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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LEONARD WALTERS, aka
JAMES C. WALTERS,
CDCR #BC-6589,

Plaintiff,

vs.

SHERIFF, San Diego County, et al.,

Defendants.

Case No.: 3:17-cv-1071-DMS-PCL

ORDER:

**1) DENYING MOTION TO
PROCEED IN FORMA PAUPERIS
PURSUANT TO 28 U.S.C. § 1915(a)
[ECF No. 2]**

AND

**2) DISMISSING CIVIL ACTION
AS FRIVOLOUS PURSUANT
TO 28 U.S.C. § 1915A(b)(1)**

LEONARD WALTERS, also known as James C. Walters (“Plaintiff”), currently incarcerated at California Institution for Men (“CIM”) in Chino, California, and proceeding pro se, has filed a civil rights Complaint pursuant to 42 U.S.C. § 1983 (ECF No. 1).

He has not prepaid the \$400 civil filing fee required by 28 U.S.C. § 1914(a), but instead has filed a Motion to Proceed In Forma Pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a) (ECF No. 2).

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
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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 has not attached a certified copy of his CIM trust account statements for the 6-month
5 period immediately preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2);
6 S.D. CAL. CIVLR 3.2. Section 1915(a)(2) clearly requires that prisoners "seeking to bring
7 a civil action ... without prepayment of fees ... *shall* submit a *certified* copy of the trust
8 fund account statement (or institutional equivalent) ... for the 6-month period
9 immediately preceding the filing of the complaint." 28 U.S.C. § 1915(a)(2) (emphasis
10 added).

11 Without Plaintiff's certified trust account statement, the Court is unable to assess
12 the appropriate amount of the initial filing fee which is statutorily required to initiate the
13 prosecution of this action. *See* 28 U.S.C. § 1915(b)(1). For this reason, Plaintiff's Motion
14 to Proceed IFP (ECF No. 2) is DENIED.

15 **II. Sua Sponte Screening Pursuant to 28 U.S.C. § 1915A(b)**

16 The Prison Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915A, also obligates
17 the Court to review complaints filed by anyone "incarcerated or detained in any facility
18 who is accused of, sentenced for, or adjudicated delinquent for, violations of criminal law
19 or the terms or conditions of parole, probation, pretrial release, or diversionary program,"
20 "as soon as practicable after docketing" and regardless of whether the prisoner prepays
21 filing fees or moves to proceed IFP. *See* 28 U.S.C. § 1915A(a), (c). Pursuant to this
22 provision of the PLRA, the Court is required to review prisoner complaints which "seek[]
23 redress from a governmental entity or officer or employee of a government entity," and to
24 dismiss those, or any portion of those, which are "frivolous, malicious, or fail[] to state a
25 claim upon which relief may be granted," or which "seek monetary relief from a
26 defendant who is immune." 28 U.S.C. § 1915A(b)(1)-(2); *Resnick v. Hayes*, 213 F.3d
27 443, 446-47 (9th Cir. 2000); *Hamilton v. Brown*, 630 F.3d 889, 892 n.3 (9th Cir. 2011).
28 "The purpose of § 1915A is 'to ensure that the targets of frivolous or malicious suits need

1 not bear the expense of responding.” *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir.
2 2014) (quoting *Wheeler v. Wexford Health Sources, Inc.*, 689 F.3d 680, 681 (7th Cir.
3 2012)).

4 Regardless of whether Plaintiff paid the filing fee, or filed a properly supported
5 Motion to Proceed IFP, however, a preliminary review of his Complaint shows this case
6 is subject to sua sponte dismissal pursuant to 28 U.S.C. § 1915A(b)(1) because it is
7 duplicative of another civil action Plaintiff filed in the Southern District just three weeks
8 before he filed this case. *See Walters v. Sheriff, et al.*, S.D. Cal. Civil Case No. 3:17-cv-
9 00902-GPC-JMA (“*Walters I*”) (ECF No. 1). A court ““may take notice of proceedings in
10 other courts, both within and without the federal judicial system, if those proceedings
11 have a direct relation to matters at issue.”” *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th
12 Cir. 2007) (quoting *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)).

13 A prisoner’s complaint is considered frivolous under 28 U.S.C. § 1915A(b)(1) if it
14 “merely repeats pending or previously litigated claims.” *Cato v. United States*, 70 F.3d
15 1103, 1105 n.2 (9th Cir. 1995) (construing former 28 U.S.C. § 1915(d)) (citations and
16 internal quotations omitted). In *Walters I*, Plaintiff alleged, as he does in this case, that
17 several unidentified San Diego County Sheriff’s Department deputies, doctors, and
18 “medical staff” provided him inadequate medical care and subjected him to a
19 “demoralizing” strip search while he was in their custody in late April and early May
20 2016. *Compare* S.D. Cal. Civil Case No. 3:17-cv-00902-GPC-JMA (ECF No. 1 at 2-7)
21 *with* ECF No. 1 in S.D. Cal. Civil Case No. 3:17-cv-1071-DMS-PCL (ECF No. 1 at 2-
22 10).

23 Because the allegations in Plaintiff’s current Complaint are factually similar, arose
24 during the same two-week period of time, and are based on the same legal grounds as
25 those he alleged against a similar group of “unknown” Sheriff’s Department officials in
26 his previously filed Complaint in *Walters I*, the Court will dismiss this duplicative and
27 subsequently filed civil case pursuant to 28 U.S.C. § 1915A(b)(1). *See Cato*, 70 F.3d at
28 1105 n.2; *Resnick*, 213 F.3d at 446 n.1; *see also Adams v. Cal. Dep’t of Health Servs.*,

1 487 F.3d 684, 688-89 (9th Cir. 2007) (“[I]n assessing whether the second action is
2 duplicative of the first, [the court must] examine whether the causes of action and relief
3 sought, as well as the parties or privies to the action, are the same.”), *overruled on other*
4 *grounds by Taylor v. Sturgell*, 553 U.S. 880, 904 (2008).

5 **III. Conclusion and Order**

6 For the reasons discussed, the Court:

7 1) **DENIES** Plaintiff’s Motion to Proceed IFP (ECF No. 2) pursuant to 28
8 U.S.C. § 1915(a);


9 2) **DISMISSES** this civil action as frivolous pursuant to 28 U.S.C.
10 § 1915A(b)(1), but without prejudice to Plaintiff’s pursuit of the same claims as alleged
11 in his previously filed civil action in *Walters v. Sheriff, et al.*, S.D. Cal. Civil Case No.
12 17-cv-00902-GPC-JMA;¹ and

13 3) **CERTIFIES** that an IFP appeal from this Order would not be taken in good
14 faith pursuant to 28 U.S.C. § 1915(a)(3).

15 The Clerk shall close the file.

16 **IT IS SO ORDERED.**

17 Dated: July 5, 2017

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19 Hon. Dana M. Sabraw
20 United States District Judge

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25 ¹ The Court notes that on May 11, 2017, Judge Curiel also denied Plaintiff’s Motion to
26 Proceed IFP based on his failure to submit a certified copy of his prison trust account
27 statements as required by 28 U.S.C. § 1915(a). *See Walters v. Sheriff, et al.*, S.D. Cal. Civil
28 Case No. 3:17-cv-00902-GPC-JMA (ECF No. 3 at 3). While Judge Curiel granted Plaintiff
leave to file a new, properly supported IFP Motion in that case, (*id.* at 4), he has yet to do
so. But should he wish to proceed, Plaintiff must do so in that action, not this one.