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

MELVIN MCCORMICK ad EDGAR TED
CAVES,

Plaintiff,

vs.

CALIFORNIA PIZZA KITCHEN, CITY OF
DALLAS POLICE DEPARTMENT, EDDIE
CRAWFORD, RICK ROSENFELD,
LARRY FLAX, MSSTY VAUGHN,

Defendant.

CASE NO. 10CV1469-MMA (WVG)

**ORDER DISMISSING CASE FOR
LACK OF PROPER VENUE
PURSUANT TO 28 U.S.C. § 1406(a);**

**DENYING AS MOOT
PLAINTIFFS’ MOTIONS FOR
LEAVE TO PROCEED *IN FORMA
PAUPERIS***

[Doc. Nos. 2, 3]

On July 14, 2010, Plaintiffs filed the instant action alleging violations of their civil rights. (Doc. No. 1.) Plaintiffs did not prepay the \$350 civil filing fee mandated by 28 U.S.C. § 1914(a); instead they have filed Motions to Proceed *In Forma Pauperis* (“IFP”). (Doc. Nos. 2, 3.)

**I.
Lack of Proper Venue**

Upon initial review of the Complaint, the Court finds that Plaintiffs’ case lacks proper venue. Venue may be raised by a court sua sponte where the defendants have not yet filed a responsive pleading and the time for doing so has not run. *Costlow v. Weeks*, 790 F.2d 1486, 1488 (9th Cir. 1986). “A civil action wherein jurisdiction is not founded solely on diversity

1 of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial
2 district where any defendant resides, if all defendants reside in the same State, (2) a judicial
3 district in which a substantial part of the events or omissions giving rise to the claim occurred,
4 or a substantial part of property that is the subject of the action is situated, or (3) a judicial
5 district in which any defendant may be found, if there is no district in which the action may
6 otherwise be brought.” 28 U.S.C. § 1391(b); *Costlow*, 790 F.2d at 1488; *Decker Coal Co. v.*
7 *Commonwealth Edison Co.*, 805 F.2d 834, 842 (9th Cir. 1986). “The district court of a district
8 in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be
9 in the interests of justice, transfer such case to any district in or division in which it could have
10 been brought.” 28 U.S.C. § 1406(a).

11 Here, Plaintiffs allege that they are Texas residents, and assert claims against
12 Defendants who are either residents of Dallas, Texas or Los Angeles, California. Plaintiffs’
13 claims bear no relation whatsoever to the Southern District of California. (Doc. No. 1.)
14 Therefore, the Court finds venue is not proper in the Southern District of California. *See* 28
15 U.S.C. § 1391(b); *Costlow*, 790 F.2d at 1488.

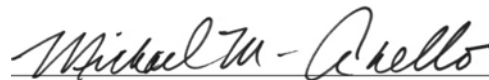
16 **II.**

17 **Conclusion and Order**

18 Accordingly, **IT IS HEREBY ORDERED** that this case is **DISMISSED** for lack of
19 proper venue pursuant to 28 U.S.C. § 1406(a). The Court **DENIES AS MOOT** Plaintiffs’
20 pending motions for leave to proceed IFP. (Doc. Nos. 2, 3.)

21 **IT IS SO ORDERED.**

22 DATED: August 4, 2010

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24 Hon. Michael M. Anello
25 United States District Judge
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