

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 KYLE JAMES,

12 Plaintiff,

13 v.

14 UNITED STATES MARSHALS
15 SERVICE AGENTS, et al.,

16 Defendants.
17
18
19

Case No.: 3:17-cv-00414-WQH-BLM

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

20 Kyle James (“Plaintiff”), a state inmate currently housed at the California State
21 Prison located in Los Angeles, California, and proceeding pro se, has filed a civil rights
22 complaint (“Compl.”) pursuant to 42 U.S.C. § 1983. (ECF No. 1). Plaintiff has not
23 prepaid the civil filing fee required by 28 U.S.C. § 1914(a); instead, he has filed a Motion
24 to Proceed In Forma Pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a). (ECF No. 2).

25 **I. Motion to Proceed IFP**

26 All parties instituting any civil action, suit or proceeding in a district court of the
27 United States, except an application for writ of habeas corpus, must pay a filing fee of
28 \$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
6 ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d
7 844, 847 (9th Cir. 2002). A “prisoner” is defined as “any person” who at the time of
8 filing is “incarcerated or detained in any facility who is accused of, convicted of,
9 sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or
10 conditions of parole, probation, pretrial release, or diversionary program.” 28 U.S.C.
11 § 1915(h); *Taylor*, 281 F.3d at 847.

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

23 While Plaintiff has filed a Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a),
24 he has not attached a certified copy of his trust account statements, or an institutional
25 equivalent, for the 6-month period immediately preceding the filing of his Complaint. *See*
26 28 U.S.C. § 1915(a)(2); S.D. Cal. CivLR 3.2. On March 14, 2017, Plaintiff filed a
27 supplemental document to his Motion to Proceed IFP stating that he “is still trying to get
28 the [trust account] statements.” (ECF No. 4). Section 1915(a)(2) clearly requires that

1 prisoners “seeking to bring a civil action . . . without prepayment of fees . . . *shall* submit
2 a certified copy of the trust fund account statement (or institutional equivalent) . . . for the
3 6-month period immediately preceding the filing of the complaint.” 28 U.S.C.
4 § 1915(a)(2) (emphasis added).

5 Without Plaintiff’s current trust account statement reflecting the 6-month period
6 immediately preceding the filing of this action, the Court is unable to assess the
7 appropriate amount of the initial filing fee which is statutorily required to initiate the
8 prosecution of this action. *See* 28 U.S.C. § 1915(b)(1).

9 **II. Conclusion and Order**

10 For these reasons, IT IS ORDERED that:

11 (1) Plaintiff’s Motion to Proceed IFP (Doc. No. 2) is DENIED and the action is
12 DISMISSED without prejudice for failure to prepay the \$400 filing fee required by 28
13 U.S.C. § 1914(a).

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

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

25 Dated: April 13, 2017

26 
27 Hon. William Q. Hayes
28 United States District Court