

**UNITED STATES DISTRICT COURT
DISTRICT OF UTAH**

)	
Plaintiff/Petitioner)	Civil Action No. _____
v.)	
)	MOTION TO PROCEED WITHOUT
Defendant/Respondent)	PREPAYING FILING FEE--WITH
)	REQUIRED AFFIDAVIT AND
)	AUTHORIZATION
)	(INCARCERATED PARTY)
)	

THIS FORM SHALL BE USED BY ANY INMATE SEEKING TO PROCEED *IN FORMA PAUPERIS*, FILING A CIVIL COMPLAINT IN THE DISTRICT OF UTAH.

Please read fully before signing and *fill every blank*, even if to state "N/A," or "not applicable." If any lines are left blank, this Motion will be deemed invalid. This Motion must be signed and dated at page 4. Pages 1-2 will be filed under seal to protect your financial information from being seen by the public. To help you understand this process, the federal statute and local rule governing motions to proceed without prepaying filing fees are attached.

I, _____ (print name), declare that I am the plaintiff/petitioner in this case; I believe that I am entitled to relief; and I am unable to prepay the costs of this proceeding. I therefore apply to have my case filed **without prepaying** the entire court filing fee of \$350, or without paying the habeas-petition filing fee of \$5. The nature of my action is briefly stated as follows:

_____.

In support of this motion, I provide *all* the following information, in **affidavit** format:

(1) I am incarcerated in the following facility: _____.

Within the past 6 months, I was also held in other facilities, as follows:

_____.

(2) In my correctional facility, I am employed / not employed (circle one).

Inmate/Plaintiff name

Case number

(3) In the past 12 months, I have received the specified amount of money from these sources
(on each line, you must indicate an amount, even if zero):

- (a) Business, profession, or other self-employment \$ _____
- (b) Income from rent, interest, or dividends \$ _____
- (c) Pensions, annuities, or life-insurance payments \$ _____
- (d) Disability, unemployment, workers compensation \$ _____
- (e) Public assistance \$ _____
- (f) Gifts or inheritances \$ _____
- (g) Child support or alimony \$ _____
- (h) Any other source of income \$ _____

(4) List the dollar amount for each of the following **(on each line, you must indicate an amount, even if zero):**

Cash on hand \$ _____ Checking account \$ _____ Savings account \$ _____

(5) Do you own or have interest in any real estate, stocks, bonds, notes, retirement plans, vehicles, or other valuable property (excluding ordinary household furnishings and clothing)? If "yes," describe the property and state its approximate value and equity (if applicable):

____ Yes _____

____ No

* * * * *

Inmate/Plaintiff name

Case number

REQUIRED AUTHORIZATION, CONSENT, AND DECLARATION

(A) I understand that it is ultimately my responsibility to meet the requirements of the statute governing federal legal actions in which an inmate applies to proceed without prepaying the entire court filing fee. This includes ensuring that the Court gets the required inmate-account statement, and, if required, an initial partial filing fee (IPFF). Regardless of whether an IPFF is required, the filing fee must be paid in increments, as described below in paragraph (H).

(B) To help me understand and meet my responsibilities, I have read this form and the attached statute governing my application to proceed without prepaying the entire court filing fee.

(C) I understand that even if the Court grants this application to proceed *in forma pauperis* and files my complaint, I must still eventually pay the entire filing fee of \$5 (habeas petition) or \$350 (non-habeas civil case). I understand that I must pay the complete filing fee even if my case is later dismissed.

(D) I understand that I must provide within **fourteen days** the statutorily required statement *certified* by my facility's inmate-account office, showing all receipts, expenditures, and balances during the last six months, for any account in the facility in which I am being held, and including a calculation of my IPFF in this Court. I will also submit a similar statement from any other institution where I was incarcerated during the last six months.

(E) To meet my statutory obligation, I authorize the Court to transmit a copy of this completed and signed form to my facility's or former facility's inmate-account office to serve as a request to that office to transmit to the Court (and to me) my account statement as described in the above paragraph.

