

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

PHENENO KENZELL AUSLER,  
AKA KENNY WALKER  
CDCR #p-21872,

Plaintiff,

vs.

TAWAINA THOMPSON, et al.,

Defendants.

Civil No. 11cv1427 MMA (NLS)

**ORDER DISMISSING CIVIL  
ACTION FOR FAILING TO PAY  
FILING FEES PURSUANT TO  
28 U.S.C. § 1914(a) AND FOR  
FAILING TO MOVE  
IN FORMA PAUPERIS  
PURSUANT TO  
28 U.S.C. § 1915(a)**

Plaintiff, a state prisoner currently incarcerated at the Richard J. Donovan Correctional Facility located in San Diego, California, and proceeding pro se, filed this civil action. Plaintiff did not prepay the civil filing fee required by 28 U.S.C. § 1914(a); nor did he submit a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a).

**I. FAILURE TO PAY FILING FEE OR REQUEST IFP STATUS**

Any party instituting a civil action, suit or proceeding in a district court of the United States, other than a writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a party’s failure to pay only if the party is granted leave to proceed *in forma pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a). *See Andrews v.*

1 *Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th  
2 Cir. 1999). As noted above, Plaintiff did not prepay the \$350 filing fee required to commence  
3 a civil action when he filed it; nor has he submitted a Motion to Proceed IFP. Therefore, the  
4 case must be dismissed pursuant to 28 U.S.C. § 1914(a).

5 **II. CONCLUSION AND ORDER**

6 For the reasons set forth above, the Court hereby:

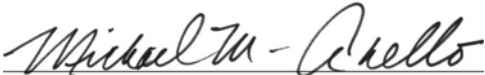
7 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350  
8 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

9 (2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is filed to:  
10 (a) prepay the entire \$350 civil filing fee in full; *or* (b) complete and file a Motion to Proceed  
11 IFP which includes a certified copy of his trust account statement for the 6-month period  
12 preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2(b).

13 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with  
14 the Court’s form “Motion and Declaration in Support of Motion to Proceed *In Forma*  
15 *Pauperis*.” If Plaintiff fails to either prepay the \$350 civil filing fee or complete and submit the  
16 enclosed Motion to Proceed IFP within that time, this action shall remain dismissed without  
17 prejudice and without further Order of the Court.

18 **IT IS SO ORDERED.**

19  
20 DATED: July 15, 2011

  
21 Hon. Michael M. Anello  
22 United States District Judge  
23  
24  
25  
26  
27  
28