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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY 
DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

TONY J. WAYNE,
CDCR #T-20904,

Plaintiff,

vs.

O'LEAL, Correctional Officer,

Defendant.

Civil 07-1605 JM (BLM)
No.

**ORDER DENYING MOTION TO
PROCEED *IN FORMA*
PAUPERIS AND DISMISSING
CASE WITHOUT PREJUDICE
PURSUANT TO
28 U.S.C. § 1915(a)
[Doc. No. 2]**

Plaintiff, Tony J. Wayne, a state prisoner currently incarcerated at the Richard J. Donovan Correctional Facility in San Diego, California, and proceeding pro se, has submitted a civil rights Complaint pursuant to 28 U.S.C. § 1983. Plaintiff has not prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a); instead, he has filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) [Doc. No. 2].

**I.
MOTION TO PROCEED IFP**

Effective April 9, 2006, all parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus,

1 must pay a filing fee of \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite
2 a party's failure to pay only if the party is granted leave to proceed in forma pauperis
3 ("IFP") pursuant to 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 2007 WL 1932824
4 at *3, ___ F.3d ___ (9th Cir. July 5, 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th
5 Cir. 1999). Prisoners granted leave to proceed IFP however, remain obligated to pay the
6 entire fee in installments, regardless of whether the action is ultimately dismissed for any
7 reason. *See* 28 U.S.C. § 1915(b)(1) & (2).

8 Prisoners seeking leave to proceed IFP must also submit a "certified copy of the
9 trust fund account statement (or institutional equivalent) for the prisoner for the 6-month
10 period immediately preceding the filing of the complaint...." 28 U.S.C. § 1915(a)(2).
11 From the certified trust account statement, the Court must assess an initial payment of
12 20% of (a) the average monthly deposits in the account for the past six months, or (b) the
13 average monthly balance in the account for the past six months, whichever is greater,
14 unless the prisoner has no assets. *See* 28 U.S.C. § 1915(b)(1), (4); *see also Taylor v.*
15 *Delatoore*, 281 F.3d 844, 850 (9th Cir. 2002). Thereafter, the institution having custody
16 of the prisoner must collect subsequent payments, assessed at 20% of the preceding
17 month's income, in any month in which the prisoner's account exceeds \$10, and forward
18 those payments to the Court until the entire filing fee is paid. *See* 28 U.S.C.
19 § 1915(b)(2).

20 While Plaintiff has filed a Motion to Proceed IFP in this matter pursuant to 28
21 U.S.C. § 1915(a), he has not attached a certified copy of his prison trust account
22 statement for the 6-month period immediately preceding the filing of his Complaint. *See*
23 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2. Section 1915(a)(2) clearly mandates that
24 prisoners "seeking to bring a civil action ...without prepayment of fees ... shall submit
25 a certified copy of the trust fund account statement (or institutional equivalent) ... for the
26 6-month period immediately preceding the filing of the complaint." 28 U.S.C. §
27 1915(a)(2) (emphasis added).

28

1 Without Plaintiff's trust account statement, the Court is simply unable to assess
2 the appropriate amount of the filing fee required to initiate this action. See 28 U.S.C.
3 § 1915(b)(1). Therefore, Plaintiff's Motion to Proceed IFP must be DENIED.

4 **II.**

5 **CONCLUSION AND ORDER**

6 For the reasons set forth above, **IT IS ORDERED** that:


7 (1) Plaintiff's Motion to Proceed IFP [Doc. No. 2] is **DENIED**.

8 (2) This action is **DISMISSED** without prejudice for failure to prepay the \$350
9 filing fee mandated by 28 U.S.C. § 1914(a), and for failure to successfully move to
10 proceed IFP pursuant to 28 U.S.C. § 1915(a).

11 (3) Plaintiff is **GRANTED** forty five (45) days from the date this Order is Filed
12 to either: (1) pay the entire \$350 filing fee, or (2) file a new Motion to Proceed IFP,
13 *which includes a certified copy of his trust account statement for the 6-month period*
14 *preceding the filing of his Complaint* pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL.
15 CIVLR 3.2(b).

16 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff
17 with a Court-approved form "Motion and Declaration in Support of Motion to Proceed
18 IFP" in this matter. If Plaintiff neither pays the \$350 filing fee in full nor sufficiently
19 completes and files the attached Motion to Proceed IFP, together with a certified copy
20 of his prison trust account statement within 45 days, this action shall remain closed
21 without further Order of the Court.

22
23 DATED: 8/31/07


24 **HON JEFFREY T. MILLER**
United States District Judge