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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JUSTIN COYLE,
Booking #15746082,

Plaintiff,

vs.

CLEAR CHANNEL
COMMUNICATIONS, et al.,

Defendants.

Case No.: 3:16-cv-01173-LAB-KSC

**ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR FAILING TO PAY
FILING FEE REQUIRED
BY 28 U.S.C. § 1914(a) AND/OR
FAILING TO MOVE TO PROCEED
IN FORMA PAUPERIS
PURSUANT TO
28 U.S.C. § 1915(a)**

Justin Boyle (“Plaintiff”), currently detained at the San Diego Central Jail and proceeding pro se, has submitted an incomprehensible pleading seeking unspecified relief against various public and private business entities, and invoking the Civil Rights Act, 42 U.S.C. § 1983 (ECF No. 1).

I. Failure to Pay Filing Fee or Request IFP Status

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

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1 \$400. See 28 U.S.C. § 1914(a).¹ The action may proceed despite a plaintiff's failure to
2 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.
3 § 1915(a). See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*
4 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, a prisoner who is granted leave to
5 proceed IFP remains obligated to pay the entire fee in "increments" or "installments,"
6 *Bruce v. Samuels*, ___ U.S. ___, 136 S. Ct. 627, 629 (2016); *Williams v. Paramo*, 775 F.3d
7 1182, 1185 (9th Cir. 2015), and regardless of whether his action is ultimately dismissed.
8 See 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

9 Section 1915(a)(2) requires all persons seeking to proceed without full prepayment
10 of fees to submit an affidavit that includes a statement of all assets possessed and
11 demonstrates an inability to pay. See *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th Cir.
12 2015). In support of this affidavit, prisoners must also submit a "certified copy of the trust
13 fund account statement (or institutional equivalent) for . . . the 6-month period immediately
14 preceding the filing of the complaint." 28 U.S.C. § 1915(a)(2); *Andrews v. King*, 398 F.3d
15 1113, 1119 (9th Cir. 2005). From the certified trust account statement, the Court assesses
16 an initial payment of 20% of (a) the average monthly deposits in the account for the past
17 six months, or (b) the average monthly balance in the account for the past six months,
18 whichever is greater, unless the prisoner has no assets. See 28 U.S.C. § 1915(b)(1); 28
19 U.S.C. § 1915(b)(4). The institution having custody of the prisoner then collects
20 subsequent payments, assessed at 20% of the preceding month's income, in any month in
21 which his account exceeds \$10, and forwards those payments to the Court until the entire
22 filing fee is paid. See 28 U.S.C. § 1915(b)(2); *Bruce*, 136 S. Ct. at 629.

23 Plaintiff did not pay the filing fee required to commence a civil action, nor has he
24 filed a Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a)(1) and (2). Therefore, his
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26
27 ¹ In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$50. See
28 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14 (eff.
Dec. 1, 2014)). The additional \$50 administrative fee does not apply to persons granted leave to proceed
IFP. *Id.*

1 case cannot yet proceed. See 28 U.S.C. § 1914(a); Andrews, 493 F.3d at 1051.

2 **II. Conclusion and Order**

3 For the reason explained above, the Court:

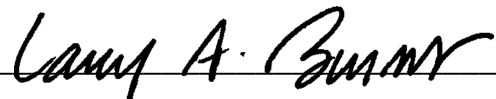
4 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the
5 \$400 civil filing and administrative fee or submit a Motion to Proceed IFP pursuant to 28
6 U.S.C. §§ 1914(a) and 1915(a);

7 (2) **GRANTS** Plaintiff **forty-five (45)** days leave from the date this Order is filed
8 to re-open this case by: (a) prepaying the entire \$400 civil filing and administrative fee in
9 full; **or** (b) completing and filing a Motion to Proceed IFP which includes a certified copy
10 of his trust account statement for the 6-month period preceding the filing of his Complaint
11 as is required by 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2(b);² and

12 (3) **DIRECTS** the Clerk of the Court to provide Plaintiff with this Court’s
13 approved form “Motion and Declaration in Support of Motion to Proceed In Forma
14 Pauperis.” If Plaintiff fails to either prepay the \$400 civil filing fee or complete and submit
15 the enclosed Motion to Proceed IFP within 45 days, his case will remain dismissed without
16 prejudice based on his failure to satisfy 28 U.S.C. § 1914(a)’s fee requirements and without
17 further Order of the Court.

18 **IT IS SO ORDERED.**

19 Dated: May 19, 2016



20 **HON. LARRY ALAN BURNS**
21 United States District Judge

22 _____
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24 ² Plaintiff is cautioned that if he chooses to proceed further by either pre-paying the full \$400 civil filing
25 fee, or submitting a properly supported Motion to Proceed IFP, his Complaint will be screened before
26 service upon any defendant and will be immediately dismissed as frivolous pursuant to 28 U.S.C.
27 § 1915A(b) or 28 U.S.C. § 1915(e)(2)(B) regardless of whether he pays the full filing fee up front, or is
28 granted leave to proceed IFP and to pay it in monthly installments. 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); Rhodes v. Robinson, 621 F.3d 1002, 1004
(9th Cir. 2010) (discussing similar screening required by 28 U.S.C. § 1915A of all complaints filed by
prisoners “seeking redress from a governmental entity or officer or employee of a governmental entity.”).