

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Herrera v. State of California

Herrera · No. 25-cv-02051-AJB-SBC · Decided September 15, 2025

SUMMARY

The United States District Court for the Southern District of California dismissed Ivan J. Herrera’s § 1983 action without prejudice because he neither paid the required filing and administrative fee nor filed a properly supported motion to proceed in forma pauperis. The court granted him 45 days to reopen the case by paying the fee or submitting a compliant IFP motion.

CASE DETAILS

COURT	United States District Court for the Southern District of California
JURISDICTION	United States District Court for the Southern District of California
DECIDED	September 15, 2025
DOCKET	25-cv-02051-AJB-SBC
DISPOSITION	dismissed
PROCEDURAL POSTURE	Pro se detainee filed a civil-rights action under 42 U.S.C. § 1983 without prepaying the filing fee or moving to proceed in forma pauperis.
PRECEDENTIAL VALUE	unpublished district court order; precedential status unknown
PARTIES	Ivan J. Herrera v. State of California

TOPICS

- civil procedure
- prisoners rights
- section 1983
- motions to dismiss

PRACTICE AREAS

- civil procedure
- prisoner civil rights
- filing fees
- in forma pauperis proceedings

QUESTIONS PRESENTED

1. Whether the action should be dismissed without prejudice because Plaintiff failed to pay the filing fee required by 28 U.S.C. § 1914(a).

2. Whether the action should be dismissed without prejudice because Plaintiff failed to file a properly supported motion to proceed in forma pauperis under 28 U.S.C. § 1915(a).

HOLDINGS

1. A civil action may not proceed when the plaintiff has neither prepaid the required filing fee nor obtained leave to proceed in forma pauperis; because Plaintiff did neither, dismissal without prejudice was warranted.
2. A prisoner seeking to proceed in forma pauperis must submit the affidavit and certified trust-account statement required by 28 U.S.C. § 1915(a); failure to do so supports dismissal without prejudice, subject to an opportunity to cure.

KEY QUOTATIONS

“However, a prisoner who is granted leave to proceed IFP remains obligated to pay the entire fee in “increments” or “installments,”” (at 1)

“Accordingly, the Court: (1) DISMISSES this action without prejudice based on Plaintiff’s failure to pay \$405 civil filing and administrative fee required by 28 U.S.C. § 1914(a), and his failure move to proceed IFP pursuant to 28 U.S.C. § 1915(a);” (at 3)

FACTUAL BACKGROUND

Ivan J. Herrera was detained at the San Diego Sheriff’s Office George Bailey Detention Facility and proceeded pro se. He alleged that another detainee attacked him while he was using the bathroom in his housing unit, that he was cuffed, and that he was denied medical attention afterward. When he filed the § 1983 action, he did not pay the required filing fee and did not submit a properly supported motion to proceed in forma pauperis.

PROCEDURAL HISTORY

Plaintiff filed a civil-rights complaint alleging that another detainee attacked him while he was using a bathroom, that he was cuffed, and that he was denied medical attention. He neither paid the required \$405 filing and administrative fee nor filed a motion to proceed in forma pauperis supported by the required affidavit and certified trust-account records. The district court dismissed the action without prejudice and granted 45 days to reopen the case by paying the fee or filing a compliant IFP motion.

DISPOSITION

dismissed

CASES CITED

- Andrews v. Cervantes, 493 F.3d 1047, 1051 (9th Cir. 2007)
- Rodriguez v. Cook, 169 F.3d 1176, 1177 (9th Cir. 1999)
- Bruce v. Samuels, 577 U.S. 82, 84 (2016)
- Williams v. Paramo, 775 F.3d 1182, 1185 (9th Cir. 2015)

- Taylor v. Delatoore, 281 F.3d 844, 847 (9th Cir. 2002)
- Escobedo v. Applebees, 787 F.3d 1226, 1234 (9th Cir. 2015)
- Rowland v. California Men's Colony, Unit II Men's Advisory Council, 506 U.S. 194, 214 (1993)
- Andrews v. King, 398 F.3d 1113, 1119 (9th Cir. 2005)

OPINION

Herrera v. State of California

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 IVAN J. HERRERA, Case No.: 25-cv-02051-AJB-SBC Booking No. 24715443, 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

STATE OF CALIFORNIA,

15 FAILURE TO MOVE TO PROCEED

Defendant. IN FORMA PAUPERIS 16

PURSUANT TO 28 U.S.C. § 1915(a)

