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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 GARLAND JONES,  
12 CDCR #F-47928

13 Plaintiff,

14 vs.

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16 MRS. TISCORNIA,

17 Defendant.  
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Case No.: 3:18-cv-00544-GPC-PCL

**ORDER:**

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

**(2) DISMISSING COMPLAINT FOR  
FAILING TO STATE A CLAIM  
PURSUANT TO 28 U.S.C. §  
1915(e)(2)(B)(ii)**

22 Garland Jones (“Plaintiff”), a prisoner incarcerated at the Richard J. Donovan  
23 Correctional Facility (“RJD”), located in San Diego, California, has filed a pro se civil  
24 complaint pursuant to 42 U.S.C. § 1983. *See* Doc. No. 1 at 1.

25 Plaintiff did not prepay the civil filing fees required by 28 U.S.C. § 1914(a) at the  
26 time of filing; instead he has filed a Motion to Proceed In Forma Pauperis (“IFP”)  
27 pursuant to 28 U.S.C. § 1915(a). Doc. No. 2.  
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1 **I. Plaintiff's 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.<sup>1</sup> 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); *Rodriguez v.*  
7 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, a prisoner who is granted leave to  
8 proceed IFP remains obligated to pay the entire fee in "increments" or "installments,"  
9 *Bruce v. Samuels*, 136 S. Ct. 627, 629 (2016); *Williams v. Paramo*, 775 F.3d 1182, 1185  
10 (9th Cir. 2015), and regardless of whether his action is ultimately dismissed. See 28  
11 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

12 Section 1915(a)(2) 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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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 In support of his IFP motion, Plaintiff has submitted a certified copy of his prison  
2 trust account statement, as well as a prison certificate, verified by an accounting officer,  
3 pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2. *See* Doc. No. 3. These  
4 statements shows that Plaintiff had an available balance of zero at the time of filing.  
5 Therefore, the Court will not assess an initial partial filing fee at this time. *See* 28 U.S.C.  
6 § 1915(b)(4) (“In no event shall a prisoner be prohibited from bringing a civil action or  
7 appealing a civil action or criminal judgment for the reason that the prisoner has no assets  
8 and no means by which to pay the initial partial filing fee.”); *Bruce*, 136 S. Ct. at 630;  
9 *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve”  
10 preventing dismissal of a prisoner’s IFP case based solely on a “failure to pay . . . due to  
11 the lack of funds available to him when payment is ordered.”).

12 Thus, the Court GRANTS Plaintiff’s Motion to Proceed IFP, declines to assess an  
13 initial filing fee because his prison certificate shows he “has no means to pay it,” *Bruce*,  
14 136 S. Ct. at 629, and directs the Secretary of the California Department of Corrections  
15 and Rehabilitation (“CDCR”), or his designee, to instead collect the entire \$350 balance  
16 of the filing fees required by 28 U.S.C. § 1914 and forward them to the Clerk of the  
17 Court pursuant to the installment payment provisions set forth in 28 U.S.C. § 1915(b)(1).  
18 *See id.*

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

### 20 **A. Standard of Review**

21 Because Plaintiff is a prisoner and is proceeding IFP, his Complaint requires a pre-  
22 answer screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b). Under these  
23 statutes, the Court must sua sponte dismiss a prisoner’s IFP complaint, or any portion of  
24 it, which is frivolous, malicious, fails to state a claim, or seeks damages from defendants  
25 who are immune. *See Williams v. King*, 2017 WL 5180205, at \*2 (9th Cir. Nov. 9, 2017)  
26 (discussing 28 U.S.C. § 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir.  
27 2010) (discussing 28 U.S.C. § 1915A(b)). “The purpose of [screening] is ‘to ensure that  
28 the targets of frivolous or malicious suits need not bear the expense of responding.’”

1 *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir. 2014) (quoting *Wheeler v. Wexford*  
2 *Health Sources, Inc.*, 689 F.3d 680, 681 (7th Cir. 2012)). A complaint is “frivolous” if it  
3 “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 324  
4 (1989).

5 “The standard for determining whether a plaintiff has failed to state a claim upon  
6 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of  
7 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668  
8 F.3d 1108, 1112 (9th Cir. 2012); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th  
9 Cir. 2012) (noting that screening pursuant to § 1915A “incorporates the familiar standard  
10 applied in the context of failure to state a claim under Federal Rule of Civil Procedure  
11 12(b)(6)”). Rule 12(b)(6) requires a complaint to “contain sufficient factual matter,  
12 accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*,  
13 556 U.S. 662, 678 (2009) (internal quotation marks omitted).

