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

CAREY SMITH,  
P-13926,

Plaintiff,

vs.

DR. JOHN CHAU; DR. G. CASIAN;  
D. MORTON,

Defendants.

Civil No. 13-1337 GPC (WMc)

**ORDER DENYING MOTION TO  
PROCEED *IN FORMA PAUPERIS*  
AND DISMISSING CASE WITHOUT  
PREJUDICE PURSUANT TO  
28 U.S.C. § 1915(a)**

[ECF No. 7]

Plaintiff, a state inmate currently incarcerated at the Richard J. Donovan Correctional Facility (“RJD”), 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 No. 7].

**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 \$400. *See* 28 U.S.C. § 1914(a). An action may proceed despite a party’s failure to pay only if the party is

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

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

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

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

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1 **II. CONCLUSION AND ORDER**

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


3 (1) Plaintiff's Motion to Proceed IFP [ECF No. 7] is DENIED and the action is  
4 DISMISSED without prejudice for failure to prepay the \$400 filing fee mandated by 28 U.S.C.  
5 § 1914(a).

6 (2) Plaintiff is GRANTED an additional forty-five (45) days from the date of this  
7 Order to either: (a) prepay the entire \$350 civil filing fee and \$50 administrative fee in full; *or*  
8 (b) complete and file a Motion to Proceed IFP *which includes a certified copy of his trust*  
9 *account statement for the 6-month period preceding the filing of his Complaint. See 28 U.S.C.*  
10 *§ 1915(a)(2); S.D. CAL. CIVLR 3.2(b).* If Plaintiff chooses to file a Motion to Proceed IFP which  
11 the Court later grants, the \$50 administrative fee will be waived.

12 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with a  
13 Court-approved form "Motion and Declaration in Support of Motion to Proceed IFP" in this  
14 matter. If Plaintiff neither pays the \$400 filing fee in full nor sufficiently completes and files  
15 the attached Motion to Proceed IFP, *together with a certified copy of his trust account statement*  
16 *within 45 days*, this action shall remained closed without further Order of the Court.

17 **IT IS SO ORDERED.**

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19 DATED: June 18, 2013

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21 HON. GONZALO P. CURIEL  
22 United States District Judge  
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