APPENDIX TO THE
PETITION FOR A WRIT OF CERTIORARI

APPENDIX A

PUBLISHED [SEPT. 16, 2024]

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22–7228

JONATHAN EUGENE BRUNSON,

Plaintiff-Appellant,

v.

JOSH STEIN; BARRY H. BLOCH; JESSICA B. HELMS; ELIZABETH B. JENKINS; BENJAMIN S. GURLITZ; CHARLTON L. ALLEN; PHILIP A. BADDOUR, III; YOLANDA K. STITH; MYRA L. GRIFFIN; KENNETH L. GOODMAN; JAMES C. GILEN; TAMMY R. NANCE; CHRISTOPHER C. LOUTIT; BRIAN R. LIEBMAN; AMANDA M. PHILLIPS; KIMBERLEE FARR; BRITTANY A. PUCKETT; EMILY M. BAUCOM,

Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Louise W. Flanagan, District Judge. (5:21-CT-3063-FL)

Argued: March 21, 2024

Decided: September 16, 2024

Before NIEMEYER, RICHARDSON, and HEYTENS, Circuit Judges.

Motion denied by published opinion. Judge Richardson wrote the opinion, in which Judges Niemeyer and Heytens joined.

ARGUED: Jennifer Franklin, WILLIAM & MARY LAW SCHOOL, Williamsburg, Virginia, for Appellant. Sripriya Narasimhan, NORTH CAROLINA DEPARTMENT OF JUSTICE, Raleigh, North Carolina, for Appellees. **ON BRIEF**: Jim Davidson, Third Year Law Student, Vivian Li, Third Year Law Student, Brendan Clark, Third Year Law Student, Supreme Court & Appellate Litigation Clinic, WILLIAM & MARY LAW SCHOOL, Williamsburg, Virginia, for Appellant. Joshua H. Stein, Attorney General, Ryan Y. Park, Solicitor General, NORTH CAROLINA DEPARTMENT OF JUSTICE, Raleigh, North Carolina, for Appellees.

RICHARDSON, Circuit Judge:

It is sometimes said that a judge's duty is to "call balls and strikes." *Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1724 (2020). This case actually requires us to do so. The Prison Litigation Reform Act's (PLRA) "three-strikes" rule bars prisoners from suing in *forma pauperis* if, while incarcerated, they filed three or more federal civil actions or appeals that were dismissed for frivolity, malice, or failure to state a claim upon which relief may be granted. 28 U.S.C. § 1915(g). One knuckleball has long divided umpires: whether a dismissal under *Heck v. Humphrey*, 512 U.S. 477 (1994), is a PLRA strike. *Heck* held that a federal court may not entertain a state prisoner's 42 U.S.C. § 1983 suit for money damages if that suit's success would necessarily undermine the legality of his conviction or confinement, unless the prisoner has first "invalidated" the legality of his confinement. *Id.* at 486–87. Today, we hold that a *Heck* dismissal is necessarily for failure to state a claim and thus counts as a PLRA strike.

I. Background

The issue here is a legal one, so few facts are needed. Jonathan Brunson is imprisoned in North Carolina pursuant to a sexual-abuse conviction. While incarcerated, Brunson filed this § 1983 action naming the North Carolina Attorney General and seventeen other state officials as defendants. He sought declaratory relief, injunctive relief, and compensatory and punitive damages.

In his complaint, Brunson acknowledged that he had previously filed four § 1983 suits that were all dismissed under *Heck*. Nevertheless, he moved to proceed *in forma pauperis*. The district court initially granted Brunson's request. But it later vacated that order after deciding that Brunson was precluded from proceeding *in forma pauperis* by the PLRA's three-strikes rule. In reaching this decision, the court found that Brunson's prior dismissals under *Heck* were for failure to state a claim upon which relief may be granted. So Brunson prepaid the $402 fee to file suit. Later, for reasons not relevant here, the district court dismissed his § 1983 complaint.

