

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 KENNETH WILLIAMS,
12 CDCR #J-17517,

13 Plaintiff,

14 vs.

15 D. PARAMO, Warden;
16 R. BROWN, Community Resource
17 Manager; E. GARZA, Captain;
18 IMAM KAHN, Chaplain,

19 Defendants.
20
21
22

Case No.: 3:17-cv-02475-CAB-NLS

ORDER:

**1) GRANTING MOTION TO
PROCEED IN FORMA PAUPERIS
PURSUANT TO 28 U.S.C. § 1915(a)
[ECF No. 2]**

AND

**2) DIRECTING U.S. MARSHAL TO
EFFECT SERVICE OF SUMMONS
AND COMPLAINT PURSUANT
TO 28 U.S.C. § 1915(d) AND
Fed. R. Civ. P. 4(c)(3)**

23 KENNETH WILLIAMS (“Plaintiff”), currently incarcerated at the California
24 Medical Facility (“CMF”) in Vacaville, California, and proceeding pro se, has filed this
25 civil rights action pursuant to 42 U.S.C. § 1983. *See* Compl., ECF No. 1.

26 Plaintiff claims several prison officials at Richard J. Donovan Correctional Facility
27 (“RJD”), in San Diego, California, violated his right to free exercise of religion and equal
28 protection of the laws by failing to permit him to participate in Ramadan in May 2017,

1 while he was incarcerated at RJD. *See id.* at 2-4. Plaintiff seeks injunctive relief
2 preventing “prisoners” from facilitating Islamic services,¹ as well as general and punitive
3 damages “to be determined.” *Id.* at 7.

4 Plaintiff did not prepay the filing fee required by 28 U.S.C. § 1914(a) to commence
5 a civil action at the time he filed suit; instead, he has filed a Motion to Proceed In Forma
6 Pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a). *See* ECF No. 2.

7 **I. Motion to Proceed IFP**

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. *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*, ___ S. Ct. ___, 136 S. Ct. 627, 629 (2016); *Williams v. Paramo*, 775
16 F.3d 1182, 1185 (9th Cir. 2015), and regardless of whether his action is ultimately
17 dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th
18 Cir. 2002).

19 ///

22 ¹ While Plaintiff does not specify the scope of the injunctive relief he seeks, *see* ECF No.
23 1 at 7, any request for injunctive or other equitable relief related to RJD’s policies or
24 practices have been rendered moot by his transfer to CMF. *See Pride v. Correa*, 719 F.3d
25 1130, 1138 (9th Cir. 2013) (“When an inmate challenges prison conditions at a particular
26 correctional facility, but has been transferred from the facility and has no reasonable
27 expectation of returning, his claim [for injunctive relief] is moot.”) (citing *Johnson v.*
28 *Moore*, 948 F.2d 517, 519 (9th Cir. 1991)). In such circumstances, claims for injunctive
relief are moot because the prisoner “no longer is subjected to [the allegedly
unconstitutional] policies.” *Id.* (quoting *Johnson*, 948 F.3d at 519); *see also Dilley v.*
Gunn, 64 F.3d 1365, 1372 (9th Cir. 1995).

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

13 In support of his IFP Motion, Plaintiff has submitted a copy of his CDCR Inmate
14 Statement Report, *see* ECF No. 2 at 6-7, together with a prison certificate completed by
15 an accounting official at CMF attesting to his trust account activity. *Id.* at 5; *see also* 28
16 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2; *Andrews*, 398 F.3d at 1119. These statements
17 show that Plaintiff had an average monthly balance of \$9.02, and average monthly
18 deposits of \$9.38 to his account over the 6-month period immediately preceding the filing
19 of his Complaint, but an available balance of zero at the time of filing. Based on this
20 financial information, the Court GRANTS Plaintiff’s Motion to Proceed IFP (ECF No.
21 2), and assesses his initial partial filing fee to be \$1.87 pursuant to 28 U.S.C.
22 § 1915(b)(1).

