

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

OPINION

Armstrong v. Doe

PER CURIAM.

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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,

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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 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 remain 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 ||is 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).