Brunson timely appealed. He then applied to proceed on appeal without prepaying fees. In the application, Brunson argued that he does not have any PLRA strikes because *Heck* dismissals do not count as strikes under the PLRA. Before resolving this question, we placed Brunson's case in abeyance pending another appeal in which this issue might have been resolved. *Pitts v. South Carolina*, 65 F.4th 141 (4th Cir. 2023). But that case ultimately reserved the question. *See id.* at 148 n.3. So we calendared Brunson's appeal for argument on whether he should be permitted to proceed on appeal *in forma pauperis*.[1]

[1] Whether the dismissal under *Heck* is a PLRA strike is a legal question that we review *de novo*. *Blakely v. Wards*, 738 F.3d 607, 610 (4th Cir. 2013) (*en banc*).

II. Discussion

Concerned by the "flood of nonmeritorious" prisoner litigation in federal courts, *Jones v. Bock*, 549 U.S. 199, 203 (2007), Congress enacted the PLRA's three-strikes rule to "filter out the bad claims filed by prisoners and facilitate consideration of the good," *Coleman v. Tollefson*, 575 U.S. 532, 535 (2015) (alterations and citation omitted). The rule bars a prisoner from suing *in forma pauperis*—that is, without first paying the filing fee—if he

> 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.

28 U.S.C. § 1915(g). A prisoner who receives three strikes must prepay the filing fee before proceeding, just like any other plaintiff. *See* 28 U.S.C. § 1914(a).

This case requires us to decide whether an action dismissed under *Heck* is dismissed for "fail[ure] to state a claim upon which relief may be granted." If so, such a dismissal counts as a strike under the PLRA. § 1915(g).[2] In *Heck*, the Supreme Court held

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[2] Defendants do not argue that Brunson's prior *Heck*-barred suits were dismissed because they were frivolous or malicious. Nothing in this opinion forecloses this as an alternative ground for finding a strike in future cases.

that "in order to recover damages for … harm caused by actions whose unlawfulness would render [his] conviction or sentence invalid, a § 1983 plaintiff must prove that [his] conviction or sentence has been" invalidated. 512 U.S. at 486–87. This is known as the "favorable-termination requirement," and suits dismissed for failing to meet it are said to be "*Heck*-barred." Before bringing this § 1983 suit, Brunson unsuccessfully filed four § 1983 suits, each of which was found to be *Heck*-barred. So if *Heck* dismissals count as strikes under the PLRA, then Brunson cannot proceed *in forma pauperis* on appeal, as he falls within the three-strikes rule.

This question is the subject of an entrenched circuit split. *See Lomax*, 140 S. Ct. at 1724 n.2 (noting the split but declining to reach the issue). The Third, Fifth, Tenth, and D.C. Circuits have held that *Heck* dismissals are necessarily for failure to state a claim. *See Garrett v. Murphy*, 17 F.4th 419, 427 (3d Cir. 2021); *Colvin v. LeBlanc*, 2 F.4th 494, 497–99 (5th Cir. 2021); *Smith v. Veterans Admin.*, 636 F.3d 1306, 1312 (10th Cir. 2011); *In re Jones*, 652 F.3d 36, 38 (D.C. Cir. 2011). The Second, Seventh, and Ninth Circuits, meanwhile, have held, to varying degrees, that *Heck* dismissals are not, or sometimes are not, strikes under the PLRA. *See Cotton v. Noeth*, 96 F.4th 249, 257 (2d Cir. 2024) (holding that "whether a *Heck* dismissal qualifies as a strike depends on … whether the dismissal turned on the merits or whether it was simply a matter of sequencing or timing"); *Washington v. L.A. Cnty. Sheriff's Dep't*, 833 F.3d 1048, 1055 (9th Cir. 2016) (holding that a *Heck* dismissal counts as a strike

only when "*Heck's* bar to relief is so obvious from the face of the complaint, and the entirety of the complaint is dismissed for a qualifying reason under the PLRA"); *Mejia v. Harrington*, 541 F. App'x 709, 710 (7th Cir. 2013) (holding that *Heck* "deal[s] with timing rather than the merits of litigation").[3]

Until now, our Circuit had not waded into this conceptual morass.[4] Today, we conclude that *Heck's* favorable-termination requirement is an element of the type of § 1983 claims *Heck* identified. *Heck*, 512 U.S. at 483. Accordingly, we hold that a dismissal under *Heck* is necessarily a dismissal for "failure to state a claim upon which relief may be granted" and qualifies as a PLRA strike. § 1915(g).

