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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

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11 OMAR YASIN,

12 Plaintiff,

13 vs.

14 CAPTAIN D. FLYNN, et al.,

15 Defendants.

Case No. 17-cv-01057-BAS-JLB

**ORDER DISMISSING CIVIL  
ACTION FOR FAILURE TO PAY  
FILING FEE**

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18 Plaintiff Omar Yasin, while detained at the San Diego County Sheriff's  
19 Department's George Bailey Detention Facility ("GBDF") and proceeding pro se, has filed  
20 a civil rights complaint pursuant to 42 U.S.C. § 1983. (See ECF No. 1.) Plaintiff's  
21 Complaint is brief: he alleges Defendants are confining him and other San Diego County  
22 Jail and GBDF inmates in 3-man, 5x7 cells that are "inhumane." (Id. at 2-3.) He seeks  
23 \$33,000,000 in damages. (Id. at 3.)

24 **I. Failure to Pay Filing Fee or Request IFP Status**

25 All parties instituting any civil action, suit, or proceeding in a district court of the  
26 United States, except an application for writ of habeas corpus, must pay a filing fee of  
27 \$400. See 28 U.S.C. § 1914(a). The action may proceed despite a plaintiff's failure to  
28 prepay the entire fee only if the plaintiff is granted leave to proceed in forma pauperis

1 (“IFP”) pursuant to 28 U.S.C. § 1915(a). See *Andrews v. Cervantes*, 493 F.3d 1047, 1051  
2 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, a  
3 prisoner who is granted leave to proceed IFP remains obligated to pay the entire fee in  
4 “increments” or “installments,” *Bruce v. Samuels*, 136 S. Ct. 627, 629 (2016), and  
5 regardless of whether his action is ultimately dismissed, see 28 U.S.C. § 1915(b)(1) & (2);  
6 *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

7 Section 1915(a)(2) requires all persons seeking to proceed without full prepayment  
8 of fees to submit an affidavit that includes a statement of all assets possessed and which  
9 demonstrates an inability to pay. See *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th Cir.  
10 2015). In support of this affidavit, prisoners like Plaintiff must also submit a “certified copy  
11 of the trust fund account statement (or institutional equivalent) for . . . the 6-month period  
12 immediately preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2); see also  
13 *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). It is from the certified trust account  
14 statement that the Court assesses an initial payment of 20% of (a) the average monthly  
15 deposits in the account for the past six months, or (b) the average monthly balance in the  
16 account for the past six months, whichever is greater, unless he has no assets. See 28 U.S.C.  
17 § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having custody of the prisoner then  
18 collects subsequent payments, assessed at 20% of the preceding month’s income, in any  
19 month in which his account exceeds \$10, and forwards those payments to the Court until  
20 the entire filing fee is paid. See 28 U.S.C. § 1915(b)(2); *Bruce*, 136 S. Ct. at 629.

21 Plaintiff did not pay the filing fee required to commence a civil action, nor has he  
22 filed a motion to proceed IFP that includes both the affidavit required by 28 U.S.C.  
23 § 1915(a)(1) and the certified copies of his trust fund account statements required by 28  
24 U.S.C. § 1915(a)(2). Although he has submitted a GBDF “prison certificate” (ECF No. 2),  
25 this certificate, by itself, is insufficient to comply with § 1915’s additional requirements.  
26 Therefore, Plaintiff’s case cannot yet proceed. See 28 U.S.C. § 1914(a); *Cervantes*, 493  
27 F.3d at 1051.

1 **II. Screening Required by 28 U.S.C. § 1915(e)(2) and § 1915A**

2 In addition, the Court cautions Plaintiff that if he chooses to proceed further by either  
3 pre-paying the full \$400 civil filing fee, or submitting a properly supported motion to  
4 proceed IFP, his Complaint will be screened before service upon any defendant and may  
5 be immediately dismissed pursuant to 28 U.S.C. § 1915A(b) or 28 U.S.C. § 1915(e)(2)(B).  
6 This screening will occur regardless of whether Plaintiff pays the full filing fee up front or  
7 is granted leave to proceed IFP and to pay it in monthly installments.<sup>1</sup> See *Lopez v. Smith*,  
8 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (noting that 28 U.S.C. § 1915(e) “not  
9 only permits but requires” the court to sua sponte dismiss an in forma pauperis complaint  
10 that is frivolous, malicious, fails to state a claim, or seeks damages from defendants who  
11 are immune); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing similar  
12 screening required by 28 U.S.C. § 1915A of all complaints filed by prisoners “seeking  
13 redress from a governmental entity or officer or employee of a governmental entity”).

