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

MARK A. FLINN,
CDCR #T-86797,

Plaintiff,

vs.

OFFICER FONTAINE, et al.,

Defendants.

Civil No. 08-0164 J (RBB)

**ORDER DISMISSING CASE
WITHOUT PREJUDICE FOR
FAILING TO PAY FILING FEES
PURSUANT TO 28 U.S.C. § 1914(a)
AND/OR MOVE TO PROCEED
IN FORMA PAUPERIS
PURSUANT TO
28 U.S.C. § 1915(a)**

Mark Flinn, (“Plaintiff”), a state prisoner currently incarcerated at the California State Prison - Sacramento located in Represa, California, and proceeding pro se, has filed this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff alleges that his constitutional rights were violated when he was housed at the R.J. Donovan Correctional Facility in San Diego.

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).

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:

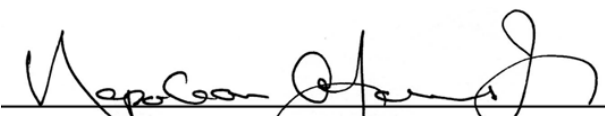
6 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350
7 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

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).

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

17 **IT IS SO ORDERED.**

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19 DATED: February 8, 2008

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21 HON. NAPOLEON A. JONES, JR.
United States District Judge

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