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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 GERALD JONES,  
12 CDCR #E-33225,

13 Plaintiff,

14 vs.

15 JOHN AND/OR JANE DOE; WARDEN;  
16 JOHN AND JANE DOE 1-50,

17 Defendants.  
18  
19  
20

Case No.: 3:21-cv-01028-DMS-BGS

**ORDER DENYING PLAINTIFF'S  
MOTION TO PROCEED IN FORMA  
PAUPERIS AND DISMISSING  
CIVIL ACTION WITHOUT  
PREJUDICE FOR FAILURE TO  
PAY FILING FEE REQUIRED BY 28  
U.S.C. § 1914(a)**

**[ECF No. 2]**

21  
22 Plaintiff Gerald Jones, currently incarcerated at Richard J. Donovan Correctional  
23 Facility ("RJD") in San Diego, California, is proceeding pro se in this case pursuant to 42  
24 U.S.C. § 1983. *See* ECF No. 1. In addition, Plaintiff has filed a Motion to Proceed *In*  
25 *Forma Pauperis* ("IFP"). *See* ECF No. 2. A CDCR Inmate Statement Report, along with  
26 a prison trust account certificate calculating his 6-month average monthly account  
27 balance and deposit, as well as his available account balance was filed on June 2, 2021.  
28 *See* ECF No. 4.

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 \$402.<sup>1</sup> See 28 U.S.C. § 1914(a). Under 28 U.S.C. § 1915(a), the Court may authorize a  
5 plaintiff to pursue a case without payment of the filing fee. Whether an affiant has  
6 satisfied § 1915(a) falls within “the reviewing court[’s] . . . sound discretion.” *California*  
7 *Men’s Colony v. Rowland*, 939 F.2d 854, 858 (9th Cir. 1991), *rev’d on other grounds*,  
8 506 U.S. 194 (1993). A party need not “be absolutely destitute” to proceed IFP. *Adkins v.*  
9 *E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948). “Nonetheless, a plaintiff  
10 seeking IFP status must allege poverty ‘with some particularity, definiteness, and  
11 certainty.’” *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th Cir. 2015) (citing *United*  
12 *States v. McQuade*, 647 F.3d 938, 940 (9th Cir. 1981)).

13 “An affidavit in support of an IFP application is sufficient where it alleges that the  
14 affiant cannot pay the court costs and still afford the necessities of life.” *Id.* And while “a  
15 prisoner’s financial needs are not the same as those of a non-prisoner,” and one “without  
16 funds [may] not be denied access to a federal court based on his poverty,” *Taylor v.*  
17 *Delatoore*, 281 F.3d 844, 849 (9th Cir. 2002) (citing 28 U.S.C. § 1915(b)(4)).

18 Before the enactment of the Prison Litigation Reform Act (“PLRA”) in 1996,  
19 “indigent prisoners, like other indigent persons, could file a civil action without paying  
20 any filing fee.” *Bruce v. Samuels*, 577 U.S. 82, 83–84 (2016) (citing 28 U.S.C.  
21 § 1915(a)(1)). The PLRA however, “placed several limitations on prisoner litigation in  
22 federal courts.” *Id.* at 84. While his civil action or appeal may proceed upon submission  
23 of an affidavit that demonstrates an “unab[ility] to pay such fees or give security  
24 therefor,” 28 U.S.C. § 1915(a); see also *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th  
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26  
27 <sup>1</sup> For civil cases like this one, the civil litigant bringing suit must pay the \$350 statutory fee in addition to  
28 a \$52 administrative fee. See 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court  
Misc. Fee Schedule, § 14 (eff. Dec. 1, 2020). The \$52 administrative fee does not apply to persons granted  
leave to proceed IFP, however. *Id.*

1 Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999), a prisoner granted  
2 leave to proceed IFP remains obligated to pay the entire fee in “increments” or  
3 “installments,” *Bruce* 577 U.S. at 84, 85; *Williams v. Paramo*, 775 F.3d 1182, 1185 (9th  
4 Cir. 2015), and regardless of whether his case is ultimately dismissed. *See* 28 U.S.C.  
5 § 1915(b)(1) & (2); *Taylor*, 281 F.3d at 847.