14 Detailed factual allegations are not required, but “[t]hreadbare recitals of the  
15 elements of a cause of action, supported by mere conclusory statements, do not suffice.”  
16 *Id.* at 678. “Determining whether a complaint states a plausible claim for relief [is] . . . a  
17 context-specific task that requires the reviewing court to draw on its judicial experience  
18 and common sense.” *Id.* The “mere possibility of misconduct” or “unadorned, the  
19 defendant-unlawfully-harmed me accusation[s]” fall short of meeting this plausibility  
20 standard. *Id.*; *see also Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009).

## 21 **B. Plaintiff’s Allegations**

22 Plaintiff claims that RJD’s prison law librarian, Defendant Tiscornia, “continues to  
23 harass” Plaintiff which “makes Plaintiff’s legal work difficult.” (Compl. at 3.) Plaintiff  
24 further alleges that “she seems to want to see every legal paperwork” he is “involved  
25 with.” (*Id.*) In addition, he alleges that Tiscornia “purposely mishandles” the copies that  
26 she makes for Plaintiff of his “legal work.” (*Id.*) Plaintiff seeks relief in the form  
27 injunctive relief, as well as compensatory and punitive damages. (*Id.* at 7.)

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1           **C.    42 U.S.C. § 1983**

2           Section 1983 is a “vehicle by which plaintiffs can bring federal constitutional and  
3 statutory challenges to actions by state and local officials.” *Anderson v. Warner*, 451 F.3d  
4 1063, 1067 (9th Cir. 2006). To state a claim under 42 U.S.C. § 1983, a plaintiff must  
5 allege two essential elements: (1) that a right secured by the Constitution or laws of the  
6 United States was violated, and (2) that the alleged violation was committed by a person  
7 acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Naffe v. Frye*,  
8 789 F.3d 1030, 1035-36 (9th Cir. 2015).

9           **D.    Duplicative claims**

10          Plaintiff has previously raised some of the same claims in a separate action filed  
11 with this Court. A court “may take notice of proceedings in other courts, both within and  
12 without the federal judicial system, if those proceedings have a direct relation to matters  
13 at issue.” *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (quoting *Bennett v.*  
14 *Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)).

15          Here, the Court takes judicial notice of the action Plaintiff has filed in *Jones v.*  
16 *Tiscornia*, S.D. Cal. Civil Case No. 3:17-cv-01592-BEN (AGS) (*Jones I*). The claims  
17 found in the case before this Court (“*Jones II*”) are virtually identical to the claims  
18 Plaintiff has previously raised in *Jones I*. However, Plaintiff failed to file an IFP motion  
19 or pay the initial civil filing fee in *Jones I* and the Court did not screen the matter.  
20 Therefore, the Court will not dismiss the claims in *Jones II* as duplicative at this stage of  
21 the proceedings. However, Plaintiff is cautioned that he may not continue to file identical  
22 actions raising the same claims against the same Defendants. A prisoner’s complaint is  
23 considered frivolous under 28 U.S.C. §§ 1915(e)(2) & 1915A(b)(1) if it “merely repeats  
24 pending or previously litigated claims.” *Cato v. United States*, 70 F.3d 1103, 1105 n.2  
25 (9th Cir. 1995) (construing former 28 U.S.C. § 1915(d)) (citations and internal quotations  
26 omitted).

27          **E.    Access to Courts claim**

28          Plaintiff alleges that Tiscornia has denied Plaintiff “access to courts.” (Compl. at

1 3.) Prisoners have a constitutional right of access to the courts. *Lewis v. Casey*, 518 U.S.  
2 343, 346 (1996). Claims for denial of access to the courts may arise from the frustration  
3 or hindrance of “a litigating opportunity yet to be gained” (forward-looking access claim)  
4 or from the loss of a suit that cannot now be tried (backward-looking claim). *Christopher*  
5 *v. Harbury*, 536 U.S. 403, 412-15 (2002); *see also* *Silva v. Di Vittorio*, 658 F.3d 1090,  
6 1102 (9th Cir. 2011) (differentiating “between two types of access to court claims: those  
7 involving prisoners’ right to affirmative assistance and those involving prisoners’ rights  
8 to litigate without active interference.”).

