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

SAUL VELASQUEZ JR.,  
  
Plaintiff,  
  
v.  
  
SEAMON, et al.  
  
Defendants.

Case No. 20-cv-1969-BAS-MDD

**ORDER DISMISSING ACTION  
WITHOUT PREJUDICE AND  
GRANTING LEAVE TO PREPAY  
FILING FEE OR MOVE FOR IN  
FORMA PAUPERIS STATUS**

Plaintiff Saul Velasquez, Jr., currently incarcerated at California State Prison, Sacramento, and proceeding *pro se*, has filed this civil rights action alleging that he received inadequate medical care while incarcerated at the R.J. Donovan Correctional Facility, located in San Diego, California. (ECF No. 1.)

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

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 \$400. *See* 28 U.S.C. § 1914(a).<sup>1</sup> An action may proceed despite a plaintiff’s failure to

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<sup>1</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,

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

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

## 12 **II. Conclusion and Order**

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

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

17 (2) **GRANTS** Plaintiff **forty-five (45) days** leave from the date of this Order:

18 (a) prepay the entire \$400 civil filing and administrative fee in full; or

19 (b) complete and file a Motion to Proceed IFP which includes a certified copy  
20 of his trust account statement for the 6-month period preceding the filing  
21 of his Complaint. *See* 28 U.S.C. § 1915(a)(2); S.D. Cal. Civ. L.R. 3.2(b).

22 Plaintiff’s payment or motion must be received by the Court on or before **November 30,**  
23 **2020.**

24 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff  
25 with this Court’s approved form, “Motion and Declaration in Support of Motion to Proceed  
26 *In Forma Pauperis.*” If Plaintiff fails to either prepay the \$400 civil filing fee or complete

27 \_\_\_\_\_  
28 § 14 (eff. Dec. 1, 2014). The additional \$50 administrative fee does not apply to persons granted leave to proceed IFP. *Id.*

1 and submit the enclosed Motion to Proceed IFP on or before **November 30, 2020**, this  
2 action will remain dismissed without prejudice based on Plaintiff's failure to satisfy 28  
3 U.S.C. § 1914(a)'s fee requirements and without further Order of the Court.

4 **IT IS SO ORDERED.**

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6 **DATED: October 13, 2020**

  
7 **Hon. Cynthia Bashant**  
8 **United States District Judge**

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