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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

NEHEMIAH LANARR McINTOSH, Sr.,  
Plaintiff,  
v.  
SAN DIEGO COUNTY SHERIFF'S  
DEP'T, et al.,  
Defendants.

Case No.: 3:17-cv-0946-JLS-PCL

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

Plaintiff Nehemiah Lanarr McIntosh, a state inmate currently housed at the California Institution for Men located in Chino, 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

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

12 In order to comply with the PLRA, prisoners seeking leave to proceed IFP must also  
13 submit a “certified copy of the[ir] trust fund account statement (or institutional equivalent)  
14 . . . for the 6-month period immediately preceding the filing of the complaint. . . .” 28  
15 U.S.C. § 1915(a)(2). From the certified trust account statement, the Court assesses an initial  
16 payment of 20% of (a) the average monthly deposits in the account for the past six months,  
17 or (b) the average monthly balance in the account for the past six months, whichever is  
18 greater, unless the prisoner has no assets. *See* 28 U.S.C. § 1915(b)(1), (4); *Taylor*, 281 F.3d  
19 at 850. Thereafter, the institution having custody of the prisoner collects subsequent  
20 payments, assessed at 20% of the preceding month’s income, in any month in which the  
21 prisoner’s account exceeds \$10, and forwards them to the Court until the entire filing fee  
22 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. Section 1915(a)(2) clearly requires that  
27 prisoners “seeking to bring a civil action . . . without prepayment of fees . . . shall submit  
28 a certified copy of the trust fund account statement (or institutional equivalent) . . . for the

1 6-month period immediately preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2)  
2 (emphasis added). Instead, Plaintiff has filed a trust account statement dated for the time  
3 period from November 1, 2006 to May 29, 2007. (*See* ECF No. 11, at 3.)

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

8 **II. Conclusion and Order**

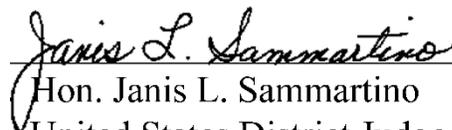
9 For these reasons, **IT IS ORDERED** that:

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

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

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

24 Dated: June 20, 2017

25   
26 Hon. Janis L. Sammartino  
27 United States District Judge  
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