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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 LEONARD WALTERS,
12 aka JAMES C. WALTERS,
13 CDCR #BC-6589,

Plaintiff,

14 vs.
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16 SHERIFF; KNOWN DOCTOR; KNOWN
17 MEDICAL STAFF; KNOWN SHERIFF
18 DEPUTY,

Defendants.
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Case No.: 3:17-cv-0902-GPC-JMA

**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]

22 Leonard Walters, also known as James C. Walters, (“Plaintiff”), currently housed
23 at the California Institution for Men, and proceeding pro se, has filed a civil rights
24 complaint pursuant to 42 U.S.C. § 1983 (ECF No. 1). Plaintiff has not prepaid the civil
25 filing fee required by 28 U.S.C. § 1914(a); instead, he has filed a Motion to Proceed *In*
26 *Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) (ECF No. 2).

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1 **I. Motion to Proceed IFP**

2 All parties instituting any civil action, suit or proceeding in a district court of the
3 United States, except an application for writ of habeas corpus, must pay a filing fee of
4 \$400. *See* 28 U.S.C. § 1914(a).¹ An action may proceed despite a plaintiff’s failure to
5 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.
6 § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, if the
7 plaintiff is a prisoner at the time of filing, he may be granted leave to proceed IFP, but he
8 nevertheless remains obligated to pay the entire fee in “increments,” *see Williams v.*
9 *Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), regardless of whether his action is
10 ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d
11 844, 847 (9th Cir. 2002). A “prisoner” is defined as “any person” who at the time of
12 filing is “incarcerated or detained in any facility who is accused of, convicted of,
13 sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or
14 conditions of parole, probation, pretrial release, or diversionary program.” 28 U.S.C.
15 § 1915(h); *Taylor*, 281 F.3d at 847.

16 In order to comply with the PLRA, prisoners seeking leave to proceed IFP must
17 also submit a “certified copy of the[ir] trust fund account statement (or institutional
18 equivalent) . . . for the 6-month period immediately preceding the filing of the
19 complaint. . . .” 28 U.S.C. § 1915(a)(2). From the certified trust account statement, the
20 Court assesses an initial payment of 20% of (a) the average monthly deposits in the
21 account for the past six months, or (b) the average monthly balance in the account for the
22 past six months, whichever is greater, unless the prisoner has no assets. *See* 28 U.S.C.
23 § 1915(b)(1), (4); *see Taylor*, 281 F.3d at 850. Thereafter, the institution having custody
24 of the prisoner collects subsequent payments, assessed at 20% of the preceding month’s
25

26 ¹ In addition to the \$350 statutory fee, civil litigants must pay an additional administrative
27 fee of \$50. *See* 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court
28 Misc. Fee Schedule, § 14 (eff. June 1, 2016). The additional \$50 administrative fee does
not apply to persons granted leave to proceed IFP. *Id.*

1 income, in any month in which the prisoner's account exceeds \$10, and forwards them to
2 the Court until the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2).

3 While Plaintiff has filed a Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a),
4 he filed only a prison certificate from the San Diego Central Jail where he is no longer
5 housed and was not housed at the time of filing. Plaintiff has been housed at the
6 California Institution for Men ("CIM") since March 30, 2017¹ and Plaintiff's Complaint
7 was deemed "filed" as of April 21, 2017. (*See* Compl. at 9.) Plaintiff must provide a
8 certified copy of his inmate trust account from the institution where he is currently
9 housed. *See* 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2. Section 1915(a)(2) clearly
10 requires that prisoners "seeking to bring a civil action . . . without prepayment of fees . . .
11 shall submit a certified copy of the trust fund account statement (or institutional
12 equivalent) . . . for the 6-month period immediately preceding the filing of the
13 complaint." 28 U.S.C. § 1915(a)(2) (emphasis added). If Plaintiff has not been in custody
14 for a full 6-months prior to filing, he must submit copies of his trust account statements
15 for the entire period during which he was first detained, up to the time of filing, and/or a
16 prison certificate signed by CIM officials attesting as to his recent trust account activities
17 and current balance.

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

21 **II. Conclusion and Order**

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

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

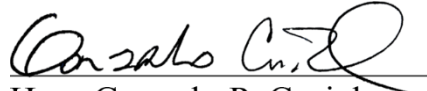
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28 ¹ *See* CDCR Inmate locator <http://inmatelocator.cdcr.ca.gov/Results.aspx> (website last visited May 8, 2017.)

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

6 (3) The Clerk of the Court is **DIRECTED** to provide Plaintiff with a Court-
7 approved form “Motion and Declaration in Support of Motion to Proceed IFP” in this
8 matter. If Plaintiff neither pays the \$400 filing fee in full nor sufficiently completes and
9 files the attached Motion to Proceed IFP, *together with a certified copy of his trust*
10 *account statement within 45 days*, this action will remain dismissed without prejudice
11 pursuant to 28 U.S.C. § 1914(a), and without further Order of the Court.²

12 **IT IS SO ORDERED.**

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14 Dated: May 11, 2017

15 
16 Hon. Gonzalo P. Curiel
17 United States District Judge
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22 ² Plaintiff is cautioned that if he chooses to proceed further by either prepaying the full
23 \$400 civil filing fee, or submitting a properly supported Motion to Proceed IFP, his
24 Complaint will be reviewed before service and may be dismissed pursuant to 28 U.S.C.
25 § 1915A(b) and/or 28 U.S.C. § 1915(e)(2)(B), regardless of whether he pays or is obligated
26 to pay filing fees. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)
27 (noting that 28 U.S.C. § 1915(e) “not only permits but requires” the court to sua sponte
28 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.”).