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[3] Whether the First and Eleventh Circuits classify a *Heck* dismissal as one for failure to state a claim is unclear. *Compare O'Brien v. Town of Bellingham*, 943 F.3d 514, 529 (1st Cir. 2019) (stating that "[w]hether *Heck* bars § 1983 claims is a jurisdictional question"), *with Figueroa v. Rivera*, 147 F.3d 77, 81 (1st Cir. 1998) (describing the favorable-termination requirement as an "element" of plaintiff's claim); *Harrigan v. Metro Dade Police Dep't Station #4*, 977 F.3d 1185 n.4 (11th Cir. 2020) (explaining that the circuit's precedents had previously "said in dicta that *Heck* strips a federal court of jurisdiction" but also that "*Heck* deprives the plaintiff of a cause of action," and ultimately declining to decide the issue).

[4] We once suggested that *Heck* might be a variant of the *Rooker-Feldman* doctrine. *Jordahl v. Democratic Party of Va.*, 122 F.3d 192, 201–02 (4th Cir. 1997). But this discussion occurred in dicta that was not necessary to the case's disposition. *See Wideman v. Innovative Fibers LLC*, 100 F.4th 490, 497 n.7 (4th Cir. 2024). So we are not bound by this statement in *Jordahl*.

Start with *Heck's* holding. Under *Heck*, for certain damages claims having to do with convictions or sentences, "a § 1983 plaintiff must prove that the conviction or sentence has been … invalidated." 512 U.S. at 486–87. If a plaintiff's "claim for damages" flunks this requirement, then that claim "is not cognizable under § 1983." *Id.* at 487. That is, if a plaintiff cannot show invalidation, we "deny the existence of a cause of action." *Id.* at 489.

Next consider why *Heck* denied the existence of a cause of action. It's because a *Heck*-barred plaintiff has failed to "allege[] and prove[]" an element of that cause of action. *Heck*, 512 U.S. at 484. This follows from basic principles about causes of action. A cause of action is the "group of operative facts"—also known as "elements"—"giving rise to one or more bases for suing." *Cause of Action*, Black's Law Dictionary (12th ed. 2024). A plaintiff has a cause of action (that is, his action "accrues") if it is "complete and present." *Corner Post, Inc. v. Bd. of Govs. of Fed. Rsrv. Sys.*, 144 S. Ct. 2440, 2451 (2024). And a cause of action is complete and present if all its elements exist. *Id.* Rephrased in the negative, a cause of action does *not* exist only if one or more elements is missing. That means for a *Heck*-barred plaintiff to lack a cause of action, an element must be missing. And *Heck* tells us what is missing: favorable termination. *See* 512 U.S. at 489–90 ("[A] § 1983 cause of action for damages attributable to an unconstitutional conviction or sentence does not accrue until the conviction or sentence has been invalidated.").

