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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TONY LEMONT SIMS, JR.,

Plaintiff,

v.

CITY OF SAN DIEGO; DISTRICT
ATTORNEYS OFFICE,

Defendants.

Case No.: 3:16-cv-02846-JLS-WVG

**ORDER DENYING MOTION TO
PROCEED IN FORMA PAUPERIS
AND DISMISSING ACTION
WITHOUT PREJUDICE**

Tony Lemont Sims, Jr. (“Plaintiff”), currently housed at the George F. Bailey Detention Facility located in San Diego, California, and proceeding pro se, has filed a civil rights complaint (“Compl.”) pursuant to 42 U.S.C. § 1983 (ECF No. 1). 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) (ECF 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 \$400. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff’s failure to

1 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.
2 § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, if the
3 plaintiff is a prisoner at the time of filing, he may be granted leave to proceed IFP, but he
4 nevertheless remains obligated to pay the entire fee in “increments,” *see Williams v.*
5 *Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), regardless of whether his action is ultimately
6 dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th
7 Cir. 2002). A “prisoner” is defined as “any person” who at the time of filing is “incarcerated
8 or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated
9 delinquent for, violations of criminal law or the terms or conditions of parole, probation,
10 pretrial release, or diversionary program.” 28 U.S.C. § 1915(h); *Taylor*, 281 F.3d at 847.

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

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

1 (emphasis added).

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

5 **II. Conclusion and Order**

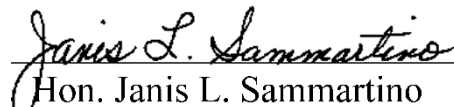
6 For these reasons, **IT IS ORDERED** that:

7 (1) Plaintiff's Motion to Proceed IFP (ECF No. 2) is **DENIED** and the action is
8 **DISMISSED WITHOUT PREJUDICE** for failure to prepay the \$400 filing fee required
9 by 28 U.S.C. § 1914(a).

10 (2) Plaintiff is **GRANTED** forty-five (45) days from the date of this Order in
11 which to re-open his case by either: (1) paying the entire \$400 statutory and administrative
12 filing fee, or (2) filing a new Motion to Proceed IFP, which includes a certified copy of his
13 trust account statement for the 6-month period preceding the filing of his Complaint
14 pursuant to 28 U.S.C. § 1915(a)(2) and S.D. Cal. CivLR 3.2(b).

15 (3) The Clerk of the Court is **DIRECTED** to provide Plaintiff with a Court-
16 approved form "Motion and Declaration in Support of Motion to Proceed IFP" in this
17 matter. If Plaintiff neither pays the \$400 filing fee in full nor sufficiently completes and
18 files the attached Motion to Proceed IFP, together with a certified copy of his trust account
19 statement within 45 days, this action will remain dismissed without prejudice pursuant
20 to 28 U.S.C. § 1914(a), and without further Order of the Court.

21 Dated: December 7, 2016

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23 Hon. Janis L. Sammartino
24 United States District Judge
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