23 However, the Court will direct the Secretary of the CDCR, or his designee, to
24 collect this initial fee only if sufficient funds are available in Plaintiff’s account at the
25 time this Order is executed. *See* 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event
26 shall a prisoner be prohibited from bringing a civil action or appealing a civil action or
27 criminal judgment for the reason that the prisoner has no assets and no means by which to
28 pay the initial partial filing fee.”); *Bruce*, 136 S. Ct. at 630; *Taylor*, 281 F.3d at 850

1 (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve” preventing dismissal of a
2 prisoner’s IFP case based solely on a “failure to pay ... due to the lack of funds available
3 to him when payment is ordered.”). The remaining balance of the \$350 total fee owed in
4 this case must be collected and forwarded to the Clerk of the Court pursuant to 28 U.S.C.
5 § 1915(b)(1).

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

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

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

27 “When there are well-pleaded factual allegations, a court should assume their
28 veracity, and then determine whether they plausibly give rise to an entitlement to relief.”

1 *Iqbal*, 556 U.S. at 679; *see also Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000)
2 (“[W]hen determining whether a complaint states a claim, a court must accept as true all
3 allegations of material fact and must construe those facts in the light most favorable to
4 the plaintiff.”); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (noting that
5 § 1915(e)(2) “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”).

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

12 As currently pleaded, the Court finds Plaintiff’s Complaint contains free exercise
13 of religion and equal protection claims sufficient to survive the “low threshold” for
14 proceeding past the sua sponte screening required by 28 U.S.C. §§ 1915(e)(2) and
15 1915A(b). *See Wilhelm v. Rotman*, 680 F.3d 1113, 1123 (9th Cir. 2012); *Hartmann v.*
16 *Cal. Dept. of Corr. and Rehab.*, 707 F.3d 1114, 1122-24 (9th Cir. 2013) (discussing
17 pleading requirements for prisoner’s free exercise of religion and equal protection
18 claims).

19 Accordingly, the Court will direct the U.S. Marshal to effect service upon the
20 Defendants on Plaintiff’s behalf. *See* 28 U.S.C. § 1915(d) (“The officers of the court shall
21 issue and serve all process, and perform all duties in [IFP] cases.”); FED. R. CIV. P.
22 4(c)(3) (“[T]he court may order that service be made by a United States marshal or
23 deputy marshal . . . if the plaintiff is authorized to proceed in forma pauperis under 28
24 U.S.C. § 1915.”).

25 **III. Conclusion and Orders**

26 Good cause appearing, the Court:

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

1 2. **ORDERS** the Secretary of the CDCR, or his designee, to collect from
2 Plaintiff's trust account the \$1.87 initial filing fee assessed, if those funds are available at
3 the time this Order is executed, and to forward whatever balance remains of the full \$350
4 owed in monthly payments in an amount equal to twenty percent (20%) of the preceding
5 month's income to the Clerk of the Court each time the amount in Plaintiff's account
6 exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2). ALL PAYMENTS MUST BE
7 CLEARLY IDENTIFIED BY THE NAME AND NUMBER ASSIGNED TO THIS
8 ACTION.

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

11 4. **DIRECTS** the Clerk to issue a summons as to Plaintiff's Complaint (ECF
12 No. 1) and forward it to Plaintiff along with a blank U.S. Marshal Form 285 for each
13 Defendant. In addition, the Clerk will provide Plaintiff with a certified copy of this Order,
14 a certified copy of his Complaint, and the summons so that he may serve the Defendants.
15 Upon receipt of this "IFP Package," Plaintiff must complete the Form 285s as completely
16 and accurately as possible, *include an address where each named Defendant may be*
17 *served, see S.D. Cal. CivLR 4.1.c,* and return them to the United States Marshal
18 according to the instructions the Clerk provides in the letter accompanying his IFP
19 package;

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

24 6. **ORDERS** Defendants, once served, to reply to Plaintiff's Complaint within
25 the time provided by the applicable provisions of Federal Rule of Civil Procedure 12(a).
26 *See* 42 U.S.C. § 1997e(g)(2) (while a defendant may occasionally be permitted to "waive
27 the right to reply to any action brought by a prisoner confined in any jail, prison, or other
28 correctional facility under section 1983," once the Court has conducted its sua sponte

1 screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b), and thus, has made a
2 preliminary determination based on the face on the pleading alone that Plaintiff has a
3 “reasonable opportunity to prevail on the merits,” defendant is required to respond); and

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

13 **IT IS SO ORDERED.**

14 Dated: February 7, 2018

15 
16 _____
17 Hon. Cathy Ann Bencivengo
18 United States District Judge
19
20
21
22
23
24
25
26
27
28