

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**

VERNON D. HOOKS,  
CDCR #T-08976,  
  
Plaintiff,  
  
vs.  
  
J. GOMEZ, et al.,  
  
Defendants.

Civil No. 14cv1855 MMA (KSC)

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

Vernon D. Hooks (“Plaintiff”), currently incarcerated at Kern Valley State Prison (“KVSP”) in Delano, California, and proceeding *pro se*, has filed a civil rights complaint (“Compl.”) pursuant to 42 U.S.C. § 1983 [Doc. No. 1].

Plaintiff claims several Calipatria State Prison officials provided him inadequate medical care in violation of the Eighth and Fourteenth Amendments by mistakenly giving him the wrong medication while he was incarcerated there in 2010. *See* Compl. at 7, 9. He seeks declaratory relief as well as compensatory and punitive damages. *Id.* at 15-17.

Plaintiff has not prepaid the civil filing fee required 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].

1 I.

2 MOTION TO PROCEED IFP

3 All parties instituting any civil action, suit or proceeding in a district court of  
4 the United States, except an application for writ of habeas corpus, must pay a filing  
5 fee of \$400.<sup>1</sup> See 28 U.S.C. § 1914(a). An action may proceed despite a party’s  
6 failure to pay only if the party is granted leave to proceed in forma pauperis (“IFP”)  
7 pursuant to 28 U.S.C. § 1915(a). See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th  
8 Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). “Under the  
9 PLRA [Prison Litigation Reform Act], all prisoners who file IFP civil actions must  
10 pay the full amount of the filing fee,” regardless of whether their case is ultimately  
11 dismissed. See *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002) (citing 28  
12 U.S.C. § 1915(b)(1) & (2)).

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

25  
26  
27 <sup>1</sup> In addition to the \$350 statutory fee, all parties filing civil actions on or after May  
28 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.  
2 § 1915(a), he has not attached a certified copy of his prison trust account statements,  
3 or KVSP's institutional certificate of funds or its equivalent, for the 6-month period  
4 immediately preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2); S.D.  
5 CAL. CIVLR 3.2. Section 1915(a)(2) clearly mandates that prisoners "seeking to bring  
6 a civil action . . . without prepayment of fees . . . shall submit a certified copy of the  
7 trust fund account statement (or institutional equivalent) . . . for the 6-month period  
8 immediately preceding the filing of the complaint." 28 U.S.C. § 1915(a)(2) (emphasis  
9 added).

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

## 13 II.

### 14 CONCLUSION AND ORDER

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

16 (1) Plaintiff's Motion to Proceed IFP [Doc. No. 2] is **DENIED** and the  
17 action is **DISMISSED without prejudice** for failure to prepay the \$400 filing fee  
18 mandated by 28 U.S.C. § 1914(a).

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

---

24  
25 <sup>2</sup> Plaintiff is cautioned that if he chooses to proceed further by either pre-paying  
26 the full \$400 civil filing fee, or submitting a properly supported Motion to Proceed IFP,  
27 his Complaint will be screened prior to service upon any defendant and may be dismissed  
28 pursuant to 28 U.S.C. § 1915A(b) and 28 U.S.C. § 1915(e)(2)(B) regardless of whether  
he pays or is obligated to pay filing fees. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27  
(9th Cir. 2000) (en banc) (noting that 28 U.S.C. § 1915(e) "not only permits but requires"  
the court to sua sponte dismiss an *in forma pauperis* complaint that is frivolous,  
malicious, fails to state a claim, or seeks damages from defendants who are immune); *see*  
also *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing similar

1 The Clerk of the Court is further **DIRECTED** to provide Plaintiff with the  
2 Court’s approved form “Motion and Declaration in Support of Motion to Proceed  
3 IFP” for Plaintiff’s use if he wishes to proceed further. If Plaintiff neither pays the  
4 \$400 filing fee in full nor sufficiently completes and files the attached Motion to  
5 Proceed IFP, *together with a certified copy of his trust account statement within 45*  
6 *days*, this civil action will remained dismissed without prejudice pursuant to 28 U.S.C.  
7 § 1915(a) and without further action by the Court.

8 **IT IS SO ORDERED.**

9 DATED: August 20, 2014



Hon. Michael M. Anello  
United States District Judge

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24 \_\_\_\_\_  
25 screening required by 28 U.S.C. § 1915A of all complaints filed by prisoners “seeking  
26 redress from a governmental entity or officer or employee of a governmental entity.”).  
27 Because Plaintiff’s Complaint includes allegations of inadequate medical treatment, he  
28 is cautioned that prison officials violate the Eighth Amendment’s prohibition of cruel and  
unusual punishments only if they are deliberately indifferent to his serious medical needs.  
*Estelle v. Gamble*, 429 U.S. 97, 106 (1976). The indifference must be substantial;  
inadequate treatment due to malpractice, or even gross negligence, does not amount to  
a constitutional violation. *Id.* at 106; *Toguchi v. Chung*, 391 F.3d 1051, 1060 (9th Cir.  
2004) (“Deliberate indifference is a high legal standard.”).