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7 UNITED STATES DISTRICT COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA  
9

10 PATRICK SHIELDS,  
11 CDCR #AY-3237,

12 Plaintiff,

13 vs.

14 Chaplain KAHN; R. BROWN,  
15 Community Resources Manager;  
16 E. GARZA, Captain;  
17 D. PARAMO, Warden,

18 Defendants.  
19

Case No.: 3:17-CV-02597-JLS (MDD)

**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)**

20 Plaintiff Patrick Shields, currently incarcerated at Richard J. Donovan Correctional  
21 Facility (“RJD”) in San Diego, California, and proceeding pro se, filed this civil rights  
22 action pursuant to 42 U.S.C. § 1983, on December 29, 2017. (*See* “Compl.,” ECF No. 1.)

23 Plaintiff claims several prison officials at Richard J. Donovan Correctional Facility  
24 (“RJD”), in San Diego, California, violated his right to free exercise of religion and equal  
25 protection of the laws by failing to permit his participation in Ramadan in May 2017. (*See*  
26 *id.* at 2–4.) Plaintiff seeks declaratory and injunctive relief preventing other inmates, as  
27 opposed to the Muslim Chaplain, from facilitating, dictating, or controlling Islamic  
28 services at RJD, as well damages “to be determined.” (*Id.* at 3, 7.)

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

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. 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); *Rodriguez v.*  
10 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, a prisoner who is granted leave to  
11 proceed IFP remains obligated to pay the entire fee in “increments” or “installments,”  
12 *Bruce v. Samuels*, 136 S. Ct. 627, 629 (2016); *Williams v. Paramo*, 775 F.3d 1182, 1185  
13 (9th Cir. 2015), and regardless of whether his action is ultimately dismissed. See 28 U.S.C.  
14 § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

15 Section 1915(a)(2) 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  
20 monthly deposits in the account for the past six months, or (b) the average monthly balance  
21 in the account for the past six months, whichever is greater, unless the prisoner has no  
22 assets. See 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having custody  
23 of the prisoner then collects subsequent payments, assessed at 20% of the preceding  
24 month’s income, in any month in which his account exceeds \$10, and forwards those  
25 payments to the Court until the entire filing fee is paid. See 28 U.S.C. § 1915(b)(2); *Bruce*,  
26 136 S. Ct. at 629.

27 In support of his IFP Motion, Plaintiff has submitted a copy of his CDCR Inmate  
28 Statement Report, (see ECF No. 3, at 2–4), together with a prison certificate completed by

1 an accounting official at RJD attesting to his trust account activity. (*Id.* at 1); *see also* 28  
2 U.S.C. § 1915(a)(2); Civ. L.R. 3.2; *Andrews*, 398 F.3d at 1119. These statements show  
3 that Plaintiff had an average monthly balance of \$382.78, and average monthly deposits of  
4 \$177.91 to his account over the 6-month period immediately preceding the filing of his  
5 Complaint, as well as an available balance of \$120.96 at the time of filing. Based on this  
6 financial information, the Court **GRANTS** Plaintiff’s Motion to Proceed IFP, (ECF No.  
7 2), and assesses his initial partial filing fee to be \$76.55 pursuant to 28 U.S.C. § 1915(b)(1).

8       However, the Court will direct the Secretary of the CDCR, or his designee, to collect  
9 this initial fee only if sufficient funds are available in Plaintiff’s account at the time this  
10 Order is executed. *See* 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event shall a  
11 prisoner be prohibited from bringing a civil action or appealing a civil action or criminal  
12 judgment for the reason that the prisoner has no assets and no means by which to pay the  
13 initial partial filing fee.”); *Bruce*, 136 S. Ct. at 630; *Taylor*, 281 F.3d at 850 (finding that  
14 28 U.S.C. § 1915(b)(4) acts as a “safety-valve” preventing dismissal of a prisoner’s IFP  
15 case based solely on a “failure to pay . . . due to the lack of funds available to him when  
16 payment is ordered.”). The remaining balance of the \$350 total fee owed in this case must  
17 be collected and forwarded to the Clerk of the Court pursuant to 28 U.S.C. § 1915(b)(1).

