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

WILBUR LANN PITTMAN,  
CDCR #F-64353,

Plaintiff,

vs.

D. PEARSON;  
MERCER;  
P. FLORST,

Defendants.

Civil No. 09-0931 IEG (PCL)

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

Plaintiff, an inmate currently incarcerated at the California Rehabilitation Center (“CRC”) in Norco, 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**

All parties instituting any civil action, suit or proceeding in any district court of the United States, except an application for 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 this filing fee only if the party is granted leave to proceed *in forma pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a). See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). Here, Plaintiff has not prepaid the \$350 filing fee required

1 to commence a civil action, nor has he submitted a Motion to Proceed IFP. Therefore, the case  
2 must be dismissed pursuant to 28 U.S.C. § 1914(a). *Id.*

3 **II. Conclusion and Order**


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

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

7 (2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is filed to:  
8 (a) prepay the entire \$350 civil filing fee in full; *or* (b) complete and file a Motion to Proceed  
9 IFP which includes a certified copy of his trust account statement for the 6-month period  
10 preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2(b).<sup>1</sup>

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

16 **DATED: May 7, 2009**

17   
18 **IRMA E. GONZALEZ**, Chief Judge  
19 **United States District Court**

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23 <sup>1</sup> Plaintiff is cautioned that if he chooses to proceed further with this action either by paying the  
24 full civil filing fee required by 28 U.S.C. § 1914(a), or moving to proceed IFP, his Complaint will be  
25 subject to the mandatory screening and sua sponte dismissal provisions of 28 U.S.C. § 1915A(b) and  
26 28 U.S.C. § 1915(e)(2)(b). *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)  
27 (noting that 28 U.S.C. § 1915(e) “not only permits but requires” the court to sua sponte dismiss an *in*  
28 *forma pauperis* complaint that fails to state a claim); *see also Resnick v. Hayes*, 213 F.3d 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 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[.]”). Finally, to the extent Plaintiff’s Complaint, which is almost wholly  
uncomprehensible, alleges civil rights violations occurring at CRC in Norco, it at the very least lacks  
proper venue. *See* 28 U.S.C. § 84(d); 28 U.S.C. § 1391(b), 1406(a).