

AUG 05 2013

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U.S. COURT OF APPEALS

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUAN MAGANA,

Plaintiff - Appellant,

v.

FRESNO COUNTY SHERIFFS  
DEPARTMENT, official capacity (Fresno  
County Jail N); et al.,

Defendants - Appellees.

No. 12-56495

D.C. No. 2:12-cv-03583-DDP-  
MAN

**MEMORANDUM\***

Appeal from the United States District Court  
for the Central District of California  
Dean D. Pregerson, District Judge, Presiding

Submitted July 24, 2013

Before: ALARCÓN, CLIFTON, and CALLAHAN, Circuit Judges.

Federal prisoner Juan Magana appeals pro se from the district court's order denying him leave to proceed in forma pauperis in his 42 U.S.C. § 1983 action alleging excessive force, medical deliberate indifference and due process claims.

We have jurisdiction under 28 U.S.C. § 1291. We review de novo the

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

determination that a complaint lacks arguable substance in law or fact, and for an abuse of discretion the denial of leave to proceed in forma pauperis. *Tripati v.*

*First Nat'l Bank & Trust*, 821 F.2d 1368, 1369 (9th Cir. 1987). We affirm.

The district court did not abuse its discretion by denying Magana leave to proceed in forma pauperis because he failed to submit the statutorily required six month prisoner trust fund account statement. *See* 28 U.S.C. § 1915(a)(2), (e)(2); *Page v. Torrey*, 201 F.3d 1136, 1139 (9th Cir. 2000) (“[P]risoner-plaintiffs seeking to proceed in forma pauperis [must] submit a certified copy of their prisoner trust fund account statement for the previous six months.”). Moreover, Magana failed to state a cognizable constitutional claim against the federal defendants and venue was improper against the state defendants. *See Tripati*, 821 F.2d at 1370 (“A district court may deny leave to proceed in forma pauperis at the outset if it appears from the face of the proposed complaint that the action is frivolous or without merit.”).

**AFFIRMED.**