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

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

1 1002, 1004 (9th Cir. 2010) (discussing 28 U.S.C. § 1915A(b)).

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

11 “When there are well-pleaded factual allegations, a court should assume their  
12 veracity, and then determine whether they plausibly give rise to an entitlement to relief.”  
13 *Iqbal*, 556 U.S. at 679; *see also Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000)  
14 (“[W]hen determining whether a complaint states a claim, a court must accept as true all  
15 allegations of material fact and must construe those facts in the light most favorable to the  
16 plaintiff.”); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (noting that  
17 § 1915(e)(2) “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”).

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

24 As currently pleaded, the Court finds Plaintiff’s Complaint contains free exercise of  
25 religion and equal protection claims sufficient to survive the “low threshold” for  
26 proceeding past the sua sponte screening required by 28 U.S.C. §§ 1915(e)(2) and  
27 1915A(b). *See Wilhelm v. Rotman*, 680 F.3d 1113, 1123 (9th Cir. 2012); *Hartmann v. Cal.*  
28 *Dept. of Corr. and Rehab.*, 707 F.3d 1114, 1122–24 (9th Cir. 2013) (discussing pleading

1 requirements for prisoner’s free exercise of religion and equal protection claims).

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

### 7 **III. Conclusion and Orders**

8 Good cause appearing, the Court:

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

11 2. **ORDERS** the Secretary of the CDCR, or his designee, to collect from  
12 Plaintiff’s trust account the \$76.55 initial filing fee assessed, if those funds are available at  
13 the time this Order is executed, and to forward whatever balance remains of the full \$350  
14 owed in monthly payments in an amount equal to twenty percent (20%) of the preceding  
15 month’s income to the Clerk of the Court each time the amount in Plaintiff’s account  
16 exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2). **ALL PAYMENTS MUST BE CLEARLY**  
17 **IDENTIFIED BY THE NAME AND NUMBER ASSIGNED TO THIS ACTION.**

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

20 4. **DIRECTS** the Clerk to issue a summons as to Plaintiff’s Complaint, (ECF  
21 No. 1), and forward it to Plaintiff along with a blank U.S. Marshal Form 285 for each  
22 Defendant. In addition, the Clerk will provide Plaintiff with a certified copy of this Order,  
23 a certified copy of his Complaint, and the summons so that he may serve the Defendants.  
24 Upon receipt of this “IFP Package,” Plaintiff must complete the Form 285s as completely  
25 and accurately as possible, *include an address where each named Defendant may be*  
26 *served, see Civ. L. R. 4.1.c*, and return them to the United States Marshal according to the  
27 instructions the Clerk provides in the letter accompanying his IFP package.

28 5. **ORDERS** the U.S. Marshal to serve a copy of the Complaint and summons

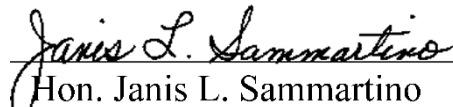
1 upon Defendants as directed by Plaintiff on the USM Form 285 provided to him. All costs  
2 of that service will be advanced by the United States. *See* 28 U.S.C. § 1915(d); Fed. R. Civ.  
3 P. 4(c)(3).

4 6. **ORDERS** Defendants, once served, to reply to Plaintiff’s Complaint within  
5 the time provided by the applicable provisions of Federal Rule of Civil Procedure 12(a).  
6 *See* 42 U.S.C. § 1997e(g)(2) (while a defendant may occasionally be permitted to “waive  
7 the right to reply to any action brought by a prisoner confined in any jail, prison, or other  
8 correctional facility under section 1983,” once the Court has conducted its sua sponte  
9 screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b), and thus, has made a  
10 preliminary determination based on the face on the pleading alone that Plaintiff has a  
11 “reasonable opportunity to prevail on the merits,” defendant is required to respond); and

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

21 **IT IS SO ORDERED.**

22 Dated: March 14, 2018

23   
24 Hon. Janis L. Sammartino  
25 United States District Judge  
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