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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
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10 IVAN FRANCES GOODLOW, Jr.,
11 CDCR #AX-3970,
12 Plaintiff,
13 vs.
14 Mr. CAMACHO, C-Yard Correctional
15 Officer, et al.,
16 Defendants.
17

Case No.: 3:18-cv-00709-CAB-MDD
**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]

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19 IVAN FRANCES GOODLOW, Jr. (“Plaintiff”), currently incarcerated at
20 California State Prison in Lancaster (“LAC”), and proceeding pro se, filed a Complaint
21 pursuant to the Civil Rights Act, 42 U.S.C. § 1983, on April 9, 2018. *See* Compl., ECF
22 No. 1.

23 Plaintiff claims several prison officials at Richard J. Donovan Correctional
24 Facility, in San Diego, California, violated his First, Eighth, and Fourteenth Amendment
25 rights while he was incarcerated there in January and February 2018. *Id.* at 1-13. Plaintiff
26 did not prepay the civil filing fee required by 28 U.S.C. § 1914(a) at the time he
27 submitted his Complaint, but instead has filed Motion to Proceed *In Forma Pauperis*
28 (“IFP”) pursuant to 28 U.S.C. § 1915(a). *See* 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).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 case is ultimately
10 dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th
11 Cir. 2002). A “prisoner” is defined as “any person” who at the time of filing is
12 “incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or
13 adjudicated delinquent for, violations of criminal law or the terms or conditions of parole,
14 probation, pretrial release, or diversionary program.” 28 U.S.C. § 1915(h); *Taylor*, 281
15 F.3d at 847.

16 Prisoners seeking leave to proceed IFP must also submit a “certified copy of the[ir]
17 trust fund account statement (or institutional equivalent) . . . for the 6-month period
18 immediately preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2). From the
19 certified trust account statement, the Court assesses an initial payment of 20% of (a) the
20 average monthly deposits in the account for the past six months, or (b) the average
21 monthly balance in the account for the past six months, whichever is greater, unless the
22 prisoner has no assets. *See* 28 U.S.C. § 1915(b)(1), (4); *Taylor*, 281 F.3d at 850. After,
23 the institution having custody of the prisoner collects subsequent payments, assessed at
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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 20% of the preceding month's income, in any month in which his account exceeds \$10,
2 and forwards them to the Court until the entire filing fee is paid. *See* 28 U.S.C.
3 § 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 a certified copy of his CDCR Inmate Statement Report for the 6-
6 month period immediately preceding the filing of his Complaint. *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 his CDCR-certified trust account statements, the Court is unable to assess
13 the 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. 2) 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
22 administrative filing fee in one lump-sum, **or** (2) filing a renewed Motion to Proceed IFP,
23 *which includes a prison certificate and/or a certified copy of his CDCR Inmate Statement*
24 *Report for the 6-month period preceding the filing of his Complaint* pursuant to 28 U.S.C.
25 § 1915(a)(2) and S.D. CAL. CIVLR 3.2(b).

26 (3) The Clerk of the Court is **DIRECTED** to provide Plaintiff with a Court-
27 approved form "Motion and Declaration in Support of Motion to Proceed IFP" for his use
28 and convenience. But if Plaintiff neither pays the \$400 filing fee in full, nor sufficiently

1 completes and files a renewed Motion to Proceed IFP, *together with a certified copy of*
2 *his 6-month CDCR Inmate Statement Report* within 45 days, this case will remained
3 dismissed without prejudice pursuant to 28 U.S.C. § 1914(a), and without any further
4 Order of the Court.¹

5 **IT IS SO ORDERED.**

6 Dated: April 23, 2018



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8 Hon. Cathy Ann Bencivengo
9 United States District Judge
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22 ¹ 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 Complaint will be reviewed before service and may be dismissed pursuant to 28
25 U.S.C. § 1915A(b) and/or 28 U.S.C. § 1915(e)(2)(B), regardless of whether he pays or is
26 obligated to pay filing fees. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000)
27 (en banc) (noting that 28 U.S.C. § 1915(e) “not only permits but requires” the court to
28 sua sponte 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.”).