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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SEDRIC EUGENE JOHNSON,  
CDCR #AZ-2648  
  
Plaintiff,  
  
v.  
  
JOHN DOE; CALIFORNIA DEPT' OF  
CORRECTIONS AND  
REHABILITATION; UNKNOWN  
DEFENDANTS,  
  
Defendants.

Case No.: 3:17-cv-01309-WQH-WVG

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

Sedric Eugene Johnson (“Plaintiff”), a state inmate currently housed at the Kern Valley State Prison located in Delano, 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 \$400. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff’s failure to

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

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

1 period immediately preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2)  
2 (emphasis added).

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

7 **II. Conclusion and Order**


8 For these reasons, IT IS ORDERED that:

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

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

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

23 Dated: August 3, 2017

24   
25 Hon. William Q. Hayes  
26 United States District Court  
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