

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Armstrong v. Doe

No. 25-cv-01176-AJB-AHG (S.D. Cal. June 8, 2025) · No. 25-cv-01176-AJB-AHG · Decided June 9, 2025

SUMMARY

The United States District Court for the Southern District of California dismissed Archie Tyrell Armstrong’s § 1983 civil action without prejudice for failure to pay the filing and administrative fees or properly move to proceed in forma pauperis. The court granted 45 days to reopen the case by paying the fees or submitting a compliant IFP motion and declaration.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Anthony J. Battaglia
JURISDICTION	United States District Court for the Southern District of California
DECIDED	June 9, 2025
DOCKET	25-cv-01176-AJB-AHG
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff, a state prisoner proceeding pro se, filed a civil-rights complaint under 42 U.S.C. § 1983 without paying the filing fee or filing a properly supported motion to proceed in forma pauperis. The district court dismissed the action without prejudice and allowed plaintiff forty-five days to reopen it by paying the fee or filing a compliant IFP motion.
PRECEDENTIAL VALUE	unpublished district court order; limited persuasive value
PARTIES	Archie Tyrell Armstrong v. John Doe, County of San Diego El Cajon Adult Probation, John Doe, City of San Diego Police Department Detectives/Investigator, John Doe, State of California Department of Corrections and Rehabilitation, John Doe, San Diego District Attorneys

TOPICS

- civil procedure
- section 1983
- prisoners rights
- pleadings

PRACTICE AREAS

Civil procedure

Prisoner civil rights

QUESTIONS PRESENTED

1. Whether the action could proceed when plaintiff had not paid the filing fee required by 28 U.S.C. § 1914(a).
2. Whether the action could proceed when plaintiff had not filed a properly supported motion and affidavit to proceed in forma pauperis under 28 U.S.C. § 1915(a).

HOLDINGS

1. A prisoner plaintiff may proceed without prepaying the filing fee only after obtaining leave to proceed in forma pauperis under 28 U.S.C. § 1915(a), which requires the plaintiff's own compliant affidavit and the required certified trust-account information.
2. Dismissal without prejudice was appropriate because plaintiff failed both to pay the required filing fee and to file a properly supported motion to proceed in forma pauperis.

KEY QUOTATIONS

“Therefore, unless Plaintiff either pays the filing fee “upfront,” Bruce, 577 U.S. at 86, or files a properly supported Motion to Proceed IFP that includes an affidavit that meets the requirements set out in 28 U.S.C. § 1915(a)(1), his case cannot proceed.” (1)

“DISMISSES this action without prejudice based on Plaintiff’s failure to pay the \$405 civil filing and administrative fee required by 28 U.S.C. § 1914(a), and his failure to properly move to proceed IFP pursuant to 28 U.S.C. § 1915(a)” (2)

FACTUAL BACKGROUND

Archie Tyrell Armstrong, incarcerated at Centinela State Prison, filed a pro se § 1983 complaint against unidentified state and local officials and entities. The complaint alleged claims arising from his conviction in San Diego Superior Court Case No. SCD97961. Armstrong did not pay the required filing fee or submit his own properly supported motion and affidavit to proceed in forma pauperis; prison officials submitted account materials on his behalf, but those materials were not accompanied by the required motion and affidavit.

PROCEDURAL HISTORY

Armstrong filed a § 1983 complaint concerning an allegedly wrongful state-court conviction. He neither prepaid the \$405 filing and administrative fee nor filed the affidavit and certified trust-account materials required for IFP status. The court dismissed without prejudice, granted forty-five days to cure, and directed the Clerk to provide the approved IFP form.