9         However, Plaintiff must allege “actual injury” as the threshold requirement to any  
10 access to courts claim. *Lewis*, 518 U.S. at 351-53; *Silva*, 658 F.3d at 1104. An “actual  
11 injury” is “actual prejudice with respect to contemplated or existing litigation, such as the  
12 inability to meet a filing deadline or to present a claim.” *Lewis*, 518 U.S. at 348; *see also*  
13 *Jones v. Blanas*, 393 F.3d 918, 936 (9th Cir. 2004) (defining actual injury as the  
14 “inability to file a complaint or defend against a charge”). The failure to allege an actual  
15 injury is “fatal.” *Alvarez v. Hill*, 518 F.3d 1152, 1155 n.1 (9th Cir. 2008) (“Failure to  
16 show that a ‘non-frivolous legal claim had been frustrated’ is fatal.” (quoting *Lewis*, 518  
17 U.S. at 353 & n.4)).

18         In addition, Plaintiff must allege the loss of a “non-frivolous” or “arguable”  
19 underlying claim. *Harbury*, 536 U.S. at 413-14. The nature and description of the  
20 underlying claim must be set forth in the pleading “as if it were being independently  
21 pursued.” *Id.* at 417. Finally, Plaintiff must specifically allege the “remedy that may be  
22 awarded as recompense but not otherwise available in some suit that may yet be  
23 brought.” *Id.* at 415.

24         Plaintiff’s Complaint fails to allege the actual injury required to state an access to  
25 courts claim. *See Lewis*, 518 U.S. at 351-53; *Silva*, 658 F.3d at 1104. Plaintiff merely  
26 claims that Tiscornia has made it “difficult to complete other legal situations.” (Compl. at  
27 3.) Thus, Plaintiff’s Complaint fails to include any “factual matter” to show how or why  
28 any of the individual Defendant in this case caused him to suffer any actual prejudice,

1 “such as the inability to meet a filing deadline or to present a claim,” with respect to any  
2 case. *Lewis*, 518 U.S. at 348; *Jones*, 393 F.3d at 936; *Iqbal*, 556 U.S. at 678.

3 Thus, because Plaintiff has failed to allege facts sufficient to show that Defendant  
4 caused him to suffer any “actual injury” with respect to any non-frivolous direct criminal  
5 appeal, habeas petition, or civil rights action he may have filed, *see Lewis*, 518 U.S. at  
6 354, the Court finds Plaintiff’s access to courts claims must be dismissed for failing to  
7 state a plausible claim upon which § 1983 relief can be granted. *See* 28 U.S.C.  
8 § 1915(e)(2)(B)(ii), § 1915A(b)(1); *Iqbal*, 556 U.S. at 678.

### 9 **F. Leave to Amend**

10 A pro se litigant must be given leave to amend his pleading to state a claim unless  
11 it is absolutely clear the deficiencies cannot be cured by amendment. *See Lopez*, 203 F.3d  
12 at 1130 (noting leave to amend should be granted when a complaint is dismissed under  
13 28 U.S.C. § 1915(e) “if it appears at all possible that the plaintiff can correct the defect”).  
14 While the Court finds that Plaintiff’s Complaint fails to state a claim upon which relief  
15 can be granted, it will provide him a chance to fix the pleading deficiencies discussed in  
16 this Order, if he can. *See Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012).

### 17 **III. Conclusion and Order**

18 For all the reasons discussed, the Court:

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

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

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

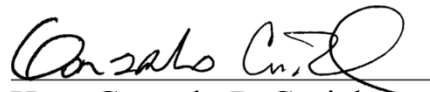
3           4.       **DISMISSES** Plaintiff’s Complaint for failing to state a claim upon which  
4 § 1983 relief can granted pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) & 1915A;

5           5.       **GRANTS** Plaintiff thirty (30) days leave to file an Amended Complaint  
6 which cures all the deficiencies of pleading described in this Order. Plaintiff is cautioned,  
7 however, that should he choose to file an Amended Complaint, it must be complete by  
8 itself, comply with Federal Rule of Civil Procedure 8(a), and that any claim not re-  
9 alleged will be considered waived. *See* S.D. CAL. CIVLR 15.1; *Hal Roach Studios, Inc. v.*  
10 *Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (“[A]n amended  
11 pleading supersedes the original.”); *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir.  
12 2012) (noting that claims dismissed with leave to amend which are not re-alleged in an  
13 amended pleading may be “considered waived if not repled.”).

14           6.       The Clerk of Court is directed to mail Plaintiff a court approved form civil  
15 rights complaint.

16           **IT IS SO ORDERED.**

17  
18 Dated: March 23, 2018

  
19 Hon. Gonzalo P. Curiel  
20 United States District Judge  
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