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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DAVANTA CRENSHAW,  
CDCR #BN-0050,  
  
Plaintiff,  
  
vs.  
  
CDCR California State Prison Los  
Angeles County and CDCR Richard J.  
Donovan Correctional Facility,  
  
Defendants.

Case No.: 23-CV-312 JLS (DEB)

**ORDER GRANTING MOTION TO  
PROCEED IN FORMA PAUPERIS  
AND DISMISSING COMPLAINT  
FOR FAILING TO STATE A CLAIM  
PURSUANT TO 28 U.S.C.  
§§ 1915(e)(2), 1915A(b)**

Plaintiff Davanta Crenshaw, a state prisoner currently housed at the Richard J. Donovan Detention Facility (“RJD”) in San Diego, California, proceeding pro se, has filed a civil rights Complaint pursuant to 42 U.S.C. § 1983, accompanied by a Motion to Proceed *In Forma Pauperis* (“IFP”). ECF Nos. 1, 2. Plaintiff claims his due process rights were violated as a result of improper and untimely processing of two inmate grievances while housed at RJD and California State Prison, Los Angeles County (“LAC”) in Lancaster, California. ECF No. 1 at 3.

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1 **I. 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 \$402.<sup>1</sup> See 28 U.S.C. § 1914(a). The action may proceed despite a failure to prepay the  
5 entire fee only if leave to proceed IFP is granted pursuant to 28 U.S.C. § 1915(a). See  
6 *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007). Section 1915(a)(2) also  
7 requires prisoners seeking leave to proceed IFP to submit a “certified copy of the trust fund  
8 account statement (or institutional equivalent) for . . . the 6-month period immediately  
9 preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2); *Andrews v. King*, 398 F.3d  
10 1113, 1119 (9th Cir. 2005). From the certified trust account statement, the Court assesses  
11 an initial payment of twenty percent of (a) the average monthly deposits in the account for  
12 the past six months, or (b) the average monthly balance in the account for the past six  
13 months, whichever is greater, unless the prisoner has no assets. See 28 U.S.C. § 1915(b)(1),  
14 (b)(4). The institution collects subsequent payments, assessed at twenty percent of the  
15 preceding month’s income, in any month in which the account exceeds \$10, and forwards  
16 those payments to the Court until the entire filing fee is paid. See 28 U.S.C. § 1915(b)(2).  
17 Plaintiff remains obligated to pay the entire fee in monthly installments regardless of  
18 whether their action is ultimately dismissed. *Bruce v. Samuels*, 577 U.S. 82, 84 (2016); 28  
19 U.S.C. § 1915(b)(1), (b)(2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

20 In support of his IFP Motion, Plaintiff has submitted a copy of his Inmate Statement  
21 Report and Prison Certificate which indicate that during the six months prior to filing suit  
22 he had an average monthly balance of \$8.10 and average monthly deposits of \$6.86, with  
23 an available balance of \$0.00 in his account at the time he filed suit. ECF No. 2 at 3; ECF  
24 No. 3 at 1.

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27 <sup>1</sup> In addition to a \$350 fee, civil litigants, other than those granted leave to proceed IFP, must pay an  
28 additional administrative fee of \$52. See 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees,  
District Court Misc. Fee Schedule, § 14 (eff. Dec. 1, 2020)).

1 Plaintiff's Motion to Proceed IFP is **GRANTED** without imposition of an initial  
2 partial filing fee. *See* 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event shall a prisoner  
3 be prohibited from bringing a civil action or appealing a civil action or criminal judgment  
4 for the reason that the prisoner has no assets and no means by which to pay the initial partial  
5 filing fee”); *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-  
6 valve” preventing dismissal of a prisoner’s IFP case based solely on a “failure to pay . . .  
7 due to the lack of funds available to him when payment is ordered”). Plaintiff remains  
8 obligated to pay the \$350.00 filing fee in monthly installments. *Bruce*, 577 U.S. at 84.