DISPOSITION

dismissed

CASES CITED

- Andrews v. Cervantes, 493 F.3d 1047, 1051 (9th Cir.)
- Rodriguez v. Cook, 169 F.3d 1176, 1177 (9th Cir.)
- Bruce v. Samuels, 577 U.S. 82, 84-86 (2016)
- Williams v. Paramo, 775 F.3d 1182, 1185 (9th Cir.)
- Taylor v. Delatoore, 281 F.3d 844, 847 (9th Cir.)
- Escobedo v. Applebees, 787 F.3d 1226, 1234 (9th Cir.)
- Andrews v. King, 398 F.3d 1113, 1119 (9th Cir.)
- Rowland v. California Men's Colony, Unit II Men's Advisory Council, 506 U.S. 194, 214 (1993)
- United States v. McQuade, 647 F.2d 938, 940 (9th Cir.)
- Jefferson v. United States, 277 F.2d 723, 725 (9th Cir.)
- Lopez v. Smith, 203 F.3d 1122, 1126-27 (9th Cir.) (en banc)
- Rhodes v. Robinson, 621 F.3d 1002, 1004 (9th Cir.)
- Cato v. United States, 70 F.3d 1103, 1105 n.2 (9th Cir.)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 ARCHIE TYRELL ARMSTRONG, Case No.: 25-cv-01176-AJB-AHG
CDCR #BZ-1105, 12 ORDER DISMISSING CIVIL Plaintiff, 13 ACTION FOR FAILURE TO
PAY vs. FILING FEES REQUIRED BY 14 28 U.S.C. § 1914(a) AND/OR FOR JOHN DOE,
County of San Diego 15 FAILURE TO PROPERLY MOVE El Cajon Adult Probation; JOHN
DOE, TO PROCEED IN FORMA 16 City of San Diego Police Department PAUPERIS
PURSUANT TO Detectives/Investigator; JOHN DOE, State 17 28 U.S.C. § 1915(a) of California
Department of Corrections 18 and Rehabilitation; JOHN DOE, San Diego District Attorneys, 19
Defendants.

20 21 22 Plaintiff Archie Tyrell Armstrong, currently incarcerated at Centinela State Prison 23
("CEN") in Imperial, California, and proceeding pro se, has filed a civil rights complaint 24
pursuant to 42 U.S.C. § 1983. (See ECF No. 1.) Plaintiff's complaint seeks to sue various 25
unidentified state and local officials and entities based on claims he was wrongfully 26 convicted
in San Diego Superior Court Case No. SCD97961.

(Id. at 5, 12.) 27 /// 28 /// 1 FAILURE TO PAY FILING FEE OR REQUEST IFP STATUS 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 \$405. 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 in forma pauperis ("IFP") 6 pursuant to 28 U.S.C. § 1915(a). See Andrews v.

Cervantes, 493 F.3d 1047, 1051 (9th Cir. 7 2007) (“Cervantes”); Rodriguez v. Cook, 169 F.3d 1176, 1177 (9th Cir. 1999).

However, 8 a prisoner who is granted leave to proceed IFP remains obligated to pay the entire fee in 9 “increments” or “installments,” Bruce v. Samuels, 577 U.S. 82, 84 (2016); Williams v. 10 Paramo, 775 F.3d 1182, 1185 (9th Cir. 2015), and regardless of whether his action is 11 ultimately dismissed. See 28 U.S.C. § 1915(b)(1) & (2); Taylor v. Delatoore, 281 F.3d 12 844, 847 (9th Cir.

2002). 13 Section 1915(a)(2) requires all persons seeking to proceed without full prepayment 14 of fees to submit an affidavit that includes a statement of all assets possessed and which 15 demonstrates an inability to pay. See Escobedo v. Applebees, 787 F.3d 1226, 1234 (9th 16 Cir. 2015) (emphasis added).

In support of this affidavit, prisoners like Plaintiff must also 17 submit a “certified copy of the trust fund account statement (or institutional equivalent) for 18... the 6-month period immediately preceding the filing of the complaint.” 28 U.S.C. 19 § 1915(a)(2); Andrews v. King, 398 F.3d 1113, 1119 (9th Cir. 2005). It is from the certified 20 trust account statement that the Court assesses an initial payment of 20% of (a) the average 21 monthly deposits in the account for the past six months, or (b) the average monthly balance 22 in the account for the past six months, whichever is greater, unless he has no assets.

See 23 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having custody of the 24 prisoner then collects subsequent payments, assessed at 20% of the preceding month’s 25 income, in any month in which his account exceeds \$10, and forwards those payments to 26 the Court until the entire filing fee is paid. See 28 U.S.C. § 1915(b)(2); Bruce, 577 U.S. at 27 85–86.