(F) I understand that, on my certified inmate-account statement, my institution may calculate whether I must pay an initial partial filing fee (IPFF), by applying the formula set forth by federal statute. The IPFF is:

20% of the greater of--(a) the average monthly deposits to my account for the six-month period immediately preceding the filing of my complaint or petition; or (b) the average monthly balance in my account for the six-month period immediately preceding the filing of my complaint or petition.

28 U.S.C.S. § 1915(b) (2023).

Inmate/Plaintiff name

Case number

(G) If the statement, with its IPFF calculation, shows that I owe an IPFF, I authorize the inmate-account office to--within thirty days of my signature here--remit the IPFF to the Court. If the IPFF is not remitted to the Court within thirty days, I understand that my case will be dismissed and closed.

(H) I understand that, so long as there is a remaining unpaid balance on my \$350 filing fee, I am required by statute "to make monthly payments of 20 percent of the preceding month's income credited to [my inmate] account." 28 U.S.C.S. § 1915(b) (2023). I therefore consent for the inmate-account office "to forward payments from [my] account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid." *Id.* The inmate-account office shall forward any payments to the Clerk's Office, United States District Court for the District of Utah, 351 S. West Temple, Rm. 1.100, Salt Lake City, UT 84101.

(I) I authorize collection on a continuing basis of any additional fees, costs, and sanctions imposed by the District Court. I understand that ultimately it is my responsibility to ensure my fees and costs are paid.

I certify--under penalty of perjury--that the foregoing (everything on pages one through four) is true and correct. 28 U.S.C.S. § 1746 (2023).

Date executed

Inmate's signature

(As necessary, the Court will transmit pages 3-4 to the relevant correctional facility.)

**THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH**

**THE COURT RESPECTFULLY REQUESTS THAT THE CORRECTIONAL FACILITY'S INMATE-ACCOUNT
OFFICE FOLLOW THESE INSTRUCTIONS:**

A. The attached Order, based on your inmate's signed authorization, authorizes and requests your office to--**within fourteen days** of receiving the Order and a copy of this motion from the federal court clerk's office--submit the completed Financial Certificate (found below) together with the inmate's *certified* inmate-account statement (showing all receipts, expenditures, and balances during the last six months) to the Clerk's Office at the following email address: utdecf_clerk@utd.uscourts.gov. When the Certificate and statement are sent to the Court, please also give a copy of that same inmate-account statement to the involved inmate. Please note the case number on the statement.

B. Please include in the Financial Certificate for this inmate a calculation of the initial partial filing fee (IPFF), using the statutory formula above and reiterated here. The IPFF is:

20% of the greater of--(a) the average monthly deposits to my account for the six-month period immediately preceding the filing of my complaint or petition; or (b) the average monthly balance in my account for the six-month period immediately preceding the filing of my complaint or petition.

28 U.S.C.S. § 1915(b) (2023).

C. Please certify the inmate-account statement, by completing the "Financial Certificate" found on the next page, and e-mailing to the Court the completed Financial Certificate with the inmate-account statement.

D. The attached Order, with this signed motion--and its authorization signed by your inmate--authorizes and requests your office to remit the calculated IPFF within the next thirty days. If the IPFF is not remitted within thirty days of the inmate's signature above, the Court will dismiss and close the inmate's case.

E. Based on the attached Order and inmate's authorization, so long as there is a remaining unpaid balance on this inmate's \$350 filing fee--on the inmate's behalf—we authorize and request your office "make monthly payments of 20 percent of the preceding month's income credited to [my inmate] account." *Id.* These payments can be forwarded from this inmate's "account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid." *Id.*

E. Please remit payments by check to the Clerk's Office, United States District Court for the District of Utah, 351 S. West Temple, Rm. 1.100, Salt Lake City, UT 84101. Please make checks payable to "Clerk United States District Court."

F. Should the District Court impose any additional fees, costs, and sanctions upon this inmate and notify your office of such, under this signed motion with its declaration and consent, your office is authorized and requested to remit those from the inmate's account to the Court.

G. Any questions may be directed by email to jessica_lykins@utd.uscourts.gov or laurie_corcoran@utd.uscourts.gov.

FINANCIAL CERTIFICATE

(To be completed by official in Correctional Facility's Inmate Account Office)

PLEASE ATTACH A PRINTOUT OF ALL TRANSACTIONS IN THE INMATE'S FACILITY
ACCOUNT FOR THE PRECEDING 6 MONTHS TO
THIS CERTIFICATE AND EMAIL TO: utdecf_clerk@utd.uscourts.gov.

