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8   **UNITED STATES DISTRICT COURT**

9   **SOUTHERN DISTRICT OF CALIFORNIA**

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11   WILBUR LANN PITTMAN,   Civil No.   09-0546 IEG (AJB)
     CDCR #F-64353,
12
                                    Plaintiff,   **ORDER DISMISSING CIVIL**
13   **ACTION WITHOUT PREJUDICE**
                                                   FOR FAILING TO PAY
14   vs.   **FILING FEE REQUIRED**
                                                   BY 28 U.S.C. § 1914(a) AND/OR
15   **FAILING TO MOVE TO PROCEED**
     WILLIAM H. KENNDY, Judge;   ***IN FORMA PAUPERIS***
16   DAVID J. DANIELSON, Judge;   **PURSUANT TO**
     D.L. RUNNELS;   **28 U.S.C. § 1915(a)**
17   M. MARTEL,

18   Defendants.

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20   Plaintiff, an inmate currently incarcerated at the California Rehabilitation Center in

21   Norco, California and proceeding pro se, has filed a civil rights Complaint pursuant to 42 U.S.C.

22   § 1983. Plaintiff seeks injunctive relief as well as trillions of dollars in general and punitive

23   damages against San Diego Superior Court Judges and two other persons who are named but not

24   further identified. Plaintiff's Complaint comprises three paragraphs of incomprehensible factual

25   allegations and asserts no violations of constitutional law. (Compl. at 4-6.)

26   **I.   Failure to Pay Filing Fee or Request IFP Status**

27   All parties instituting any civil action, suit or proceeding in any district court of the

28   United States, except an application for writ of habeas corpus, must pay a filing fee of $350. *See*

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1 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay this filing fee only

2 if the party is granted leave to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C.

3 § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*,

4 169 F.3d 1176, 1177 (9th Cir. 1999). Here, Plaintiff has not prepaid the $350 filing fee required

5 to commence a civil action, nor has he submitted a Motion to Proceed IFP. Therefore, the case

6 must be dismissed pursuant to 28 U.S.C. § 1914(a). *Id.*

7 **II**.   **Conclusion and Order**

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

9   (1)   **DISMISSES** this action sua sponte without prejudice for failing to pay the $350

10 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

11   (2)   **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is filed to:

12 (a) prepay the entire $350 civil filing fee in full; *or* (b) complete and file a Motion to Proceed

13 IFP which includes a certified copy of his trust account statement for the 6-month period

14 preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2(b).[1]

15   **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with this

16 Court's approved form "Motion and Declaration in Support of Motion to Proceed *In Forma*

17 *Pauperis*." If Plaintiff fails to either prepay the $350 civil filing fee or complete and submit the

18 enclosed Motion to Proceed IFP within that time, this action shall remain dismissed without

19 prejudice and without further Order of the Court.

20 **DATED: March 25, 2009**

21   _Irma E. Gonzalez_

22   **IRMA E. GONZALEZ, Chief Judge**
                                                            United States District Court

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24   [1] Plaintiff is cautioned that if he chooses to proceed further with this action either by paying the full civil filing fee required by 28 U.S.C. § 1914(a), or moving to proceed IFP, his patently insubstantial

25 Complaint will be subject to the mandatory screening and sua sponte dismissal provisions of 28 U.S.C. § 1915A(b) and 28 U.S.C. § 1915(e)(2)(b). *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000)

26 (en banc) (noting that 28 U.S.C. § 1915(e) "not only permits but requires" the court to sua sponte dismiss an *in forma pauperis* complaint that fails to state a claim); *see also Resnick v. Hayes*, 213 F.3d

27 443, 446 (9th Cir. 2000) (discussing sua sponte screening required by 28 U.S.C.§ 1915A(b)). Moreover, such a dismissal may be counted as a "strike" against Plaintiff if he requests IFP status in any future

28 civil action filed while he is incarcerated. *See Andrews*, 493 F.3d at 1052 (under the Prison Litigation Reform Act, "[p]risoners who have repeatedly brought unsuccessful suits may entirely be barred from IFP status under the three strikes rule[.]").