

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

JUAN CRUZ-ORTEGA,
BOP #10515-298,

Plaintiff,

vs.

SIX UNKNOWN NAMED AGENTS;
BARACK OBAMA, President,

Defendants.

Civil No. 10-1472 MMA (CAB)

**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 Airpark Unit Correctional Center located in Big Spring, Texas and proceeding pro se, filed this action entitled “Civil Rights Action Under 42 USCS 1983 Complints. [sic] Under 2255.” Plaintiff has not prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a) to commence a civil action; nor has he filed a Motion to Proceed *In Forma Pauperis* pursuant to 28 U.S.C. § 1915(a).

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.

1 § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*,
2 169 F.3d 1176, 1177 (9th Cir. 1999).

3 Plaintiff has not prepaid the \$350 filing fee required to commence a civil action, nor has
4 he submitted a Motion to Proceed IFP. Therefore, the case must be dismissed pursuant to 28
5 U.S.C. § 1914(a).

6 **II. Conclusion and Order**


7 For the reasons set forth above, 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).¹

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 45 days, this action shall remain dismissed without
18 prejudice and without further Order of the Court.

19
20 DATED: July 20, 2010

21 

22 Hon. Michael M. Anello
23 United States District Judge

24
25 _____
26 ¹ Plaintiff is cautioned that if he chooses to proceed further with this action either by paying the
27 full civil filing fee required by 28 U.S.C. § 1914(a), or moving to proceed IFP, his Complaint will be
28 screened and is likely to be dismissed sua sponte pursuant to 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) (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 443, 446 (9th Cir. 2000)
(discussing sua sponte screening required by 28 U.S.C. § 1915A(b)).