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7 UNITED STATES DISTRICT COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA  
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10 FRANCISCO MORENO,  
11 CDCR #AP-8200,

Plaintiff,

12 vs.  
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14 DANIEL PARAMO, et al.,  
15

Defendants.  
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Case No.: 3:17-cv-1449-CAB-KSC

**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]**

19 FRANCISCO MORENO (“Plaintiff”), currently incarcerated at California Health  
20 Care Facility (“CHCF”) in Stockton, California, and proceeding pro se, has filed a civil  
21 rights Complaint pursuant to 42 U.S.C. § 1983 (ECF No. 1). Plaintiff claims the Warden  
22 and several medical officials at Richard J. Donovan Correctional Facility (“RJD”) in San  
23 Diego, California, denied him adequate medical care in violation of the Eighth  
24 Amendment while he was incarcerated there from January through September 2016. (*Id.*  
25 at 2-3, 22-23.)

26 Plaintiff has not prepaid the civil filing fee required by 28 U.S.C. § 1914(a);  
27 instead, he has filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28  
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).<sup>1</sup> 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 Court  
20 assesses an initial payment of 20% of (a) the average monthly deposits in the account for  
21 the past six months, or (b) the average monthly balance in the account for the past six  
22 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 <sup>1</sup> 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. Dec. 1, 2014). 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 CHCF 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 trust account statement, the Court is simply unable to assess the  
12 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).

## 14 **II. Conclusion and Order**

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

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

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

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26 <sup>2</sup> Plaintiff is cautioned that if he chooses to proceed further by either prepaying the full  
27 \$400 civil filing fee, or submitting a properly supported Motion to Proceed IFP, his  
28 Complaint will be reviewed before service and may be dismissed pursuant to 28 U.S.C.  
§ 1915A(b) and/or 28 U.S.C. § 1915(e)(2)(B), regardless of whether he pays or is  
obligated to pay filing fees. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000)  
(en banc) (noting that 28 U.S.C. § 1915(e) "not only permits but requires" the court to  
sua sponte dismiss an *in forma pauperis* complaint that is frivolous, malicious, fails to

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

7 **IT IS SO ORDERED.**

8 Dated: August 10, 2017



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10 Hon. Cathy Ann Bencivengo  
11 United States District Judge  
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27 state a claim, or seeks damages from defendants who are immune); *see also Rhodes v.*  
28 *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.”).