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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DEMETRIUS CROSBY,  
Booking #15781534,  
  
Plaintiff,  
  
vs.  
  
SAN DIEGO POLICE DEPT., et al.,  
  
Defendants.

Case No.: 3:16-cv-1309-GPC-MDD

**ORDER DENYING MOTION TO  
PROCEED IN FORMA PAUPERIS  
PURSUANT TO 28 U.S.C. § 1915(a)  
AND DISMISSING CIVIL ACTION  
WITHOUT PREJUDICE FOR  
FAILING TO PREPAY FILING  
FEES REQUIRED BY  
28 U.S.C. § 1914(a)**

**[ECF No. 2]**

Demetrius Crosby (“Plaintiff”), currently incarcerated at George Bailey Detention Facility (“GBDF”), and proceeding pro se, has filed a civil rights complaint (“Compl.”) pursuant to 42 U.S.C. § 1983 (ECF No. 1). Plaintiff claims the San Diego Police Department, both the City and County of San Diego, and three “John Doe” Police Officers used excessive force while effecting his arrest “at or around” Petco Park in December 2015, and denied him medical attention afterward. (ECF No. 1 at 2-5.)

Plaintiff has not prepaid the civil filing fee required by 28 U.S.C. § 1914(a); instead, he has filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) (ECF No. 2).

1 **I. Motion to Proceed IFP**

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 \$400. *See* 28 U.S.C. § 1914(a).<sup>1</sup> An action may proceed despite a plaintiff's failure to  
5 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.  
6 § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, if the  
7 plaintiff is a prisoner at the time of filing, he may be granted leave to proceed IFP, but he  
8 nevertheless remains obligated to pay the entire fee in "increments," *see Williams v.*  
9 *Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), regardless of whether his action is ultimately  
10 dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th  
11 Cir. 2002). A "prisoner" is defined as "any person" who at the time of filing is "incarcerated  
12 or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated  
13 delinquent for, violations of criminal law or the terms or conditions of parole, probation,  
14 pretrial release, or diversionary program." 28 U.S.C. § 1915(h); *Taylor*, 281 F.3d at 847.

15 In order to comply with the PLRA, prisoners seeking leave to proceed IFP must also  
16 submit a "certified copy of the[ir] trust fund account statement (or institutional equivalent)  
17 . . . for the 6-month period immediately preceding the filing of the complaint. . . ." 28  
18 U.S.C. § 1915(a)(2). From the certified trust account statement, the Court assesses an initial  
19 payment of 20% of (a) the average monthly deposits in the account for the past six months,  
20 or (b) the average monthly balance in the account for the past six months, whichever is  
21 greater, unless the prisoner has no assets. *See* 28 U.S.C. § 1915(b)(1), (4); *see Taylor*, 281  
22 F.3d at 850. Thereafter, the institution having custody of the prisoner collects subsequent  
23 payments, assessed at 20% of the preceding month's income, in any month in which the  
24 prisoner's account exceeds \$10, and forwards them to the Court until the entire filing fee

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27 <sup>1</sup> In addition to the \$350 statutory fee, civil litigants must pay an additional administrative  
28 fee of \$50. *See* 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court  
Misc. Fee Schedule, § 14 (eff. Dec. 1, 2014)). The additional \$50 administrative fee does  
not apply to persons granted leave to proceed IFP. *Id.*

1 is paid. *See* 28 U.S.C. § 1915(b)(2).

2 While Plaintiff has filed a Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a),  
 3 he has not attached a certified copy of his GBDF trust account statements for the 6-month  
 4 period immediately preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2); S.D.  
 5 CAL. CIVLR 3.2. Section 1915(a)(2) clearly requires that prisoners “seeking to bring a civil  
 6 action . . . without prepayment of fees . . . *shall* submit a certified copy of the trust fund  
 7 account statement (or institutional equivalent) . . . for the 6-month period immediately  
 8 preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2) (emphasis added).

9 Without Plaintiff’s trust account statement, the Court is simply unable to assess the  
 10 appropriate amount of the initial filing fee which is statutorily required to initiate the  
 11 prosecution of this action. *See* 28 U.S.C. § 1915(b)(1).

## 12 **II. Conclusion and Order**

13 For these reasons, **IT IS ORDERED** that:

14 (1) Plaintiff’s Motion to Proceed IFP (ECF No. 2) is **DENIED** and the action is  
 15 **DISMISSED** without prejudice for failure to prepay the \$400 filing fee required by 28  
 16 U.S.C. § 1914(a).

17 (2) Plaintiff is **GRANTED** forty-five (45) days from the date of this Order in  
 18 which to re-open his case by either: (1) paying the entire \$400 statutory and administrative  
 19 filing fee, **or** (2) filing a new Motion to Proceed IFP, *which includes a certified copy of his*  
 20 *trust account statement for the 6-month period preceding the filing of his Complaint*  
 21 pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2(b).<sup>2</sup>

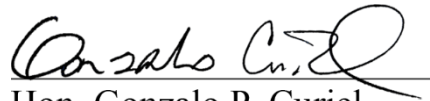
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23  
 24 <sup>2</sup> Plaintiff is cautioned that if he chooses to proceed further by either prepaying the full  
 25 \$400 civil filing fee, or submitting a properly supported Motion to Proceed IFP, his  
 26 Complaint will be reviewed before service and may be dismissed pursuant to 28 U.S.C.  
 27 § 1915A(b) and/or 28 U.S.C. § 1915(e)(2)(B), regardless of whether he pays or is obligated  
 28 to pay filing fees. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)  
 (noting that 28 U.S.C. § 1915(e) “not only permits but requires” the court to sua sponte  
 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) (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.”). As currently pleaded, it appears

1 (3) The Clerk of the Court is **DIRECTED** to provide Plaintiff with a Court-  
2 approved form “Motion and Declaration in Support of Motion to Proceed IFP” in this  
3 matter. If Plaintiff neither pays the \$400 filing fee in full nor sufficiently completes and  
4 files the attached Motion to Proceed IFP, *together with a certified copy of his trust account*  
5 *statement within 45 days*, this action will remain dismissed without prejudice pursuant  
6 to 28 U.S.C. § 1914(a), and without further Order of the Court.

7 **IT IS SO ORDERED.**

8 Dated: September 22, 2016

9   
10 Hon. Gonzalo P. Curiel  
United States District Judge

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26 Plaintiff’s Complaint will be subject to such a dismissal insofar as it fails to comply with  
27 FED.R.CIV.P. 8(a)(1)-(3). *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (noting that “[a]  
28 pleading that offers ‘labels and conclusions,’” or one that “tenders ‘naked assertion[s]’  
devoid of ‘further factual enhancement’” fails to “state a claim to relief that is plausible on  
its face.”” (quoting *Bell Atlantic v. Twombly*, 550 U.S. 544, 555, 557, 570 (2007))).