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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>TUVALU TUTUILA FAUSIA,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>MATHEW CATES; et al.,</p> <p>Defendants - Appellees.</p>

No. 10-55974

D.C. No. 5:09-cv-02320-R-E

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Manuel L. Real, District Judge, Presiding

Submitted August 11, 2011**

Before: THOMAS, SILVERMAN, and CLIFTON, Circuit Judges.

Tuvalu Tutuila Fausia, a California state prisoner, appeals pro se from the district court’s judgment dismissing his Americans with Disabilities Act and 42 U.S.C. § 1983 action for failure to pay the initial partial filing fee. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion the

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

district court's decision to impose a partial filing fee pursuant to 28 U.S.C. § 1915, and its dismissal for failure to pay. *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002). We reverse and remand.

The district court abused its discretion by dismissing Fausia's action for failure to pay an initial partial filing fee in the amount of \$20.20, because Fausia had no available funds with which to pay the fee. *See* 28 U.S.C. § 1915(b)(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."); *Taylor*, 281 F.3d at 850 (district court cannot dismiss in forma pauperis prisoner's case based on his failure to pay initial partial fee when his failure to pay is due to lack of available funds when payment is ordered).

REVERSED and REMANDED.