

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JIMMY MALO,	)	Case No. EDCV 13-1781-SJO (JPR)
	)	
Plaintiff,	)	
	)	ORDER TO SHOW CAUSE RE DISMISSAL
vs.	)	FOR FAILURE TO PAY INITIAL
	)	PARTIAL FILING FEE
MR. HERNANDEZ et al.,	)	
	)	
Defendants.	)	
	)	

---

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

On October 10, 2013, Plaintiff was granted permission pursuant to 28 U.S.C. § 1915(b)(1) to file the above-referenced action without paying the full filing fee of \$350.00, but he was ordered to pay an initial partial filing fee, in the amount of \$32.70, within 30 days to the Clerk of Court. To date, the payment has not been received.

Under the Prison Litigation Reform Act, all prisoners who are granted in forma pauperis status to file their civil rights actions must nonetheless pay the full amount of the filing fee. Id. For prisoners unable to pay the filing fee at the time of filing, the statute provides for the assessment and, "when funds exist," the collection of an initial fee equal to 20 percent of the greater of the prisoner's average monthly account balance or

1 monthly deposits for "the 6-month period immediately preceding  
2 the filing of the complaint or notice of appeal." Id. After  
3 payment of the initial fee, the prisoner must make monthly  
4 payments equal to 20 percent of the preceding month's income  
5 credited to the account, to be forwarded when the prisoner's  
6 account balance exceeds \$10. § 1915(b)(2). Under the PLRA's  
7 "safety-valve" provision, a prisoner cannot "be prohibited from  
8 bringing a civil action . . . for the reason that the prisoner  
9 has no assets and no means by which to pay the initial partial  
10 filing fee." § 1915(b)(4).

11 Under the safety-valve provision, a court may not dismiss  
12 the lawsuit of a prisoner whose funds become depleted after the  
13 initial partial filing fee is assessed and who can no longer pay.  
14 Taylor v. Delatoore, 281 F.3d 844, 850-51 (9th Cir. 2002). In  
15 all other circumstances, however, a court may dismiss a  
16 prisoner's civil rights action for failure to pay the initial  
17 partial filing fee (or indeed any portion of the full fee). See  
18 Olivares v. Marshall, 59 F.3d 109, 112 (9th Cir. 1995) (upholding  
19 dismissal of action for failure to pay initial partial filing fee  
20 when prisoner had enough money to buy "name brand toiletries" and  
21 snacks).

22 Plaintiff has not complied with § 1915(b)(1) and is hereby  
23 ORDERED TO SHOW CAUSE why this action should not be dismissed for  
24 Plaintiff's failure to timely pay the initial partial filing fee.

25 Plaintiff must file a response to this Order to Show Cause  
26 no later than 20 days from the date of this Order. Failure to  
27 file a response within the time specified may result in the  
28 dismissal of this action. If the initial partial filing fee is

1 received by the Court within the 20-day period, no further  
2 response to this Order to Show Cause is necessary.

3  
4 DATED: December 2, 2013

  
JEAN P. ROSENBLUTH  
U.S. MAGISTRATE JUDGE

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28