Heck's reasoning confirms this conclusion. A § 1983 claim generally derives its "elements of damages and the prerequisites for their recovery" from whatever common-law tort is most analogous to that § 1983 claim. 512 U.S. at 483–86 (citation omitted).[5] And as *Heck* reasoned, a § 1983 claim calling into question the validity of one's conviction or confinement requires favorable termination because favorable termination is an "element" of malicious prosecution. *Id.* at 484. In *Heck's* language, "[o]ne *element* that must be *alleged* and *proved* in a malicious prosecution action is termination of the prior criminal proceeding in favor of the accused." *Id.* (emphasis added). So a plaintiff must first *allege*, and ultimately *prove*, that same *element* for a similar claim to be cognizable under § 1983. *See id.* at 489–90. Without the element, the plaintiff lacks a "complete and present cause of action" under § 1983. *McDonough v. Smith*, 588 U.S. 109, 119 (2019) (quotation marks and citations omitted); *see Heck*, 512 U.S. at 489.[6]

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[5] As we have recognized, § 1983 does not provide its own elements; instead, § 1983 is a vehicle for vindicating claims that derive their elements from elsewhere. "To identify the elements … for a § 1983 claim, we 'look first to the common law of torts' to identify the most analogous tort." *Smith v. Travelpiece*, 31 F.4th 878, 883–84 (4th Cir. 2022) (quoting *Manuel v. City of Joliet*, 137 S. Ct. 911, 910 (2017)). Once we have found "that common-law analogy …, the court incorporates its elements" into the § 1983 action. *Id.* at 884.

[6] We have described *Heck* this way before. *See Travelpiece*, 31 F.4th at 884 (describing *Heck* as "incorporating the favorable-termination element for malicious prosecution").

For this reason, a *Heck*-barred plaintiff fails to state a claim upon which relief may be granted. A plaintiff who has no "cause of action," *Heck*, 512 U.S. at 489, has no claim either.[7] The Supreme Court has recognized as much: If a plaintiff fails to plead a required element and his claim is thus "not cognizable under § 1983," the appropriate remedy is dismissal for failure to state a claim. *Estelle v. Gamble*, 429 U.S. 97, 107–08 (1976); *see also Skinner v. Switzer*, 562 U.S. 521, 533–37 (2011) (reaffirming that a plaintiff cannot "proceed under § 1983" when his claim is *Heck*-barred). Put another way, a *Heck*-barred plaintiff cannot "survive a motion to dismiss" because he cannot "plausibly allege facts that, if proven, would be sufficient to establish *each element* of the claim." *Harvey v. Cable News Network, Inc.*, 48 F.4th 257, 268–69 (4th Cir. 2022) (citations omitted) (emphasis added). All told, the upshot of *Heck's* holding—that certain plaintiffs have a cause of action only if they show favorable termination—is that when such a plaintiff *does not* show favorable termination, that plaintiff has no cause of action and thus fails to state a claim.[8]

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[7] *See, e.g., Claim*, Black's Law Dictionary (6th ed. 1990) (defining "claim" as "[a] cause of action").

[8] For this reason, *Heck* was not about subject-matter jurisdiction. The absence of a complete cause of action does not deprive a federal court of subject-matter jurisdiction. *Bell v. Hood*, 327 U.S. 678, 682 (1946) ("Jurisdiction ... is not defeated ... by the possibility that the averments might fail to state a cause of action on which petitioners could actually recover."). Since *Heck* "den[ied] the existence of a cause of action" absent the favorable-termination element, 512 U.S. at 489, the lack of

Rather than treat *Heck* as defining an element of certain causes of action under § 1983, Brunson urges us to adopt the Ninth Circuit's holding in *Washington v. L.A. Cnty*, *Sherriff's Dep't*, 833 F.3d 1048 (9th Cir. 2016). There, our sister circuit held that *Heck's* favorable-termination requirement is more like an affirmative defense than an element. *Id*. at 1056. Accordingly, the Ninth Circuit recognizes that a *Heck* dismissal is only for failure to state a claim "if there exists an 'obvious bar to securing relief on the face of the complaint.'" *Id*. at 1056; *see Rivera v. Peri & Sons Farms*, *Inc.*, 735 F.3d 892, 902 (9th Cir. 2013) ("When an affirmative defense is obvious on the face of a complaint, … a defendant can raise that defense in a motion to dismiss.").

