

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10

11 KYLE MOGAN  
12 BA-2010,

13 Plaintiff,

14 v.

15 UNKNOWN DEFENDANTS,

16 Defendants.  
17  
18  
19

Case No.: 3:17-cv-02308-CAB-MDD

**ORDER DISMISSING CIVIL  
ACTION WITHOUT PREJUDICE  
FOR FAILING TO PAY  
FILING FEE REQUIRED  
BY 28 U.S.C. § 1914(a) AND/OR  
FAILING TO MOVE TO PROCEED  
IN FORMA PAUPERIS  
PURSUANT TO  
28 U.S.C. § 1915(a)**

20 KYLE MOGAN (“Plaintiff”), currently incarcerated at High Desert State Prison  
21 located in Susanville, California, and proceeding pro se, has filed a civil rights complaint  
22 (“Compl.”) pursuant to 42 U.S.C. § 1983 (ECF No. 1).

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

24 All parties instituting any civil action, suit or proceeding in a district court of the  
25 United States, except an application for writ of habeas corpus, must pay a filing fee of  
26  
27

1 \$400. *See* 28 U.S.C. § 1914(a).<sup>1</sup> An action may proceed despite a plaintiff’s failure to  
2 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.  
3 § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*  
4 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, if the Plaintiff is a prisoner, and  
5 even if he is granted leave to commence his suit IFP, he remains obligated to pay the  
6 entire filing fee in “increments,” *see Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir.  
7 2015), regardless of whether his case is ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1)  
8 & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

9 Plaintiff has not prepaid the \$400 in filing and administrative fees required to  
10 commence this civil action, nor has he submitted a properly supported Motion to Proceed  
11 IFP pursuant to 28 U.S.C. § 1915(a). Therefore, his case cannot yet proceed. *See* 28  
12 U.S.C. § 1914(a); *Andrews*, 493 F.3d at 1051.

## 13 **II. Conclusion and Order**

14 For the reasons set forth above, the Court hereby:

15 (1) **DISMISSES** this action sua sponte without prejudice for failure to pay the  
16 \$400 civil filing and administrative fee or to submit a Motion to Proceed IFP pursuant to  
17 28 U.S.C. §§ 1914(a) and 1915(a); and

18 (2) **GRANTS** Plaintiff **forty-five (45)** days leave from the date this Order is  
19 filed to: (a) prepay the entire \$400 civil filing and administrative fee in full; or (b)  
20 complete and file a Motion to Proceed IFP which includes a certified copy of his trust  
21 account statement for the 6-month period preceding the filing of his Complaint. *See* 28  
22 U.S.C. § 1915(a)(2); S.D. Cal. CivLR 3.2(b).

---

23  
24  
25  
26 <sup>1</sup> In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$50.  
27 *See* 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court 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           **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff  
2 with this Court’s approved form “Motion and Declaration in Support of Motion to  
3 Proceed *In Forma Pauperis*.” If Plaintiff fails to either prepay the \$400 civil filing fee or  
4 complete and submit the enclosed Motion to Proceed IFP within 45 days, this action will  
5 remain dismissed without prejudice based on Plaintiff’s failure to satisfy 28 U.S.C.  
6 § 1914(a)’s fee requirements and without further Order of the Court.

7           **IT IS SO ORDERED.**

8 Dated: November 20, 2017



Hon. Cathy Ann Bencivengo  
United States District Judge

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27