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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 MICHAEL DEWAYNE ALLEN,  
12 CDCR#T-55834,

13 Plaintiffs,

14 vs.

15 C.O. QUILLEN, et al.,

16 Defendants.  
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Case No. 20cv2192-MMA (DEB)

**ORDER DISMISSING CIVIL  
ACTION WITHOUT PREJUDICE  
FOR FAILING TO PAY  
FILING FEE REQUIRED  
BY 28 U.S.C. § 1914(a) AND/OR  
FAILING TO MOVE TO PROCEED  
IN FORMA PAUPERIS  
PURSUANT TO 28 U.S.C. § 1915(a)**

19 Plaintiff Michael Dewayne Allen, a state prisoner incarcerated at the R.J. Donovan  
20 Correctional Facility proceeding pro se, has filed a civil right complaint pursuant to 42  
21 U.S.C. § 1983. *See* Doc. No. 1. Plaintiff has not prepaid the \$400 civil filing fee  
22 required by 28 U.S.C. § 1914(a) and has not filed a Motion to Proceed *In Forma*  
23 *Pauperis* (“*IFP*”) pursuant to 28 U.S.C. § 1915(a).

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

25 All parties instituting any civil action, suit or proceeding in a district court of the  
26 United States, except an application for writ of habeas corpus, must pay a filing fee of  
27 \$400. *See* 28 U.S.C. § 1914(a). The action may proceed despite a plaintiff’s failure to  
28 prepay the entire fee only if he is granted leave to proceed *IFP* pursuant to 28 U.S.C.

1 § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*  
2 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, the Prison Litigation Reform Act’s  
3 (“PLRA”) amendments to § 1915 require that all prisoners who proceed *IFP* to pay the  
4 entire fee in “increments” or “installments,” *Bruce v. Samuels*, \_\_\_ U.S. \_\_\_, 136 S. Ct.  
5 627, 629 (2016); *Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), and  
6 regardless of whether their action is ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1) &  
7 (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

8 Section 1915(a)(2) requires all persons seeking to proceed without full prepayment  
9 of fees to file an affidavit that includes a statement of all assets possessed and  
10 demonstrates an inability to pay. *See Escobedo v. Applebee’s*, 787 F.3d 1226, 1234 (9th  
11 Cir. 2015). In support of this affidavit, the PLRA also requires prisoners to submit a  
12 “certified copy of the trust fund account statement (or institutional equivalent) for . . . the  
13 6-month period immediately preceding the filing of the complaint.” 28 U.S.C.  
14 § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified  
15 trust account statement, the Court assesses an initial payment of 20% of (a) the average  
16 monthly deposits in the account for the past six months, or (b) the average monthly  
17 balance in the account for the past six months, whichever is greater, unless the prisoner  
18 has no assets. *See* 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having  
19 custody of the prisoner then collects subsequent payments, assessed at 20% of the  
20 preceding month’s income, in any month in which his account exceeds \$10, and forwards  
21 those payments to the Court until the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2);  
22 *Bruce*, 136 S. Ct. at 629.

23 Because Plaintiff has neither paid the filing fee required by 28 U.S.C. § 1914(a) to  
24 commence a civil action, nor filed a Motion to Proceed *IFP* pursuant to 28 U.S.C.  
25 § 1915(a), his case cannot proceed. *See* 28 U.S.C. § 1914(a); *Andrews*, 493 F.3d at 1051.

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1 **II. Conclusion and Order**

2 Accordingly, the Court:


3 (1) **DISMISSES** this action without prejudice based on Plaintiff's failure to pay  
4 the filing fee or file a Motion to Proceed *IFP* pursuant to 28 U.S.C. §§ 1914(a) and  
5 1915(a).

6 (2) **GRANTS** Plaintiff forty-five (45) days leave from the date this Order is  
7 filed to: (a) prepay the entire civil filing fee in full; or (b) complete and file a Motion to  
8 Proceed *IFP*. See 28 U.S.C. § 1915(a)(2); S.D. Cal. CivLR 3.2(b).

9 (3) **DIRECTS** the Clerk of the Court to provide Plaintiff with the Court's  
10 approved form "Motion and Declaration in Support of Motion to Proceed *In Forma*  
11 *Pauperis*."<sup>1</sup> If Plaintiff fails to either prepay the civil filing fee or fully complete and  
12 submit the enclosed Motion to Proceed *IFP* within 45 days, this action will remain  
13 dismissed without prejudice based on his failure to satisfy 28 U.S.C. § 1914(a)'s fee  
14 requirement and without further Order of the Court.

15 **IT IS SO ORDERED.**

16 DATE: November 17, 2020

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18 HON. MICHAEL M. ANELLO  
19 United States District Judge  
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26 <sup>1</sup> Plaintiff is cautioned that if he chooses to proceed further by submitting a properly supported Motion to  
27 Proceed *IFP*, his Complaint will be screened before service and may be dismissed *sua sponte* pursuant to  
28 28 U.S.C. § 1915A(b). See *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (noting that  
28 U.S.C. § 1915(e) "not only permits but requires" the court to *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).