1. Inmate's name: _____

2. Case number: _____

3. Current account balance: _____

4. Average monthly balance for preceding 6 months: _____

5. Average monthly deposits for preceding 6 months: _____

6. Federal initial partial filing fee: _____ (To be remitted within
30 days)

I hereby certify that, as of this date, the above information for the prison account of the
inmate named above is correct.

Signature of authorized official

Date

Printed name of authorized official & title

(a)

(1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such [person] prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

(2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

(3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b)

(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of—

(A) the average monthly deposits to the prisoner's account; or

(B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

(4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

(c) Upon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b), the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate [United States magistrate judge] in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title [28 USCS § 636(b)] or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is

required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title [28 USCS § 636(c)]. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(d) The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(e)

(1) The court may request an attorney to represent any person unable to afford counsel.

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—

(A) the allegation of poverty is untrue; or

(B) the action or appeal—

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

(f)

(1) Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States.

(2)

(A) If the judgment against a prisoner includes the payment of costs under this subsection, the prisoner shall be required to pay the full amount of the costs ordered.

(B) The prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection (a)(2).

(C) In no event shall the costs collected exceed the amount of the costs ordered by the court.

(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

(h) As used in this section, the term “prisoner” means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

District of Utah Local Rules of Civil Practice (December 2022)

Rule 3-2 PROCEEDING WITHOUT PREPAYMENT OR PAYMENT OF FILING FEES

(a) Motion to Proceed In Forma Pauperis.

. . . .

(2) An Incarcerated Party. Under 28 U.S.C. § 1915, an incarcerated party may request authorization to proceed in a civil action without prepayment of the filing fee by filing a Motion to Proceed Without Prepayment of Fees. A form motion is available from the Clerk's Office and on the court's website.

(A) *Account Statement and Consent*. In addition to the motion, a party must submit:

(i) a certified copy of the incarcerated party's trust fund account statement (or institutional equivalent) from each institution in which the incarcerated party was confined in the 6 months before the motion is filed. The account statement must be submitted with the motion; and

(ii) written consent authorizing the appropriate prison official to collect fees and submit payments to the clerk if the motion is granted. If the motion is granted, the court will send a written consent form to the incarcerated party to sign and return to the court.

(B) *Initial Partial Filing Fee*. If the motion is granted, the court will assess and, when funds exist, collect an initial partial filing fee of 20% of the greater of:

(i) the average monthly deposits to the account during the six-month period preceding the filing of the action; or

(ii) the average monthly balance in the account for the six-month period preceding the filing of the action.

(C) *Monthly Payments*. After the initial partial filing fee is paid, the incarcerated party must make monthly payments of 20% of the preceding month's income credited to the account but only if the account balance exceeds \$10.

(D) *Collecting Payments*. The agency having custody of the incarcerated party must forward any payment required under this rule in the proper amount to the clerk until the filing fees are paid.

(E) *Conditions for Filing the Action*. The clerk will file the action as of the date of the order granting the motion. If the motion is denied, the clerk will notify the incarcerated party of the decision and will file the action only upon receipt of the required fee.

(b) Screening the Case.

(1) At any time, including when reviewing the motion, a magistrate judge may recommend dismissal of the action or a district judge may order dismissal of the action if: (A) the allegation of indigence is untrue; (B) the court lacks jurisdiction; (C) the claims are frivolous or malicious; (D) it fails to state a claim on which relief can be granted; or (E) it seeks monetary relief against a defendant who is immune.

(c) Service of Process.

(1) The clerk will not issue a summons until directed to do so by the court.

(2) After the motion is granted, or after the case has been screened and a decision has been made to proceed with service, the court will order: . . . (B) Regarding an incarcerated party's action: (i) each defendant to waive service of process, under Rule 4 of the Federal Rules of Civil Procedure; or (ii) the United States Marshal to serve on each defendant the completed summons, the complaint, and a copy of the order.