

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

ROBERT HATCHER, Inmate Booking No. 17182375,	Plaintiff,	
vs.		
MRS. ABLIOS; C. BRIGHAM; KAY; F. MICHAEL GARCIA; JACKIE BRADEN; RANOR MIZE,	Defendants.	

Case No.: 3:18-cv-0562-WQH-JLB

**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]**

Robert Hatcher (“Plaintiff”), while housed at the San Diego Central Jail located in San Diego, California, and proceeding pro se, filed this civil rights action on March 16, 2018. *See* Compl., 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

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

12       In order to comply with the PLRA, prisoners seeking leave to proceed IFP must also  
13 submit a “certified copy of the[ir] trust fund account statement (or institutional equivalent)  
14 ... for the 6-month period immediately preceding the filing of the complaint.” 28 U.S.C.  
15 § 1915(a)(2). From the certified trust account statement, the Court assesses an initial  
16 payment of 20% of (a) the average monthly deposits in the account for the past six months,  
17 or (b) the average monthly balance in the account for the past six months, whichever is  
18 greater, unless the prisoner has no assets. *See* 28 U.S.C. § 1915(b)(1), (4); *see Taylor*, 281  
19 F.3d at 850. Thereafter, the institution having custody of the prisoner collects subsequent  
20 payments, assessed at 20% of the preceding month’s income, in any month in which the  
21 prisoner’s account exceeds \$10, and forwards them to the Court until the entire filing fee  
22 is paid. *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 for the 6-month period  
25

---

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. June. 1, 2016). The additional \$50 administrative fee does  
not apply to persons granted leave to proceed IFP. *Id.*

1 immediately preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2); S.D. CAL.  
2 CIVLR 3.2. Section 1915(a)(2) clearly requires that prisoners “seeking to bring a civil  
3 action ... without prepayment of fees ... *shall* submit a certified copy of the trust fund  
4 account statement (or institutional equivalent) ... for the 6-month period immediately  
5 preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2) (emphasis added).

6 Without Plaintiff’s trust account statements, the Court is unable to assess the  
7 appropriate amount of the initial filing fee which is statutorily required to initiate the  
8 prosecution of this action. *See* 28 U.S.C. § 1915(b)(1).

## 9 **II. Conclusion and Order**

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

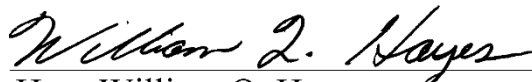
11 (1) Plaintiff’s Motion to Proceed IFP (ECF No. 2) is **DENIED** and the action is  
12 **DISMISSED** without prejudice for failure to prepay the \$400 filing fee required by 28  
13 U.S.C. § 1914(a).

14 (2) Plaintiff is **GRANTED** thirty (30) days from the date of this Order in which  
15 to re-open his case by either: (1) paying the entire \$400 statutory and administrative filing  
16 fee, **or** (2) filing a new Motion to Proceed IFP, *which includes a certified copy of his trust*  
17 *account statement for the 6-month period preceding the filing of his Complaint* pursuant to  
18 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2(b).

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

25 **IT IS SO ORDERED.**

26 Dated: March 27, 2018

27   
28 Hon. William Q. Hayes  
United States District Court