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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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

10
11 PEREA FLOREZ ROSALIO,
12 BOP #12526-298,

13 Plaintiff,

14 vs.

15 SIX UNKNOWN NAMED AGENTS;
16 BARACK OBAMA, Mr. President of the
17 United States,

18 Defendants.

Civil No. 11cv559 BEN (NLS)

**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)**

19 Plaintiff, an inmate currently incarcerated at the Big Spring Correctional Center located in
20 Big Spring, Texas and proceeding pro se, filed a one-page complaint entitled "Civil Right Action
21 under the Writ of Summons and Complaint for Federal or Law of State," which the Clerk has
22 filed, for lack of a better option, as a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff
23 has not prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a) to commence a civil action;
24 nor has he filed a Motion to Proceed *In Forma Pauperis* ("IFP") pursuant to 28 U.S.C.
25 § 1915(a).

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*

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 IFP pursuant to 28 U.S.C. § 1915(a). *See Andrews v.*
3 *Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th
4 Cir. 1999).

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

8 **II. Conclusion and Order**

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

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

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

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

21
22 DATED: 3/28/2011


23 HON. ROGER T. BENITEZ
24 United States District Judge

25 ¹ Plaintiff is cautioned that if he chooses to proceed further with this action either by paying the
26 full civil filing fee required by 28 U.S.C. § 1914(a), or moving to proceed IFP, his Complaint, which is
27 comprised of single paragraph of legal jargon, will be screened and no doubt dismissed as frivolous
28 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 Rhodes*
v. Robinson, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing sua sponte screening required by 28 U.S.C.
§ 1915A(b) of all prisoner complaints).