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

RAMIRO ORNELAS,
CDCR #F-94282,

Plaintiff,

vs.

MARIA LOPEZ, et al.,

Defendants.

Case No.: 3:17-cv-01867-DMS-AGS

**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. 9]**

RAMIRO ORNELAS (“Plaintiff”), currently incarcerated at Richard J. Donovan Correctional Facility (“RJD”) in San Diego, California, and proceeding pro se, has filed this civil rights action pursuant to 42 U.S.C. § 1983.

Plaintiff did not prepay the civil filing fee required by 28 U.S.C. § 1914(a) at the time he filed his original Complaint (ECF No. 1), but on October 2, 2017, he filed an Amended Complaint (ECF No. 8), together with a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) (ECF No. 9).

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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 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
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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 of the prisoner collects subsequent payments, assessed at 20% of the preceding month's
2 income, in any month in which the prisoner's account exceeds \$10, and forwards them to
3 the Court until the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2).

4 While Plaintiff has filed a Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a),
5 he has not attached or submitted certified copy of his CDCR Inmate Statement Report for
6 the 6-month period immediately preceding the filing of his Complaint.¹ *See* 28 U.S.C.
7 § 1915(a)(2); S.D. CAL. CIVLR 3.2. Section 1915(a)(2) clearly requires that prisoners
8 "seeking to bring a civil action ... without prepayment of fees ... *shall* submit a certified
9 copy of the trust fund account statement (or institutional equivalent) ... for the 6-month
10 period immediately preceding the filing of the complaint." 28 U.S.C. § 1915(a)(2)
11 (emphasis added).

12 Without these certified trust account statements, the Court is unable to assess the
13 appropriate amount of the initial filing fee which is statutorily required to initiate the
14 prosecution of this action. *See* 28 U.S.C. § 1915(b)(1).

15 **II. Conclusion and Order**

16 For this reason, **IT IS ORDERED** that:

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

20 (2) Plaintiff is **GRANTED** forty-five (45) days from the date of this Order in
21 which to re-open his case by either: (1) paying the entire \$400 statutory and
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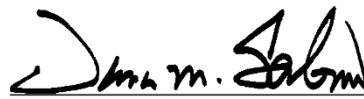
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24 ¹ On September 8, 2017, Plaintiff submitted a certified copy of his CDCR Inmate Statement
25 Report covering one month of his trust account activity from July 1, 2017, through August
26 8, 2017, *see* ECF No. 3, but he has not attached proof of the additional 5-months of activity
27 required by 28 U.S.C. § 1915(a)(2) to the IFP Motion he filed on October 2, 2017. In
28 addition, his IFP Motion is not certified by an authorized trust account official at RJD, and
is instead signed by Plaintiff himself. *See* ECF No. 9 at 4.

1 administrative filing fee, **or** (2) filing a renewed Motion to Proceed IFP, *which includes a*
2 *certified copy of his trust account statement for the 6-month period preceding the filing of*
3 *his Complaint* pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2(b).

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

11 **IT IS SO ORDERED.**

12 Dated: November 7, 2017

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14 Hon. Dana M. Sabraw
15 United States District Judge
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22 ² Plaintiff is cautioned that if he chooses to proceed further by either prepaying the full
23 \$400 civil filing fee, or submitting a properly supported renewed Motion to Proceed IFP,
24 his pleadings will be reviewed before service and may be dismissed pursuant to 28 U.S.C.
25 § 1915A(b) and/or 28 U.S.C. § 1915(e)(2)(B), regardless of whether he pays or is obligated
26 to pay filing fees. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)
27 (noting that 28 U.S.C. § 1915(e) “not only permits but requires” the court to sua sponte
28 dismiss an in forma pauperis complaint that is frivolous, malicious, fails to state a claim,
or seeks damages from defendants who are immune); *see also Rhodes v. 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.”).