## 9 **II. Screening Pursuant to 28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

### 10 **A. Standard of Review**

11 Because Plaintiff is a prisoner and is proceeding IFP, his Complaint requires a pre-  
12 Answer screening pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under these statutes,  
13 the Court must *sua sponte* dismiss a prisoner’s IFP complaint, or any portion of it, which  
14 is frivolous, malicious, fails to state a claim, or seeks damages from defendants who are  
15 immune. *See Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc) (discussing  
16 28 U.S.C. § 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010)  
17 (discussing 28 U.S.C. § 1915A(b)).

18 “The standard for determining whether a plaintiff has failed to state a claim upon  
19 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of  
20 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668 F.3d  
21 1108, 1112 (9th Cir. 2012); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir.  
22 2012) (noting that § 1915A screening “incorporates the familiar standard applied in the  
23 context of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6)”). Rule  
24 12(b)(6) requires a complaint to “contain sufficient factual matter, accepted as true, to ‘state  
25 a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)  
26 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Detailed factual  
27 allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action,  
28 supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678.

1 Title 42 U.S.C. § 1983 “creates a private right of action against individuals who,  
2 acting under color of state law, violate federal constitutional or statutory rights.”  
3 *Devereaux v. Abbey*, 263 F.3d 1070, 1074 (9th Cir. 2001). Section 1983 “is not itself a  
4 source of substantive rights, but merely provides a method for vindicating federal rights  
5 elsewhere conferred.” *Graham v. Connor*, 490 U.S. 386, 393–94 (1989) (internal quotation  
6 marks omitted). “To establish § 1983 liability, a plaintiff must show both (1) deprivation  
7 of a right secured by the Constitution and laws of the United States, and (2) that the  
8 deprivation was committed by a person acting under color of state law.” *Tsao v. Desert*  
9 *Palace, Inc.*, 698 F.3d 1128, 1138 (9th Cir. 2012).

### 10 **B. Plaintiff’s Allegations**

11 Plaintiff alleges that on November 21, 2022, he “was supposed to have a response  
12 to a 602. The due process/time constraints were violated which caused for [sic] the filing  
13 of another 602 concerning the violations of due process/time constraints.” ECF No. 1 at 3.  
14 Plaintiff alleges that the failure to timely respond to his grievances “deprived [him] of  
15 certain privileges and proved that negligence and insufficiency was present causing pain  
16 and suffering.” *Id.* He contends that on January 24, 2023, his second 602 inmate grievance  
17 “was granted in its entirety along with the amount of financial compensation of 5 billion  
18 dollars.” *Id.* He claims the Defendants, California Department of Corrections and  
19 Rehabilitation State Prison Los Angeles County (“CDCR LAC”) and California  
20 Department of Corrections and Rehabilitation Richard J. Donovan Correctional Facility  
21 (“CDCR RJD”), violated his due process rights by failing to follow their own time  
22 constraints in the first grievance and in failing to pay him five billion dollars within thirty  
23 days after granting his second grievance. *Id.* He seeks monetary compensation of five  
24 billion dollars and unspecified injunctive relief. *Id.* at 7.

### 25 **C. Analysis**

26 Plaintiff claims he was denied his right to due process from the failure of the two  
27 Defendants named in the Complaint, CDCR LAC and CDCR RJD, to follow their own  
28 time constraints in addressing his first 602 inmate grievance, the subject of which is not

1 identified in the Complaint, and in failing to pay the \$5 billion demand in the second  
2 grievance, which complained of the failure to abide by the deadlines of the first grievance.

