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

JOSHUA DAVID WILLIAMS,
Inmate Booking No. 14732898,

Plaintiff,

vs.

STATE OF CALIFORNIA, et al.,

Defendants.

Civil No. 14cv1816 GPC (PCL)

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

(Doc. No. 4)

Joshua David Williams (“Plaintiff”), currently incarcerated at San Diego Central Jail located in San Diego, California, and proceeding pro se, has filed a civil rights complaint (“Compl.”) pursuant to 42 U.S.C. § 1983 (Doc. No. 1). On July 31, 2013, Plaintiff filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) (Doc. No. 2). The Court denied Plaintiff’s Motion because he failed to file a certified copy of his prison trust account statement as required by 28 U.S.C. § 1915(a)(2). (ECF No. 3.) The Court permitted Plaintiff to file a renewed Motion and informed him he must comply with the Court’s Order requiring the trust account statement. (ECF No. 3 at 3.)

1 Plaintiff has now filed a second Motion to Proceed IFP but once again, he has
2 failed to submit a certified copy of his inmate trust account statement. (ECF No. 4.)

3 **I.**

4 **MOTION TO PROCEED IFP**

5 All parties instituting any civil action, suit or proceeding in a district court of the
6 United States, except an application for writ of habeas corpus, must pay a filing fee of
7 \$400.¹ See 28 U.S.C. § 1914(a). An action may proceed despite a party’s failure to pay
8 only if the party is granted leave to proceed in forma pauperis (“IFP”) pursuant to 28
9 U.S.C. § 1915(a). See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007);
10 *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). “Under the PLRA [Prison
11 Litigation Reform Act], all prisoners who file IFP civil actions must pay the full amount
12 of the filing fee,” regardless of whether their case is ultimately dismissed. See *Taylor*
13 *v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002) (citing 28 U.S.C. § 1915(b)(1) & (2)).

14 In order to comply with the PLRA, prisoners seeking leave to proceed IFP must
15 also submit a “certified copy of the trust fund account statement (or institutional
16 equivalent) for the prisoner for the 6-month period immediately preceding the filing of
17 the complaint” 28 U.S.C. § 1915(a)(2). From the certified trust account statement,
18 the Court assesses an initial payment of 20% of (a) the average monthly deposits in the
19 account for the past six months, or (b) the average monthly balance in the account for the
20 past six months, whichever is greater, unless the prisoner has no assets. See 28 U.S.C.
21 § 1915(b)(1), (4); see *Taylor*, 281 F.3d at 850. Thereafter, the institution having custody
22 of the prisoner collects subsequent payments, assessed at 20% of the preceding month’s
23 income, in any month in which the prisoner’s account exceeds \$10, and forwards them
24 to the Court until the entire filing fee is paid. See 28 U.S.C. § 1915(b)(2).

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27 ¹ In addition to the \$350 statutory fee, all parties filing civil actions on or after
28 May 1, 2013, must pay an additional administrative fee of \$50. See 28 U.S.C. § 1914(a)
(Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule) (eff. May 1,
2013). However, the additional \$50 administrative fee is waived if the plaintiff is
granted leave to proceed IFP. *Id.*

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

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

12 II.

13 CONCLUSION AND ORDER

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

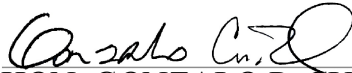
15 (1) Plaintiff’s Motion to Proceed IFP (Doc. No. 4) is **DENIED** and the action
16 is **DISMISSED** without prejudice for failure to prepay the \$400 filing fee mandated by
17 28 U.S.C. § 1914(a).

18 (2) Plaintiff is **GRANTED** an additional forty-five (45) days from the date of
19 this Order to either: (1) pay the entire \$400 statutory and administrative filing fee, **or** (2)
20 file a new Motion to Proceed IFP, *which includes a certified copy of his trust account*
21 *statement for the 6-month period preceding the filing of his Complaint* pursuant to 28
22 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2(b).

23 The Clerk of the Court is further **DIRECTED** to provide Plaintiff with the Court’s
24 approved form “Motion and Declaration in Support of Motion to Proceed IFP” for
25 Plaintiff’s use if he wishes to proceed further. If Plaintiff neither pays the \$400 filing
26 fee in full nor sufficiently completes and files the attached Motion to Proceed IFP,
27 *together with a certified copy of his trust account statement within 45 days*, this civil
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1 action will remained dismissed without prejudice pursuant to 28 U.S.C. § 1915(a) and
2 without further action by the Court.

3 DATED: September 15, 2014

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5 HON. GONZALO P. CURIEL
6 United States District Judge

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