

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MAURICE D. MOYER, Sr.,
CDCR #AR-9913,

Plaintiff,

PEOPLE OF THE STATE OF
CALIFORNIA, et al.,

Defendants.

Case No.: 17cv797-JLS (BLM)

**ORDER DENYING MOTION TO
PROCEED *IN FORMA PAUPERIS*
PURSUANT TO 28 U.S.C. § 1915(a)
AND DISMISSING CIVIL ACTION
WITHOUT PREJUDICE FOR
FAILING TO PREPAY FILING
FEES REQUIRED BY
28 U.S.C. § 1914(a)**

(ECF No. 2)

Plaintiff Maurice D. Moyer, Sr., currently incarcerated at California State Prison—Sacramento (“CSP-SAC”) in Represa, California, and proceeding pro se, has filed a “petition for writ for civil rights complaint” seeking \$15 million in punitive damages from the State of California, a San Diego Superior Court Judge, and the San Diego District Attorney based on his “wrongful imprisonment.” (ECF No. 1 at 1–2, 4, 29.) Plaintiff claims he was denied a fair and speedy trial and was convicted based on “insufficient evidence” in San Diego Superior Court Case No. SCE324735 sometime in 2013. (*Id.* at 3, 6, 8–11, 14, 22.)

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1 Plaintiff has not prepaid the civil filing fee required by 28 U.S.C. § 1914(a); instead,
2 he has filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C.
3 § 1915(a) (ECF No. 2).

4 **I. 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. *See* 28 U.S.C. § 1914(a).¹ An action may proceed despite a plaintiff’s failure to
8 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.
9 § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, if the
10 plaintiff is a prisoner at the time of filing, he may be granted leave to proceed IFP, but he
11 nevertheless remains obligated to pay the entire fee in “increments,” *see Williams v.*
12 *Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), regardless of whether his action is ultimately
13 dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th
14 Cir. 2002). A “prisoner” is defined as “any person” who at the time of filing is “incarcerated
15 or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated
16 delinquent for, violations of criminal law or the terms or conditions of parole, probation,
17 pretrial release, or diversionary program.” 28 U.S.C. § 1915(h); *Taylor*, 281 F.3d at 847.

18 In order to comply with the Prison Litigation Reform Act (42 U.S.C. § 1997e),
19 prisoners seeking leave to proceed IFP must also submit a “certified copy of the[ir] trust
20 fund account statement (or institutional equivalent) . . . for the 6-month period immediately
21 preceding the filing of the complaint. . . .” 28 U.S.C. § 1915(a)(2). From the certified trust
22 account statement, the Court assesses an initial payment of 20% of (a) the average monthly
23 deposits in the account for the past six months, or (b) the average monthly balance in the
24 account for the past six months, whichever is greater, unless the prisoner has no assets. *See*
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26 ¹ In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$50. *See*
27 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14 (eff.
28 Dec. 1, 2014)). The additional \$50 administrative fee does not apply to persons granted leave to proceed
IFP. *Id.*

1 28 U.S.C. § 1915(b)(1), (4); *see Taylor*, 281 F.3d at 850. Thereafter, the institution having
2 custody of the prisoner collects subsequent payments, assessed at 20% of the preceding
3 month's income, in any month in which the prisoner's account exceeds \$10, and forwards
4 them to the Court until the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2).

5 While Plaintiff has filed a Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a),
6 he has not attached a certified copy of his CSP-SAC trust account statements for the 6-
7 month period immediately preceding the filing of his Complaint. *See* 28 U.S.C.
8 § 1915(a)(2); S.D. Cal. Civ. L.R. 3.2. Section 1915(a)(2) clearly requires that prisoners
9 “seeking to bring a civil action . . . without prepayment of fees . . . shall submit a certified
10 copy of the trust fund account statement (or institutional equivalent) . . . for the 6-month
11 period immediately preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2)
12 (emphasis added).

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

16 **II. Conclusion and Order**

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

18 (1) Plaintiff's Motion to Proceed IFP (ECF No. 2) is **DENIED** and the action is
19 **DISMISSED** without prejudice for failure to prepay the \$400 filing fee required by 28
20 U.S.C. § 1914(a).

21 (2) Plaintiff is **GRANTED** forty-five (45) days from the date of this Order in
22 which to re-open his case by either: (1) paying the entire \$400 statutory and administrative
23 filing fee, **or** (2) filing a new Motion to Proceed IFP, *including a certified copy of his trust*
24 *account statement for the 6-month period preceding the filing of his Complaint* pursuant to
25 28 U.S.C. § 1915(a)(2) and S.D. Cal. Civ. L.R. 3.2(b).²

27 ² Plaintiff is cautioned that if he chooses to proceed further by either prepaying the full \$400 civil filing
28 fee, or submitting a properly supported Motion to Proceed IFP, his Complaint will be reviewed before
service and will be dismissed pursuant to 28 U.S.C. § 1915A(b) and/or 28 U.S.C. § 1915(e)(2)(B),

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

IT IS SO ORDERED.

Dated: August 1, 2017

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

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 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”). As currently pled, Plaintiff’s Complaint will be subject to such a dismissal because suits like his “challenging the validity of [a] prisoner’s continued incarceration lie within ‘the heart of habeas corpus.’” *Ramirez v. Galaza*, 334 F.3d 850, 856 (9th Cir. 2003) (quoting *Preiser v. Rodriguez*, 411 U.S. 475, 489–99 (1973) (holding that a writ of habeas corpus is “explicitly and historically designed” to provide a state prisoner with the “exclusive” means to “attack the validity of his confinement” in federal court)). Moreover, he may not seek damages against the parties he has named as Defendants. The State of California is entitled to sovereign immunity. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 99–100 (1984) (explaining that the Eleventh Amendment bars federal jurisdiction over suits by individuals against a State and its instrumentalities, unless either the State consents to waive its sovereign immunity or Congress abrogates it). San Diego Superior Court Judge Brannigan is absolutely immune. *See Gregory v. Thompson*, 500 F.2d 59, 62 (9th Cir. 1974) (“A seemingly impregnable fortress in American Jurisprudence is the absolute immunity of judges from civil liability for acts done by them within their judicial jurisdiction.”). And the District Attorney is entitled to similar immunity. *See Van de Kamp v. Goldstein*, 555 U.S. 335, 341 (2009) (state prosecutors are entitled to absolute prosecutorial immunity for acts taken in their official capacity).