17 18 Plaintiff Ivan J. Herrera, while detained at the San Diego Sheriff Office's George 19 Bailey Detention Facility ("GBDF"), and proceeding pro se, filed this civil rights action 20 pursuant to 42 U.S.C. § 1983. (See Doc. No. 1.) Plaintiff claims he was attacked by another 21 GBDF detainee while he was using the bathroom in his housing unit, cuffed, and denied 22 medical attention afterward. (Id. at 1.) 23 All parties instituting any civil action, suit or proceeding in a district court of the 24 United States, except an application for writ of habeas corpus, must pay a filing fee of 25 \$405. See 28 U.S.C. § 1914(a). The action may proceed despite a plaintiff's failure to 26 prepay the entire fee only if he is granted leave to proceed in forma pauperis ("IFP") 27 pursuant to 28 U.S.C. § 1915(a). See Andrews v. Cervantes, 493 F.3d 1047, 1051 (9th Cir. 28 2007) ("Cervantes"); Rodriguez v. Cook, 169 F.3d 1176, 1177 (9th Cir. 1999). However, 1 a prisoner who is granted leave to proceed IFP remains obligated to pay the entire fee in 2 "increments" or "installments," Bruce v. Samuels, 577 U.S. 82, 84 (2016); Williams v. 3 Paramo, 775 F.3d 1182, 1185 (9th Cir. 2015), and regardless of whether his action is 4 ultimately dismissed. See 28 U.S.C. § 1915(b)(1) & (2); Taylor v. Delatoore, 281 F.3d 844, 5 847 (9th Cir. 2002).

6 Section 1915(a)(2) requires all persons seeking to proceed without full prepayment

7 of fees to submit an affidavit that includes a statement of all assets possessed and which 8

demonstrates an inability to pay. See *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th Cir. 9 2015) (emphasis added). “The in forma pauperis statute authorizes courts to allow ‘[1] the 10 commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, 11 or appeal therein, without prepayment of fees and costs or security therefor, by a person 12 who [2] makes affidavit that he is [3] unable to pay such costs or give security therefor.’” 13 *Rowland v. California Men’s Colony, Unit II Men’s Advisory Council*, 506 U.S. 194, 214 14 (1993) (quoting 28 U.S.C. § 1915(a)). 15 In support of this affidavit, prisoners like Plaintiff must also submit a “certified copy 16 of the trust fund account statement (or institutional equivalent) for . . . the 6-month period 17 immediately preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2); *Andrews v. 18 King*, 398 F.3d 1113, 1119 (9th Cir. 2005). It is from the certified trust account statement 19 that the Court assesses an initial payment of 20% of (a) the average monthly deposits in 20 the account for the past six months, or (b) the average monthly balance in the account for 21 the past six months, whichever is greater, unless he has no assets. See 28 U.S.C. 22 § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having custody of the prisoner then 23 collects subsequent payments, assessed at 20% of the preceding month’s income, in any 24 month in which his account exceeds \$10, and forwards those payments to the Court until 25 the entire filing fee is paid. See 28 U.S.C. § 1915(b)(2); *Bruce*, 577 U.S. at 85–86. 26 Plaintiff did not pay the \$405 filing fee required to commence a civil action when 27 he filed his complaint, nor has he filed a motion to proceed IFP, which includes both the 28 affidavit required by 28 U.S.C. § 1915(a)(1) and certified copies of his trust fund account 1 || activity as required by 28 U.S.C. § 1915(a)(2). Therefore, until Plaintiff either pays the 2 || filing fee “upfront,” *Bruce*, 577 U.S. at 86, or files a properly supported motion to proceed 3 ||IFP, his case cannot proceed. See 28 U.S.C. § 1914(a); *Cervantes*, 493 F.3d at 1051.

4 CONCLUSION

5 Accordingly, the Court: 6 (1) DISMISSES this action without prejudice based on Plaintiff’s failure to pay 7 \$405 civil filing and administrative fee required by 28 U.S.C. § 1914(a), and his failure 8 move to proceed IFP pursuant to 28 U.S.C. § 1915(a); 9 (2) GRANTS Plaintiff forty-five (45) days leave from the date of this Order to 10 ||re-open this case by: (a) prepaying the entire \$405 civil filing and administrative fee 11 ||required by 28 U.S.C. § 1914(a) in full; or (b) completing and filing a Motion and 12 ||Declaration in Support of Motion to Proceed IFP that complies with 28 U.S.C. 13 || § 1915(a)(1), (2) and S.D. Cal. CivLR 3.2.b; and 14 (3) DIRECTS the Clerk of the Court to provide Plaintiff with a Court-approved 15 ||form “Motion and Declaration in Support of Motion to Proceed IFP” for his use and 16 ||convenience. Should Plaintiff neither pay the \$405 filing fee in full nor sufficiently 17 ||complete and file the attached IFP motion within 45 days, this civil action will remained 18 || dismissed without prejudice pursuant to 28 U.S.C. § 1914(a), and without further Order of 19 || the Court. 20 IT IS SO ORDERED. 21 ||Dated: September 15, 2025 23 United States District Judge 24 25 26 27 28

3 AK AANKFA □□□□□

