statement (or institutional equivalent) for the prisoner for the six-  
14 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  
20 having custody of the prisoner then collects subsequent payments, assessed at 20% of the  
21 preceding month’s income, in any month in which the prisoner’s account exceeds \$10,  
22 and forwards those payments to the Court until the entire filing fee is paid. *See* 28 U.S.C.  
23 § 1915(b)(2).

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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 In support of his IFP Motion, Plaintiff has submitted a certified copy of his trust  
2 account statement pursuant to 28 U.S.C. § 1915(a)(2) and S.D. Cal. CivLR 3.2. *Andrews*,  
3 398 F.3d at 1119. The Court has reviewed Plaintiff’s trust account statement, but it  
4 shows that he has a current available balance of zero. *See* 28 U.S.C. § 1915(b)(4)  
5 (providing that “[i]n no event shall a prisoner be prohibited from bringing a civil action  
6 or appealing a civil action or criminal judgment for the reason that the prisoner has no  
7 assets and no means by which to pay the initial partial filing fee.”); *Taylor v. Delatoore*,  
8 281 F.3d 844, 850 (9th Cir. 2002) (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-  
9 valve” preventing dismissal of a prisoner’s IFP case based solely on a “failure to pay . . .  
10 due to the lack of funds available to him when payment is ordered.”).

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

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

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

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

10 “When there are well-pleaded factual allegations, a court should assume their  
11 veracity, and then determine whether they plausibly give rise to an entitlement to relief.”  
12 *Iqbal*, 556 U.S. at 679; *see also Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000)  
13 (“[W]hen determining whether a complaint states a claim, a court must accept as true all  
14 allegations of material fact and must construe those facts in the light most favorable to  
15 the plaintiff.”); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (noting that §  
16 1915(e)(2) “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”).

17 However, while the court “ha[s] an obligation where the petitioner is pro se,  
18 particularly in civil rights cases, to construe the pleadings liberally and to afford the  
19 petitioner the benefit of any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir.  
20 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)), it may not  
21 “supply essential elements of claims that were not initially pled.” *Ivey v. Board of*  
22 *Regents of the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

23 A. Defendants Juarez, Garez, Olson, Sosa, and Self

24 As an initial matter, the Court finds that Plaintiff has failed to state a § 1983 claim  
25 against Juarez, Garez, Olson, Sosa, and Self. The only allegations pertaining to these  
26 Defendants are Plaintiff’s allegations that they are “evading their legal duties” by failing  
27 to respond to Plaintiff’s grievances in a manner he finds satisfactory. (Compl. at 5.)

1           However, a prison official’s allegedly improper processing of an inmate’s  
2 grievances or appeals, without more, cannot serve as a basis for section 1983 liability.  
3 *See generally Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003) (prisoners do not  
4 have a “separate constitutional entitlement to a specific prison grievance procedure.”)  
5 (citation omitted); *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988) (due process not  
6 violated simply because defendant fails properly to process grievances submitted for  
7 consideration); *Shallowhorn v. Molina*, 572 Fed. Appx. 545, 547 (9th Cir. 2014) (district  
8 court properly dismissed section 1983 claims against defendants who “were only  
9 involved in the appeals process”) (citing *Ramirez*, 334 F.3d at 860).

10           Here, Plaintiff’s conclusory allegations that Defendants Juarez, Garex, Olson,  
11 Sosa, and Self “conspired to reject and cancel Plaintiff’s inmate appeals” are simply  
12 insufficient to state a plausible claim upon which § 1983 relief may be granted. *See Iqbal*,  
13 556 U.S. at 680-84 (citations omitted); *Valdivia v. Tampkins*, No. EDCV 16-1975  
14 JFW(JC), 2016 WL 7378887, at \*6 (C.D. Cal. Dec. 19, 2016) (sua sponte dismissing  
15 claims predicated upon the alleged improper processing of inmate grievances); 28 U.S.C.  
16 §§ 1915(e)(2), 1915A(b); *Lopez*, 203 F.3d at 1126-27; *Rhodes*, 621 F.3d at 1004.

17           B.     Remaining claims

18           As currently pleaded, the Court finds the remaining allegations against the  
19 remaining Defendants in Plaintiff’s Complaint are sufficient to survive the sua sponte  
20 screening required by 28 U.S.C. §§ 1915(e)(2) and 1915A(b).

21           C.     Leave to Amend

22           Because the Court has determined that some of Plaintiff’s claims survive the sua  
23 sponte screening process, the Court will give Plaintiff the opportunity to either: (1)  
24 notify the Court of the intent to proceed with his claims against Defendants Paramo,  
25 Stratton, Segovia and Decastro only; or (2) file an amended pleading correcting all the  
26 deficiencies of pleading identified by the Court in this Order. Plaintiff must choose one  
27 of these options within forty-five (45) days from the date this Order is filed. If Plaintiff

1 chooses to proceed as to his claims against Paramo, Stratton, Segovia and Decastro only,  
2 the Court will issue an Order directing the U.S. Marshal to effect service of his  
3 Complaint and dismiss the remaining claims and defendants.

### 4 **III. Conclusion and Order**

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

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

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

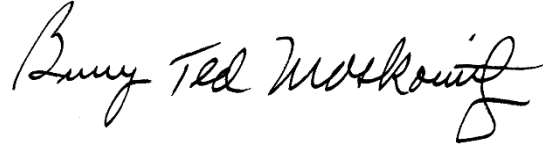
15 3. The Clerk of the Court is directed to serve a copy of this Order on Scott  
16 Kernan, Secretary, California Department of Corrections and Rehabilitation, P.O. Box  
17 942883, Sacramento, California, 94283-0001.

18 **IT IS FURTHER ORDERED** that:

19 4. The Court **DISMISSES** Plaintiff's claims against Defendants Juarez, Garez,  
20 Olson, Sosa, and Self for failing to state a claim pursuant to 28 U.S.C. § 1915(e)(2) and  
21 § 1915A(b).

22 5. The Court **GRANTS** Plaintiff forty-five (45) days leave from the date of this  
23 Order in which to either: (1) Notify the Court of the intention to proceed with the claims  
24 against Paramo, Stratton, Segovia, and Decastro only; or (2) File an Amended Complaint  
25 which cures all the deficiencies of pleading noted. Plaintiff's Amended Complaint must  
26 be complete in itself without reference to his original pleading. Defendants not named  
27 and any claims not re-alleged in the Amended Complaint will be considered waived. *See*

1 S.D. CAL. CIVLR 15.1; *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d  
2 1542, 1546 (9th Cir. 1989) (“[A]n amended pleading supersedes the original.”); *Lacey*,  
3 693 F.3d at 928 (noting that claims dismissed with leave to amend which are not re-  
4 alleged in an amended pleading may be “considered waived if not repled.”).

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7 Dated: February 20, 2018

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

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