

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

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

GERALD LEE MILLER,  
CDCR # C-92075,

Plaintiff,

vs.

L.S. McEWEN; G.J. JANDA; R.  
LIZARRAGA; DR. RICHARD  
KORNBLUTH; PARAMO; H. AMEZCUA;  
S. HARDMAN; ALVAREZ; T. ALVAREZ;  
B. DOMINGUES; C. VILLALOBOS;  
A. CASTRO; J. FLORES; M. VITELA;  
ZAMORA,

Defendants.

Civil No. 12cv1481 BEN (WVG)

**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 Kern Valley State Prison located in Delano, California, and proceeding pro se, has filed this civil rights action 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.

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 Because Plaintiff has neither prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a)  
4 to commence a civil action; nor filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant  
5 to 28 U.S.C. § 1915(a), this action must be dismissed pursuant to 28 U.S.C. § 1914(a). *Id.*

6 **II. Conclusion and Order**

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

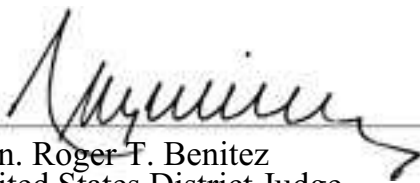
8 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350  
9 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

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).

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  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATED: June 26, 2012

  
\_\_\_\_\_  
Hon. Roger T. Benitez  
United States District Judge