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DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
DEPUTY

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

JAMES EUSSE, Jr;  
CDCR #K-75382,  
  
Plaintiff,  
  
vs.  
  
MARCO VITELA; EVARISTO  
DUARTE;  
MARTIN CARPIO; ROGER N.  
NELSON, Jr.,  
  
Defendants.

Civil No. 13-cv-0916 BEN (NLS)  
  
**ORDER DENYING MOTION TO  
PROCEED *IN FORMA PAUPERIS*  
AND DISMISSING CASE  
WITHOUT PREJUDICE  
PURSUANT TO  
28 U.S.C. § 1915(a)  
  
(ECF Doc. No. 2)**

Plaintiff, a state inmate currently housed at Centinela State Prison located in Imperial, California, and proceeding pro se, has filed a civil rights complaint pursuant to 42 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) (ECF Doc. No. 2).

**I. MOTION TO PROCEED IFP**

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, must pay a filing fee of

1 \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay  
2 only if the party is granted leave to proceed in forma pauperis ("IFP") pursuant to 28  
3 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007);  
4 *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). "Under the PLRA [Prison  
5 Litigation Reform Act], all prisoners who file IFP civil actions must pay the full amount  
6 of the filing fee," regardless of whether the action is ultimately dismissed for any reason.  
7 *See Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002) (citing 28 U.S.C.  
8 § 1915(b)(1) & (2)).

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

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

1 Without Plaintiff's trust account statement, the Court is simply unable to assess  
2 the appropriate amount of the filing fee which is statutorily required to initiate the  
3 prosecution of this action. See 28 U.S.C. § 1915(b)(1).

4 **II. CONCLUSION AND ORDER**

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

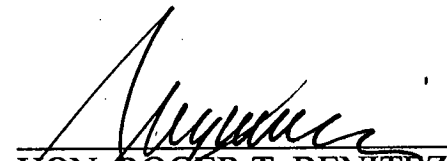
6 (1) Plaintiff's Motion to Proceed IFP (ECF Doc. No. 2) is **DENIED** and the  
7 action is **DISMISSED** without prejudice for failure to prepay the \$350 filing fee  
8 mandated by 28 U.S.C. § 1914(a).

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

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

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DATED: 4/23/17

  
HON. ROGER T. BENITEZ  
United States District Judge