28 /// 1 Plaintiff did not pay the filing fee required to commence a civil action when he filed 2 his Complaint, nor has he filed a Motion to Proceed IFP, which includes both the affidavit 3 required by 28 U.S.C. § 1915(a)(1) and the certified copies of his trust funds account 4 statements required by 28 U.S.C. § 1915(a)(2). While CEN has submitted prison 5 certificates and CDCR printouts of Plaintiff’s trust account activity on his behalf, see ECF 6 No. 2, this accounting, unless accompanied by a motion and affidavit submitted by 7 Plaintiff, is insufficient. “The in forma pauperis statute authorizes courts to allow ‘[1] the 8 commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, 9 or appeal therein, without prepayment of fees and costs or security therefor, by a person 10 who [2] makes affidavit that he is [3] unable to pay such costs or give security therefor.’” 11 Rowland v. California Men’s Colony, Unit II Men’s Advisory Council, 506 U.S. 194, 214 12 (1993) (quoting 28 U.S.C. § 1915(a)). “Section 1915(a) thus contemplates that the 13 [person] who is entitled to the benefits of the provision will have three characteristics: 14 He will have the capacity to sue or be sued, to make an affidavit, and to be unable to pay 15 court costs.” Id. “Such affidavit shall [also] state the nature of the action,... and affiant’s 16 belief that [he] is entitled to redress.” 28 U.S.C. § 1915(a)(1). “When a claim of

poverty 17 is made under section 1915 ‘it is proper and indeed essential for the supporting affidavits 18 to state the facts as to affiant’s poverty with some particularity, definiteness and certainty.’” 19 *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir.

1981) (quoting *Jefferson v. United 20 States*, 277 F.2d 723, 725 (9th Cir. 1960)). 21 Therefore, unless Plaintiff either pays the filing fee “upfront,” *Bruce*, 577 U.S. at 86, 22 or files a properly supported Motion to Proceed IFP that includes an affidavit that meets 23 the requirements set out in 28 U.S.C. § 1915(a)(1), his case cannot proceed. See 28 U.S.C. 24 § 1914(a); *Cervantes*, 493 F.3d at 1051.

25 CONCLUSION 26 Accordingly, the Court: 27 (1) DISMISSES this action without prejudice based on Plaintiff’s failure to pay 28 the \$405 civil filing and administrative fee required by 28 U.S.C. § 1914(a), and his failure | ||to properly move to proceed IFP pursuant to 28 U.S.C. § 1915(a); 2 (2) GRANTS Plaintiff forty-five (45) days leave from the date of this Order to 3 ||re-open this case by: (a) prepaying the entire \$405 civil filing and administrative fee 4 ||required by 28 U.S.C. § 1914(a) in full; or (b) completing and filing a Motion and 5 ||Declaration in Support of Motion to Proceed IFP that complies with 28 U.S.C. 6 || § 1915(a)(1), (2) and S.D.

Cal. CivLR 3.2.b; and 7 (3) DIRECTS the Clerk of the Court to provide Plaintiff with a Court-approved 8 ||form “Motion and Declaration in Support of Motion to Proceed IFP” for his use and 9 ||convenience. Should Plaintiff neither pay the \$405 filing fee in full nor sufficiently 10 complete and file the attached Motion and Declaration to Proceed IFP within 45 days, this 11 action will remained dismissed without prejudice pursuant to 28 U.S.C. § 1914(a), 12 without further Order of the Court.!

13 IT IS SO ORDERED. 14 || Dated: June 8, 2025 We 16 ~ 17 Hon. Anthony J. Battaglia 18 United States District Judge 19 ||] _____ - 20 Plaintiff is cautioned that if he chooses to re-open the case by either prepaying the full \$405 civil filing 91 || fee, or by submitting a properly supported Motion to Proceed IFP, his Complaint will be subject to an initial review and may be dismissed sua sponte pursuant to 28 U.S.C. § 1915A(b) and/or 28 □□□□□□ 22 ||§ 1915(e) (2)(B), regardless of whether he pays the full filing fee at once, or is granted IFP status and is obligated to pay the full filing fee in installments.

See *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 23 2000) (en banc) (noting that 28 U.S.C. § 1915(e) “not only permits but requires” the court to sua sponte 24 dismiss an in forma pauperis complaint that is frivolous, malicious, fails to state a claim, or seeks damages from defendants who are immune); see also *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir.

2010) 25 || (discussing similar screening required by 28 U.S.C. § 1915A of all complaints filed by prisoners “seeking redress from a governmental entity or officer or employee of a governmental

entity.”). Plaintiff admits in 26 || his complaint that he filed a previous case “dealing with the same facts” in *Armstrong v. County of San Diego, et al.*, S. D. Cal. Case No. 23-cv-1684-CAB-DDL.

(See ECF No. 1 at 10.) A prisoner’s complaint 27 |lis subject to sua sponte dismissal under 28 U.S.C. § 1915 if it “merely repeats pending or previously 28 litigated claims.” *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (construing former 28 U.S.C. § 1915(d)) (citation omitted).