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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MICHAEL CORY LINDSEY
CDC #K-89803,

Plaintiff,

vs.

J. TILTON, et al.,

Defendants.

Civil No. 06-1945 W (RBB)

**ORDER DISMISSING CIVIL
ACTION FOR FAILING TO PAY
FILING FEE OR MOVE TO
PROCEED *IN FORMA PAUPERIS*
PURSUANT TO 28 U.S.C. § 1915(a)**

Plaintiff, an inmate currently incarcerated at the Richard J. Donovan Correctional Facility in San Diego, California, and proceeding pro se, has filed a civil rights complaint pursuant to 42 U.S.C. § 1983.

I. Failure to Pay Filing Fee or Request IFP Status

Effective April 9, 2006, all parties instituting any civil action, suit or proceeding in a district court of the United States, other than a writ of habeas corpus, must pay a filing fee of \$350. See 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay only if the party is granted leave to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a). See *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

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1 Here, Plaintiff has neither prepaid the \$350 filing fee required to commence this action,
2 nor has he submitted a Motion to Proceed IFP. Therefore, this action is subject to immediate
3 dismissal pursuant to 28 U.S.C. § 1914(a).

4 **II. Conclusion and Order**

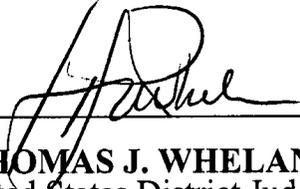
5 For the reasons set forth above, the Court hereby:

6 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350
7 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

8 (2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is stamped
9 "Filed" to: (a) prepay the entire \$350 civil filing fee in full; *or* (b) complete and file a Motion
10 to proceed IFP which includes a certified copy of his trust account statement for the 6-month
11 period preceding the filing of his Complaint pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL.
12 CivLR 3.2(b).

13 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with the
14 Court's approved form "Motion and Declaration in Support of Motion to Proceed *In Forma*
15 *Pauperis*." If Plaintiff fails to either prepay the \$350 civil filing fee or complete and submit the
16 attached Motion to Proceed IFP within that time, this action shall remain dismissed without
17 prejudice and without further Order of the Court.

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19 DATED: 9/28/06



THOMAS J. WHELAN
United States District Judge

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