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

JACQUELINE HIGHBAUGH,
Booking No. 23736394,

Plaintiff,

vs.

JESSICA PETRY, STATE OF
CALIFORNIA, JUDGE EUGENIA
EYHERABIDE, et al.,

Defendants.

Case No.: 24-cv-0219-MMA (KSC)

**ORDER DENYING MOTION TO
PROCEED IN FORMA PAUPERIS
AND DISMISSING CIVIL
ACTION WITHOUT PREJUDICE**

[Doc. No. 2]

Jacqueline Highbaugh (“Plaintiff”), a detainee proceeding pro se, has filed a civil rights complaint pursuant to 42 U.S.C. § 1983. Doc. No. 1. In lieu of paying the filing fee required by 28 U.S.C. § 1914(a), Plaintiff filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a). Doc. No. 2.

I. IFP Motion

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 \$405. *See* 28 U.S.C. § 1914(a). The action may proceed despite a plaintiff’s failure to 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, all prisoners who proceed IFP
3 must pay the entire fee in “increments” or “installments,” *Bruce v. Samuels*, 577 U.S. 82,
4 83–84 (2016), and regardless of whether their action is ultimately dismissed. *See* 28
5 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

6 Section 1915(a)(2) requires all persons seeking to proceed without full prepayment
7 of fees to file an affidavit that includes a statement of all assets possessed and
8 demonstrates an inability to pay. *See Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th
9 Cir. 2015). In support of this affidavit, the PLRA also requires prisoners to submit a
10 “certified copy of the trust fund account statement (or institutional equivalent) for . . . the
11 6-month period immediately preceding the filing of the complaint.” 28 U.S.C.

12 § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified
13 trust account statement, the Court assesses an initial payment of 20% of (a) the average
14 monthly deposits in the account for the past six months, or (b) the average monthly
15 balance in the account for the past six months, whichever is greater, unless the prisoner
16 has no assets. *See* 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution
17 having custody of the prisoner then collects subsequent payments, assessed at 20% of the
18 preceding month’s income, in any month in which her account exceeds \$10, and forwards
19 those payments to the Court until the entire filing fee is paid. *See* 28 U.S.C.

20 § 1915(b)(2); *Bruce*, 577 U.S. at 84.

21 Although Plaintiff has filed a Motion to Proceed IFP, she has not submitted a
22 certified trust account statement “for the 6-month period immediately preceding the filing
23 of the complaint.” 28 U.S.C. § 1915(a)(2). Because Plaintiff has neither paid the filing
24 fee required by 28 U.S.C. § 1914(a) to commence a civil action, nor filed a properly
25 supported Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a), her case cannot yet
26 proceed. *See* 28 U.S.C. § 1914(a); *Andrews*, 493 F.3d at 1051.

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1 **II. Conclusion and Order**

2 For this reason, **IT IS ORDERED** that:


3 (1) Plaintiff’s Motion to Proceed IFP (Doc. No. 2) is **DENIED** and the action is
4 **DISMISSED** without prejudice for failure to prepay the \$405 civil filing fee required by
5 28 U.S.C. §§ 1914(a);

6 (2) Plaintiff is **GRANTED forty-five (45)** days from the date this Order in
7 which to re-open her case by either: (a) prepaying the entire \$405 civil filing and
8 administrative fee in one lump-sum; or (b) filing a renewed Motion to Proceed IFP,
9 *which includes a prison certificate, signed by a trust accounting official attesting as to*
10 *her trust account balances and deposits and/or a certified copy of her Inmate*
11 *Statement Report for the 6-month period preceding the filing of her Complaint*
12 pursuant to 28 U.S.C. § 1915(a)(2) and S.D. Cal. CivLR 3.2(b); and

13 (3) The Clerk of the Court is **DIRECTED** to provide Plaintiff with a Court-
14 approved form “Motion and Declaration in Support of Motion to Proceed *In Forma*
15 *Pauperis.*”

16 **IT IS SO ORDERED.**

17 Dated: February 6, 2024

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20 HON. MICHAEL M. ANELLO
21 United States District Judge
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