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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 OSCAR ORTIZ MARTINEZ,
12 Reg. No. 20895298,

13 Plaintiff,

14 vs.

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16 UNIVISION COMMUNICATIONS;
17 AQUI Y AHORA TELEVISION
18 PROGRAM; UNKNOWN ENTITIES;
19 UNKNOWN INDIVIDUALS; AGENTS
20

21 Defendant.
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Case No.: 3:18-cv-00764-LAB-BLM

ORDER:

**1) GRANTING MOTION TO
PROCEED IN FORMA PAUPERIS
[ECF No. 2]; AND**

**3) ISSUING STAY OF CIVIL
ACTION**

23 Oscar Ortiz Martinez (“Plaintiff”), a federal inmate currently housed at the Federal
24 Prison Camp located in Yankton, South Dakota, and proceeding pro se, has filed a civil
25 action (ECF No. 1). Plaintiff has not prepaid the \$400 filing fee required by 28 U.S.C.
26 § 1914(a) to commence a civil action; instead, he has filed a Motion to Proceed IFP (ECF
27 No. 2).

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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 \$400.¹ See 28 U.S.C. § 1914(a). The 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 *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*
7 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, a prisoner who is granted leave to
8 proceed IFP remains obligated to pay the entire fee in “increments” or “installments,”
9 *Bruce v. Samuels*, ___ U.S. ___, 136 S. Ct. 627, 629 (2016); *Williams v. Paramo*, 775 F.3d
10 1182, 1185 (9th Cir. 2015), and regardless of whether his action is ultimately dismissed.
11 See 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir.
12 2002).

13 Section 1915(a)(2) requires prisoners seeking leave to proceed IFP to submit a
14 “certified copy of the trust fund account statement (or institutional equivalent) for . . . the
15 6-month period immediately preceding the filing of the complaint.” 28 U.S.C.
16 § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified
17 trust account statement, the Court assesses an initial payment of 20% of (a) the average
18 monthly deposits in the account for the past six months, or (b) the average monthly
19 balance in the account for the past six months, whichever is greater, unless the prisoner
20 has no assets. See 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having
21 custody of the prisoner then collects subsequent payments, assessed at 20% of the
22 preceding month’s income, in any month in which his account exceeds \$10, and forwards
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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 those payments to the Court until the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2);
2 *Bruce*, 136 S. Ct. at 629.

3 In support of his IFP Motion, Plaintiff has submitted a copy of his Federal Bureau
4 of Prisons Trust Account Activity. *See* ECF No. 2 at 2-6; 28 U.S.C. § 1915(a)(2); S.D.
5 CAL. CIVLR 3.2; *Andrews*, 398 F.3d at 1119. This statement shows that while Plaintiff
6 has had a total of \$633.47 deposited to his account since October 15, 2017, he had an
7 available balance of only \$-20.00 at the time of filing. *See* ECF No. 2 at 2-6. Thus, the
8 Court assesses Plaintiff’s initial partial filing fee to be \$21.11 pursuant to 28 U.S.C.
9 § 1915(b)(1), but acknowledges he may be unable to pay even that initial fee at this time.
10 *See* 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event shall a prisoner be prohibited
11 from bringing a civil action or appealing a civil action or criminal judgment for the
12 reason that the prisoner has no assets and no means by which to pay the initial partial
13 filing fee.”); *Bruce*, 136 S. Ct. at 630; *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C.
14 § 1915(b)(4) acts as a “safety-valve” preventing dismissal of a prisoner’s IFP case based
15 solely on a “failure to pay . . . due to the lack of funds available to him when payment is
16 ordered.”).

17 Therefore, the Court GRANTS Plaintiff’s Motion to Proceed IFP (ECF No. 2),
18 declines to exact the initial filing fee because his trust account statement indicates he may
19 have “no means to pay it,” *Bruce*, 136 S. Ct. at 629, and directs the Warden of the
20 Federal Prison Camp or their designee, to instead collect the entire \$350 balance of the
21 filing fees required by 28 U.S.C. § 1914 and forward them to the Clerk of the Court
22 pursuant to the installment payment provisions set forth in 28 U.S.C. § 1915(b)(1). *See*
23 *id.*

24 In addition, because Plaintiff has been granted IFP status, his complaint requires a
25 pre-answer screening pursuant to 28 U.S.C. § 1915(e)(2) which the Court will issue in a
26 separate Order to follow.

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1 **II. Conclusion and Order**

2 Based on the foregoing, the Court:

3 1. **GRANTS** Plaintiff's Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a)
4 (ECF No. 2).

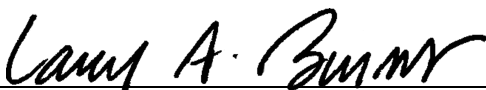
5 2. **DIRECTS** the Warden of the Federal Prison Camp, or their designee, to
6 collect from Plaintiff's trust account the \$350 filing fee owed in this case by garnishing
7 monthly payments from his account in an amount equal to twenty percent (20%) of the
8 preceding month's income and forwarding those payments to the Clerk of the Court each
9 time the amount in Plaintiff's account exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2).

10 **ALL PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME AND**
11 **NUMBER ASSIGNED TO THIS ACTION.**

12 3. **DIRECTS** the Clerk of the Court to serve a copy of this Order on Warden,
13 Federal Prison Camp, P.O. Box 700, Yankton, South Dakota, 57078.

14 **IT IS SO ORDERED.**

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16 Dated: April 25, 2018

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19 HON. LARRY ALAN BURNS
20 United States District Judge
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