14 The Court further cautions Plaintiff that if his Complaint is found to be frivolous or  
15 malicious, or if it fails to state a claim, its dismissal pursuant to 28 U.S.C. § 1915(e)(2)  
16 and/or § 1915A(b) may later count as a third “strike” against him pursuant to 28 U.S.C.  
17 § 1915(g). See *Andrews*, 398 F.3d at 1116 n.1 (“Strikes are prior cases or appeals, brought  
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20 <sup>1</sup> The Court notes that as currently pled, Plaintiff’s Complaint will be subject to sua sponte  
21 dismissal regardless of whether he pays the full civil filing fee, or submits a properly  
22 supported motion to proceed IFP and pays it in installments. This is because allegations of  
23 overcrowding alone are insufficient to state a plausible claim for relief. See *Balla v. Idaho*  
24 *State Bd. of Corr.*, 869 F.2d 461, 471 (9th Cir. 1989); see also *Rhodes v. Chapman*, 452  
25 *U.S.* 337, 348-49 (1981) (noting double-celling of inmates by itself does not inflict  
26 unnecessary or wanton pain or constitute grossly disproportionate punishment in violation  
27 of the Eighth Amendment). An overcrowding claim is cognizable only if the plaintiff  
28 alleges that crowding has caused an increase in violence, has reduced the provision of other  
constitutionally-required services, or has reached a level rendering the institution no longer  
fit for human habitation. See *Balla*, 869 F.2d at 471; *Hoptowit v. Ray*, 682 F.2d 1237, 1248–  
49 (9th Cir. 1982) (noting that overcrowding itself is not an Eighth Amendment violation  
but can lead to specific effects that might violate the Constitution).

1 while the plaintiff was a prisoner, which were dismissed on the ground that they were  
2 frivolous, malicious, or failed to state a claim.” (internal quotations omitted). “Pursuant to  
3 § 1915(g), a prisoner with three strikes or more cannot proceed IFP” unless the prisoner is  
4 in “imminent danger of serious physical injury” at the time the complaint is filed. Id.; see  
5 also 28 U.S.C. § 1915(g); Williams, 775 F.3d at 1188 (citing Cervantes, 493 F.3d at 1053).

6 **III. Conclusion and Order**


7 For the reason explained above, the Court:

8 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the  
9 \$400 civil filing and administrative fee or to submit a motion to proceed IFP pursuant to  
10 28 U.S.C. §§ 1914(a) and 1915(a); and

11 (2) **GRANTS** Plaintiff forty-five (45) days leave from the date of this Order to  
12 re-open this case by: (a) prepaying the entire \$400 civil filing and administrative fee  
13 required by 28 U.S.C. § 1914(a) in full; or (b) completing and filing a motion to proceed  
14 IFP that includes both the affidavit and the certified copies of his trust account statement  
15 for the 6-month period preceding the filing of his Complaint required by 28 U.S.C.  
16 § 1915(a)(1), (2) and Civil Local Rule 3.2(b).<sup>2</sup>

17 **IT IS SO ORDERED.**

18  
19 **DATED: August 1, 2017**

20   
21 **Hon. Cynthia Bashant**  
22 **United States District Judge**

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25 <sup>2</sup> If Plaintiff fails to either prepay the \$400 civil filing fee or file a properly supported  
26 Motion and Declaration in Support of his motion to proceed IFP, together with the trust  
27 account statements required by 28 U.S.C. § 1915(a)(2) within 45 days, this case will remain  
28 dismissed without prejudice based only on Plaintiff’s failure to satisfy 28 U.S.C.  
§ 1914(a)’s fee requirements, and will not be counted as a “strike” against him pursuant to  
28 U.S.C. § 1915(g).