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5 UNITED STATES DISTRICT COURT  
6 SOUTHERN DISTRICT OF CALIFORNIA  
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8 MARLIN LEE GOUGHER,  
9 BOP #71150-097,

10 Plaintiff,

Case No.: 3:18-cv-00521-WQH-AGS

**ORDER**

11 vs.

12 SMITH, Warden of MCC;  
13 C.O. OROSCO, Correctional  
14 Officer;  
15 C.O. Lt. KAAWALOA,  
16 Correctional Officer/SHU; C.O.  
17 SHAEBORN, Counselor/7th  
18 Floor; C.O. Counselor  
19 CLEVELAND; C.O. Unit  
20 Manager CASTILLO; All  
21 Members of SHU Team,

22 Defendants.

23 HAYES, Judge:

24 On March 9, 2018, Plaintiff Marlin Gougher initiated this action by filing the  
25 Complaint (ECF No. 1). Plaintiff was formerly a federal pretrial detainee at the  
26 Metropolitan Correctional Center (“MCC”) in San Diego, California, but has been  
27 convicted and transferred to the Federal Correctional Institution (“FCI”) in Lompoc,  
28 California.<sup>1</sup>

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<sup>1</sup> The Court takes judicial notice of Plaintiff’s criminal judgment, entered on December 18, 2017, in *United States v. Gougher*, S.D. Cal. Criminal Case No. 3:14-cr-00635-WQH-1 (ECF No. 185). *See Bias v. Monyihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (federal courts “may take notice of proceedings in other

1 Plaintiff has not prepaid the civil filing fee required by 28 U.S.C. § 1914(a); instead,  
2 he has filed a Motion to Proceed *In Forma Pauperis* (“*IFP*”) pursuant to 28 U.S.C.  
3 § 1915(a) (ECF No. 2), together with a Motion to Appoint Counsel pursuant to 28 U.S.C.  
4 § 1915(e)(1) (ECF No. 3).

5 **I. Motion to Proceed *IFP***

6 All parties instituting any civil action, suit, or proceeding in a district court of the  
7 United States, except an application for writ of habeas corpus, must pay a filing fee of  
8 \$400. *See* 28 U.S.C. § 1914(a).<sup>2</sup> An action may proceed despite a plaintiff’s failure to  
9 prepay the entire fee only if he is granted leave to proceed *IFP* pursuant to 28 U.S.C.  
10 § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, if the  
11 plaintiff is a prisoner at the time of filing, he may be granted leave to proceed *IFP*, but he  
12 nevertheless remains obligated to pay the entire fee in increments regardless of whether his  
13 case is ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2); *Williams v. Paramo*, 775  
14 F.3d 1182, 1185 (9th Cir. 2015); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).  
15 A “prisoner” is defined as “any person” who at the time of filing is “incarcerated or  
16 detained in any facility who is accused of, convicted of, sentenced for, or adjudicated  
17 delinquent for, violations of criminal law or the terms or conditions of parole, probation,  
18 pretrial release, or diversionary program.” 28 U.S.C. § 1915(h); *Taylor*, 281 F.3d at 847.

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21 courts . . . if those proceedings have a direct relation to matters at issue.” (quoting *Bennett v. Medtronic,*  
22 *Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)). According to the Federal Bureau of Prisons (“BOP”) Inmate  
23 Locator, Plaintiff is now incarcerated at FCI-Lompoc. *See* Inmate Locator,  
24 <https://www.bop.gov/inmateloc/> (last visited May 8, 2018); *United States v. Basher*, 629 F.3d 1161, 1165  
25 n.2 (9th Cir. 2011) (taking judicial notice of information available to the public on the BOP’s Inmate  
26 Locator). Therefore, the Court will direct the Clerk of Court to update the docket to reflect Plaintiff’s  
27 current address and to ensure he is notified of the proceedings in this case. Plaintiff is cautioned, however,  
28 that it is his responsibility to “keep the court and opposing parties advised as to [his] current address.” *See*  
S.D. Cal. CivLR 83.11.b.

<sup>2</sup> In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$50.  
*See* 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court 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 Prisoners seeking leave to proceed *IFP* must also submit a “certified copy of the[ir]  
2 trust fund account statement (or institutional equivalent) . . . for the 6-month period  
3 immediately preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2). From the  
4 certified trust account statement, the Court assesses an initial payment of 20% of (a) the  
5 average monthly deposits in the account for the past six months, or (b) the average monthly  
6 balance in the account for the past six months, whichever is greater, unless the prisoner has  
7 no assets. *See* 28 U.S.C. § 1915(b)(1), (4); *Taylor*, 281 F.3d at 850. The institution having  
8 custody of the prisoner collects subsequent payments, assessed at 20% of the preceding  
9 month’s income, in any month in which his account exceeds \$10, and forwards them to the  
10 Court until the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2).

11 Plaintiff has not attached a certified copy of his MCC and/or BOP trust account  
12 statements for the 6-month period immediately preceding the filing of his Complaint. *See*  
13 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2. Without his certified trust account  
14 statements, the Court is unable to assess the appropriate amount of the initial filing fee  
15 which is statutorily required to initiate the prosecution of this action. *See* 28 U.S.C.  
16 § 1915(b)(1).

## 17 **II. Motion to Appoint Counsel**

18 Plaintiff has filed a Motion to Appoint Counsel pursuant to 28 U.S.C. § 1915(e)(1)  
19 (ECF No. 3). However, 28 U.S.C. § 1915(e)(1) only applies in proceedings *in forma*  
20 *pauperis*. *Agyeman v. Corr. Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004). Because  
21 Plaintiff has not been granted leave to proceed *IFP*, he is not entitled to the appointment of  
22 counsel under 28 U.S.C. § 1915(e)(1).

## 23 **III. Conclusion and Order**

24 The Motions to Proceed *IFP* (ECF No. 2) is DENIED. The Motion to Appoint  
25 Counsel (ECF No. 3) is DENIED. This civil action is DISMISSED without prejudice. To  
26 re-open his case, Plaintiff must, within forty-five days of this order, either: (1) prepay the  
27 full \$400 filing fee or (2) file a renewed Motion to Proceed *IFP* together with the certified  
28 prison trust account statements required by 28 U.S.C. § 1915(a)(2).