6 Thus, section 1915(a)(2) requires prisoners to submit a “certified copy of the[ir]  
7 trust fund account statement (or institutional equivalent) for . . . the 6-month period  
8 immediately preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2); *Andrews v.*  
9 *King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified trust account statement,  
10 “the district court must make a series of factual findings regarding the prisoner’s assets.”  
11 *Taylor*, 281 F.3d at 847 n.2. It must assess an initial payment of 20% of (a) the average  
12 monthly deposits in the account for the past six months, or (b) the average monthly  
13 balance in the account for the past six months, whichever is greater, unless the prisoner  
14 has no assets. *See* 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having  
15 custody of the prisoner then collects subsequent payments, assessed at 20% of the  
16 preceding month’s income, in any month in which his account exceeds \$10, and forwards  
17 those payments to the Court until the entire filing fee is paid. *See* 28 U.S.C. § 1915(b)(2);  
18 *Bruce*, 577 U.S. at 85–86.

19 In support of his Motion, Plaintiff has submitted a sworn declaration of assets. In  
20 addition, the required prison certificate authorized by a RJD accounting official, as well  
21 as a copy of his CDCR Inmate Statement Report has been filed. *See* ECF Nos. 2, 4; 28  
22 U.S.C. § 1915(a)(2); S.D. Cal. CivLR 3.2; *Andrews*, 398 F.3d at 1119. But these  
23 documents do *not* demonstrate he is “unable to pay” the \$402 civil filing fee. *See* 28  
24 U.S.C. § 1915(a). Instead, Plaintiff’s submissions show he has carried an average  
25 monthly balance of \$4064.64 in his trust account over the last six months, and that he had  
26 an available balance of \$3836.13 to his credit at the time of filing. *See* ECF No. 4 at 1.

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1 Thus, because the Court finds Plaintiff is able pay the full \$402 civil filing fee  
2 required to commence a civil action, his Motion to Proceed IFP must be **DENIED**.

3 **II. Conclusion and Orders**

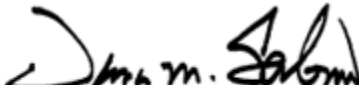
4 For the reasons discussed, the Court **DENIES** Plaintiff's Motion to Proceed IFP  
5 (ECF No. 2) because it demonstrates he is able to pay the \$402 filing fee in full and  
6 **DISMISSES** this civil action without prejudice based on his failure to satisfy 28 U.S.C.  
7 § 1914(a)'s fee requirements.

8 Plaintiff may re-open this case by submitting the full \$402 filing fee due by **July**  
9 **23, 2021**.<sup>2</sup> If he chooses this course, Plaintiff must ensure his check is submitted and  
10 made payable to the Clerk of the Court, U.S. District Court, Southern District of  
11 California, and include reference to Civil Case No. 3:21-cv-01028-DMS-BGS.

12 If Plaintiff does *not* submit the full \$402 filing fee in one lump sum on or before  
13 **July 23, 2021**, the case will remain dismissed without prejudice based on his failure to  
14 pay the required filing fee and without any further Order of the Court.

15 **IT IS SO ORDERED.**

16 Dated: June 7, 2021

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18 \_\_\_\_\_  
19 Hon. Dana M. Sabraw, Chief Judge  
20 United States District Court  
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23 <sup>2</sup> Plaintiff is cautioned that should he elect to re-open this case by paying the full \$402 civil filing fee, his  
24 Complaint will still be subject to the mandatory initial screening required by 28 U.S.C. § 1915A. Also  
25 enacted as part of the PLRA, § 1915A requires the Court to “review, ... as soon as practicable after  
26 docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental officer or  
27 employee of a governmental entity.” 28 U.S.C. § 1915A(a). “The court shall identify cognizable claims  
28 or dismiss the complaint, or any portion of the complaint, if the complaint—(1) is frivolous, malicious, or  
fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who  
is immune from such relief.” *Id.*, subd. (b)(1), (2). “The purpose of § 1915A is ‘to ensure that the targets  
of frivolous or malicious suits need not bear the expense of responding.’” *Nordstrom v. Ryan*, 762 F.3d  
903, 920 n.1 (9th Cir. 2014) (citation omitted).