But each reason *Washington* gives conflicts with *Heck* itself. To begin, *Washington* rationalized that the favorable-termination requirement can't be an element of a cause of action because it appears nowhere in § 1983's text. 833 F.3d at 1056. But this argument misapprehends *Heck* and § 1983 alike. *Heck* didn't purport to draw the favorable-termination requirement from § 1983's text; it drew it from an analogy to malicious prosecution. 512 U.S. at 483–86. And for good reason. By its text, § 1983 *requires* elements outside the statute itself. Section 1983 states that "Every person who, under color of [state law], … depriv[es a party] of any rights … *secured by the Constitution and laws*, shall be liable

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that element "does not implicate subject-matter jurisdiction," *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998).

to the party ….” (emphasis added). In other words, the statute “is not itself a source of substantive rights, but a method for vindicating federal rights elsewhere conferred by those parts of the United States Constitution and federal statutes that it describes.” *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979). Section 1983’s text thus contemplates that any cause of action brought using this “method,” *id.*, will necessarily require elements not enumerated in the statute. And when the cause of action resembles the common law tort of malicious prosecution, favorable termination is an element under § 1983 just as it was an element at common law. *See, e.g.*, *Carter v. Greenhow*, 114 U.S. 317, 322–23 (1885); *Thompson v. Clark*, 596 U.S. 36, 42–44 (2022); *see also supra* note 5.

Next, *Washington* reasons that favorable termination cannot be an element because it’s only required if the court makes the “threshold legal determination ... that the requested relief would undermine the underlying conviction.” 833 F.3d at 1056. This is partly true. *Heck* said that favorable termination is required only if a court determines that “a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence.” 512 U.S. at 487. But that doesn’t mean a favorable termination is not an element of certain § 1983 claims. As just explained, when a plaintiff alleges a violation of a constitutional right under § 1983, we “look to the elements of the most analogous tort as of 1871 when § 1983 was enacted.” *Thompson*, 596 U.S. at 43; *see Heck*, 512 U.S. at 483. That is how we know what elements the plaintiff

must plead and prove. So the "threshold inquiry" *Washington* refers to is both indispensable and logically prior to the elements: the court must determine what kind of action the plaintiff is bringing in order to determine *what elements* he's required to "allege[]" in the complaint and ultimately "prove[]" on the merits. *Heck*, 512 U.S. at 484.

Third, *Washington* reads *Heck* as mandating dismissal not because a plaintiff fails to plead a necessary element, but as "a matter of 'judicial traffic control'" that "most closely resembles" an affirmative defense: "the mandatory administrative exhaustion of PLRA claims." *Washington*, 833 F.3d at 1056. But this too runs headlong into *Heck*. *Heck* specifically and repeatedly said that § 1983 does not have an exhaustion requirement and that it was not creating one. 512 U.S. at 483, 488, 489. And in disclaiming any notion that it was "engraft[ing] an exhaustion requirement upon § 1983," the Court explicitly said that it was instead "deny[ing] the existence of a cause of action." *Id*. at 489. So even if dismissals for failure to state a claim sometimes function as "judicial traffic control," *Heck's* stoplight, by its very language, isn't akin to an exhaustion requirement.

Last, *Washington's* conclusion is as hard to reconcile with *Heck* as the reasons *Washington* gives for it. *Heck* made apparent that the *plaintiff* bears the burden of alleging and proving favorable termination. *Id*. at 486–87 ("[I]n order to recover damages for allegedly unconstitutional conviction or imprisonment, … a § 1983 *plaintiff must prove* that

the conviction or sentence has been [invalidated]." (emphasis added)); *id.* at 486–87 ("[T]he complaint must be dismissed unless *the plaintiff* can demonstrate that the conviction or sentence has already been invalidated." (emphasis added)). Generally, plaintiffs bear the burden of proving elements. *Cf. Ashcroft v. Iqba1*, 556 U.S. 662, 678 (2009). They don't bear the burden of alleging or proving the absence of affirmative defenses. *See Goodman v. Praxair, Inc.*, 494 F.3d 458, 464 (4th Cir. 2007). Defendants bear that burden.