3 “The Fourteenth Amendment’s Due Process Clause protects persons against  
4 deprivations of life, liberty, or property; and those who seek to invoke its procedural  
5 protection must establish that one of these interests is at stake.” *Wilkinson v. Austin*, 545  
6 U.S. 209, 221 (2005). “The Supreme court has held that a State creates a protected liberty  
7 by placing substantive limitations on official discretion, [and] that to obtain a protectable  
8 right an individual must have a legitimate claim of entitlement to it, [but] there is no  
9 legitimate claim of entitlement to a grievance procedure.” *Mann v. Adams*, 855 F.2d 639,  
10 640 (9th Cir. 1988) (citations and quotations omitted). Plaintiff’s allegations of a due  
11 process violation arising from the processing of his inmate grievances fails to state a claim  
12 because there is no protected liberty interest or independent constitutional right to a prison  
13 administrative appeal or grievance system. *Id.*; *see also Ramirez v. Galaza*, 334 F.3d 850,  
14 860 (9th Cir. 2003) (“[I]nmates lack a separate constitutional entitlement to a specific  
15 prison grievance procedure.” (citing *Mann*, 855 F.2d at 640)).

16 Plaintiff’s Complaint, which contains only allegations of untimely and inadequate  
17 processing of inmate grievances, is dismissed for failure to state a 42 U.S.C. § 1983 claim  
18 upon which relief may be granted. *See* 28 U.S.C. §§ 1915(e)(2)(B)(ii), 1915A(b)(1).

#### 19 **D. Leave to Amend**

20 In light of his pro se status, the Court grants Plaintiff leave to amend his Complaint  
21 in order to attempt to address the pleading deficiencies identified in this Order. *See Rosati*  
22 *v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir. 2015) (“A district court should not dismiss a pro  
23 se complaint without leave to amend unless ‘it is absolutely clear that the deficiencies of  
24 the complaint could not be cured by amendment.’” (quoting *Akhtar v. Mesa*, 698 F.3d 1202,  
25 1212 (9th Cir. 2012))).

### 26 **III. Conclusion and Orders**

27 Good cause appearing, the Court:

- 28 **1. GRANTS** Plaintiff’s Motion to Proceed IFP (ECF No. 2);

1           2.       **ORDERS** the Secretary of the CDCR, or his designee, to collect from  
2 Plaintiff's prison trust account the \$350 filing fee owed by collecting monthly payments  
3 from Plaintiff's account in an amount equal to twenty percent (20%) of the preceding  
4 month's income and forwarding those payments to the Clerk of the Court each time the  
5 amount in the account exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2);

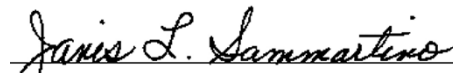
6           3.       **DIRECTS** the Clerk of the Court to serve a copy of this Order by U.S. Mail  
7 on Jeff Macomber, Secretary, CDCR, P.O. Box 942883, Sacramento, California,  
8 94283-0001, or by forwarding an electronic copy to trusthelpdesk@cdcr.ca.gov; and

9           4.       **DISMISSES** Plaintiff's Complaint for failing to state a claim upon which  
10 relief may be granted pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b)(1) and  
11 **GRANTS** Plaintiff forty-five (45) days leave from the date of this Order in which to file  
12 an amended complaint which cures all the deficiencies of pleading noted above. Plaintiff's  
13 amended complaint must be complete by itself without reference to his original pleading.  
14 Defendants not named and any claim not re-alleged in the amended complaint will be  
15 considered waived. *See* S.D. Cal. CivLR 15.1; *Hal Roach Studios, Inc.*, 896 F.2d at 1546  
16 (“[A]n amended pleading supersedes the original.”).

17           If Plaintiff fails to file an amended complaint within the time provided, the Court  
18 will enter a final order dismissing this civil action based both on Plaintiff's failure to state  
19 a claim upon which relief can be granted pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and  
20 1915A(b)(1), and his failure to prosecute in compliance with a court order requiring  
21 amendment. *See Lira v. Herrera*, 427 F.3d 1164, 1169 (9th Cir. 2005) (“If a plaintiff does  
22 not take advantage of the opportunity to fix his complaint, a district court may convert the  
23 dismissal of the complaint into dismissal of the entire action.”).

24           **IT IS SO ORDERED.**

25 Dated: March 7, 2023

26   
27 Hon. Janis L. Sammartino  
28 United States District Judge