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

STEPHEN GARCIA,
Booking #7021264,

Plaintiff,

vs.

GEORGE BAILEY CORRECTIONAL
FACILITY,

Defendants.

Civil No. 10-1199 JAH (NLS)

**ORDER DISMISSING CIVIL
ACTION FOR FAILING TO PAY
FILING FEES PURSUANT TO
28 U.S.C. § 1914(a) AND FAILING
TO MOVE TO PROCEED
IN FORMA PAUPERIS
PURSUANT TO
28 U.S.C. § 1915(a)**

Plaintiff, currently detained at Fresno County Detention Facility located in Fresno, California, and proceeding pro se, initially filed a civil complaint in the Eastern District of California. United States Magistrate Judge Michael Seng determined that venue was proper in the Southern District of California and transferred the matter to this Court on June 4, 2010.

I.

FAILURE TO PAY FILING FEE OR REQUEST IFP STATUS

Any party instituting a 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

1 leave to proceed *in forma pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v.*
2 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

3 Plaintiff has not paid the \$350 filing fee required to initiate this civil action, however; nor
4 has he submitted a motion to proceed IFP pursuant to 28 U.S.C. § 1915(a).

5 **II.**

6 **CONCLUSION AND ORDER**

7 Accordingly, the Court hereby:

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

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

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

19 **IT IS SO ORDERED.**

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21 DATED: June 16, 2010

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23 HON. JOHN A. HOUSTON
24 United States District Judge
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