In sum, everything in *Heck* points to the conclusion that favorable termination is an element of a plaintiff's cause of action under § 1983. Arguments to the contrary don't hold water. And without a cause of action, a plaintiff has no claim upon which relief may be granted. So the dismissal of an action under *Heck* is a dismissal for failure to state a claim and thus a strike under the PLRA.

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"[T]o be a good judge and a good umpire, you [] have to follow the established rules and the established principles." Brett M. Kavanaugh, *The Judge as Umpire: Ten Principles*, 65 Cath. U. L. Rev. 683, 686 (2016). *Heck* established the rule that a plaintiff who asserts a damages claim challenging his conviction or confinement fails to state a claim unless he alleges and proves favorable termination. Since Brunson has filed at least three prior actions that were dismissed as *Heck*-barred, our role as umpires is to strike him out under the PLRA.

Brunson's motion to proceed *in forma pauperis* is thus

DENIED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:21-CT-3063-FL

JONATHAN EUGENE BRUNSON,	)	
	)	
Plaintiff,	)	
v.	)	ORDER
	)	
JOSH STEIN, BARRY H. BLOCH, JESSICA B. HELMS, ELIZABETH B. JENKINS, BENJAMIN S. GURLITZ, CHARLTON L. ALLEN, PHILIP A. BADDOUR, III, YOLANDA K. STITH, MYRA L. GRIFFIN, KENNETH L. GOODMAN, JAMES C. GILLEN, TAMMY R. NANCE, CHRISTOPHER C. LOUTIT, BRIAN R. LIEBMAN, AMANDA M. PHILLIPS, KIMBERLEE FARR, BRITTANY A. PUCKETT, and EMILY M. BAUCOM,	)	
	)	
Defendants.	)	

Plaintiff, a state inmate proceeding pro se, commenced this action by filing complaint on March 2, 2021, alleging claims for violations of his civil rights pursuant to 42 U.S.C. § 1983. The matter is before the court on plaintiff's motion to proceed without prepayment of fees (DE 4). For the reasons

stated below, the court vacates the April 21, 2021, order granting the motion to proceed without prepayment of fees, denies said motion, and directs plaintiff to pay the full $402.00 filing fee.

The Prison Litigation Reform Act ("PLRA") bars a prisoner from bringing a civil action in forma pauperis "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." 28 U.S.C. § 1915(g). This subsection is known as the "three-strikes" provision of the PLRA. *See Tolbert v. Stevenson*, 635 F.3d 646, 650 (4th Cir. 2011); *Banks v. Hornak*, 698 F. App'x 731, 734 & n.2 (4th Cir. 2017).

At least three previous civil rights actions filed by plaintiff have been dismissed as frivolous or for failure to state a claim on which relief may be granted. *See Brunson v. Ammons*, 5:19-CT-3081-D (E.D.N.C. Jan. 31, 2020), *aff'd* No. 20-6216 (4th Cir. June 19, 2020); *Brunson v. North Carolina*, No. 5:17-CT-3083-D (E.D.N.C. Oct. 11, 2017), aff'd No. 18-6102 (4th Cir. May 21, 2012); *Brunson v. Obama*, No. 5:14-CT-3291-FL (E.D.N.C. June 9, 2015); *Brunson v. Office of the Governor*, No. 5:11-CT-3252-FL (E.D.N.C. Jan. 4, 2012); *Brunson v. Hamilton*, No. 5:11-CT-3138-FL (E.D.N.C. Nov. 28, 2011). Accordingly, plaintiff has incurred three strikes under the PLRA.

