

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

Betts v. Terronez

Betts · No. 25-cv-01296-MMA (DDL) · Decided May 30, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 DOMENIC JARELLE BETTS, Case No.: 25-cv-01296-MMA (DDL)
CDCR #AM-3604, 12 ORDER DENYING MOTION TO Plaintiff, 13 PROCEED IN FORMA
PAUPERIS v. AND DISMISSING CIVIL ACTION 14 WITHOUT PREJUDICE LISA
TERRONEZ, Correctional Officer, 15 [Doc. No. 2] 16 Defendant. 17 18 19 Plaintiff Domenic
Jarelle Betts, a prisoner at Salinas Valley State Prison (“SVSP”) 20 in Soledad, California, and
proceeding pro se, has filed a civil rights complaint pursuant 21 to 42 U.S.C. § 1983 (“Compl.”),
together with a motion to proceed in forma pauperis 22 pursuant to 28 U.S.C. § 1915(a) (“IFP”).

See Doc. Nos. 1, 2. Plaintiff claims a Richard 23 J. Donovan Correctional Facility (“RJD”) Officer retaliated against him on May 24, 24 2023, by destroying his property and “put[ting] [him] in a cage” due to lawsuits he filed 25 against two of her fellow officers. See Compl. at 3. 26 I. MOTION TO PROCEED IFP 27 All parties instituting any civil action, suit or proceeding in a district court of the 28 United States, except an application for writ of habeas corpus, must pay a filing fee of 1 \$405.

See 28 U.S.C. § 1914(a). The action may proceed despite a failure to pay the 2 entire fee at the time of filing only if the court grants the Plaintiff leave to proceed IFP 3 pursuant to 28 U.S.C. § 1915(a). See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th 4 Cir. 2007); cf. *Hymas v. U.S. Dep’t of the Interior*, 73 F.4th 763, 765 (9th Cir. 2023) 5 (“[W]here [an] IFP application is denied altogether, Plaintiff’s case [cannot] proceed 6 unless and until the fee[s] [a]re paid.”).

7 To proceed IFP, prisoners must “submit[] an affidavit that includes a statement of 8 all assets [they] possess[,]” as well as “a “certified copy of the[ir] trust fund account 9 statement (or institutional equivalent) for... the 6-month period immediately preceding 10 the filing of the complaint.” 28 U.S.C. § 1915(a)(1), (2); *Andrews v. King*, 398 F.3d 11 1113, 1119 (9th Cir.

2005). Using this financial information, the court “assess[es] and 12 when funds exist, collect[s], ... an initial partial filing fee,” which is “calculated based on 13 ‘the average monthly deposits to the prisoner’s account’ or ‘the average monthly balance 14 in the prisoner’s account’ over a 6-month term; the remainder of the fee is to be paid in 15 ‘monthly payments of 20 percent of the preceding month’s income credited to the 16 prisoner’s account.” *Hymas*, 73 F.4th at 767 (quoting 28 U.S.C. § 1915(b)(1)–(2)).

In 17 short, while prisoners may qualify to proceed IFP without having to pay the full statutory 18 filing upfront, they remain obligated to pay the full amount due in monthly payments. 19 See Bruce v. Samuels, 577 U.S. 82, 84 (2016); 28 U.S.C. § 1915(b)(1) & (2); Taylor v. 20 Delatoore, 281 F.3d 844, 847 (9th Cir. 2002). 21 Plaintiff's current motion to proceed IFP is incomplete because it does not include 22 a certified copy of his CDCR inmate trust account statements for the 6-month period 23 immediately preceding the filing of his Complaint.

See 28 U.S.C. § 1915(a)(2); S.D. Cal. 24 25 26 1 In addition to the \$350 statutory fee, civil litigants must pay an additional 27 administrative fee of \$55. See 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14 (eff. Dec. 1, 2023)).

The additional \$55 28 1 CivLR 3.2. Without these records, or SVSP's equivalent, the Court is unable to 2 determine whether Plaintiff is eligible to proceed IFP and cannot assess whether any 3 initial partial filing fee is required to initiate the prosecution of his case. See 28 U.S.C. 4 § 1915(b) (1). 5 II. CONCLUSION 6 Accordingly, the Court: 7 (1) DENIES Plaintiff's Motion to Proceed IFP (Doc.

No. 2); 8 (2) DISMISSES this civil action without prejudice for failure to prepay the 9 \$405 civil filing fee required by 28 U.S.C. § 1914(a); 10 (3) GRANTS Plaintiff forty-five (45) days from the date this Order in which to 11 re-open this case by either: (a) paying the entire \$405 civil filing and administrative fee 12 in one lump-sum; or (b) filing a renewed IFP motion, which includes a prison certificate 13 signed by a SVSP accounting official attesting as to his trust account balances and 14 deposits for the 6-month period preceding the filing of his complaint pursuant to 28 15 U.S.C. § 1915(a)(2) and S.D.

Cal. CivLR 3.2(b);3 and 16 17 18 2 While Plaintiff's claims are alleged to have arisen while he was incarcerated at RJD 19 in May 2023, nothing in his Complaint or attached exhibits indicates when he was transferred to SVSP. 20 21 3 Plaintiff is cautioned that if he chooses to re-open the case by either prepaying the full \$405 civil filing fee, or by submitting a properly supported renewed motion to proceed 22 IFP, his complaint will be subject to an initial review and may be dismissed pursuant to 28 23 U.S.C. § 1915A(b) and/or 28 U.S.C. § 1915(e)(2)(B), regardless of whether he pays the full \$405 filing fee at once, or is granted IFP status and is required to pay the full filing fee 24 in installments.

See Lopez v. Smith, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc) 25 (noting that 28 U.S.C. § 1915(e) “not only permits but requires” the court to dismiss IFP complaints that are frivolous, malicious, fail to state a claim, or seek damages from 26 defendants who are immune); see also Rhodes v. Robinson, 621 F.3d 1002, 1004 (9th Cir. 27 2010) (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 28 1 (4) DIRECTS the Clerk of the Court to mail

Plaintiff a blank form “Motion and 2 || Declaration in Support of Motion to Proceed In Forma Pauperis” for his use should he re- 3 to proceed IFP in this case.

If he does, Plaintiff is advised to include S.D. Cal. Case 4 || No. 25-cv-01296-MMA (DDL) in the caption of his renewed IFP motion and/or any 5 || other subsequent document he wishes the Court to consider. 6 Should Plaintiff fail to pay the \$405 civil filing fee in full or complete and re- 7 || submit a renewed IFP motion together with the trust account certifications required by 28 8 || U.S.C. § 1915(a)(2) within 45 days, his case will remain dismissed without prejudice 9 || pursuant to 28 U.S.C. § 1914(a), and without further Order of the Court.

10 IT IS SO ORDERED. 11 || Dated: May 30, 2025 MM Du _ / / Vp, - 12 HON. MICHAEL M. ANELLO 13 United States District Judge 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 4 25-cv-01296-MMA (DDL)