Section 1915(g) permits a prisoner with three strikes to proceed in forma pauperis when his complaint alleges an "imminent danger of serious physical injury." *See* 28 U.S.C. § 1915(g). The imminent danger exception "focuses on the risk that the conduct complained of threatens continuing or future injury, not whether the inmate deserves a remedy for past misconduct." *Johnson v. Warner*, 200 F. App'x 270, 272 (4th Cir. 2006) (quoting *Martin v. Shelton*, 319 F.3d 1048, 1050 (8th Cir. 2003)). Here, plaintiff's complaint does not allege that he is in imminent danger of serious physical injury.

Based on the foregoing, the court VACATES the April 21, 2021, order allowing plaintiff to proceed without prepayment of fees, and DENIES the motion requesting the same (DE 4). Plaintiff is DIRECTED to pay the $402.00 filing fee within **30 days** of entry of this order. *See* Local Civ. R. 3.2. The filing fee can be paid by remitting payment to the Clerk, U.S. District Court, P.O. Box 25670, Raleigh, NC 27611. In the event plaintiff fails to pay the filing fee by the deadline set forth above, the clerk shall, without further order of the court, terminate all pending motions as moot and enter judgment dismissing this action without prejudice for failure to prosecute.

SO ORDERED, this the 29th day of November, 2021.

LOUISE W. FLANAGAN [h/w]
LOUISE W. FLANAGAN
United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:21-CT-3063-FL

JONATHAN EUGENE BRUNSON #0493187,	)	
Plaintiff,	)	ORDER
v.	)	
JOSH STEIN, et al.,	)	
Defendants.	)	

Plaintiff has initiated a civil action in this court and has filed a motion to proceed in the district court without prepaying fees and costs [D.E. 4]. Plaintiff has demonstrated the requisite inability to pay such fees and the motion to proceed in the district court without prepaying fees and costs is ALLOWED, pursuant to 28 U.S.C. § 1915(a). Notwithstanding allowance of the motion, pursuant to 28 U.S.C.§ 1915(b)(1) and (2), incarcerated plaintiffs who have initiated civil actions are required to pay the entire **$350.00** filing fee. This fee is to be collected in two stages. The prisoner immediately owes an initial partial filing fee, equal to 20 percent of the greater of (1) the average monthly deposits to the prisoner's trust fund account or (2) the account's average monthly balance for the

six-month period immediately preceding the filing of the complaint. The remainder must be collected in monthly payments of 20 percent of the preceding month's income credited to the plaintiff's trust fund account.

In this case, the court has calculated the plaintiffs initial partial filing fee to be **$19.00**. The appropriate officials at the correctional facility at which the plaintiff is incarcerated are hereby ORDERED to deduct the initial partial filing fee of **$19.00** from the plaintiff's trust fund account. If the account has insufficient funds to pay the initial filing fee, all available funds must be deducted, as well as all incoming deposits, until the initial filing fee of **$19.00** is paid in full.

Once the initial filing fee is paid in full, the appropriate officials at the correctional facility at which the plaintiff is incarcerated shall deduct monthly payments of 20 percent of the preceding month's income credited to the plaintiff's trust fund account, until the remaining **$331.00** of the filing fee is paid in full. Any money in the plaintiffs trust fund account may be deducted to pay that fee.

If an inmate has been ordered to make payments in more than one action or appeal in the federal courts, the Prison Litigation Reform Act of 1995 calls for "monthly payments of 20 percent of the preceding month's income" simultaneously for each action pursued. *Bruce v. Samuels*, 136 S. Ct. 627, 632 (2016) (quoting 28 U.S.C. § 1915(b)(2)).

In accordance with the Court's general agreement with the North Carolina Department of Public Safety, payments may be aggregated by the Department until the total funds exceed $50.00. Payments must be made payable to "Clerk, U.S. District Court" and transmitted to:

U.S. District Court
P.O. Box 25670
Raleigh, NC 27611
Attn: CRT Section

In the event the plaintiff is transferred to a different correctional facility, this financial responsibility must be transferred to the new correctional facility.

SO ORDERED, this 21 day of April 2021.

Robert B. Jones, Jr. [h/w]
Robert B. Jones, Jr.
United States Magistrate Judge