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

JOHN ROETTGEN,
CDCR #V-05142,

Plaintiff,

vs.

D. FOSTON, et al.,

Defendants.

Civil No. 13cv1101 GPC (BGS)

**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)**

20 John Roettgen (“Plaintiff”), currently housed at the Richard J. Donovan Correctional
21 Facility (“RJD”) located in San Diego, California, and proceeding pro se, has filed a civil action
22 pursuant to 42 U.S.C. § 1983.

23 **I. Failure to Pay Filing Fee or Request IFP Status**

24 All parties instituting any civil action, suit or proceeding in any district court of the
25 United States, except an application for writ of habeas corpus, must pay a filing fee of \$350
26 filing pursuant to 28 U.S.C. § 1914(a). In addition, all parties filing civil actions must pay an
27 additional administrative fee of \$50. An action may proceed despite a party’s failure to pay the
28 filing fee only if the party is granted leave to proceed *in forma pauperis* (“IFP”) pursuant to 28

1 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez*
2 *v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). If a party is granted IFP status, the \$50
3 administrative fee is waived.

4 Plaintiff has not prepaid the \$350 filing fee and \$50 administrative fee required to
5 commence a civil action, nor has he submitted a Motion to Proceed IFP pursuant to 28 U.S.C.
6 § 1915(a). Therefore, the action cannot yet proceed. *Id.*

7 **II. Conclusion and Order**

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

9 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350
10 filing fee, along with the \$50 administrative fee or file a Motion to Proceed IFP pursuant to 28
11 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 and \$50 administrative fee in full; *or* (b) complete and
14 file a Motion to Proceed IFP which includes a certified copy of his trust account statement for
15 the 6-month period preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2); S.D. CAL.
16 CivLR 3.2(b). If Plaintiff chooses to file a Motion to Proceed IFP which the Court later grants,
17 the \$50 administrative fee will be waived.

18 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with this
19 Court’s approved form “Motion and Declaration in Support of Motion to Proceed *In Forma*
20 *Pauperis*.” If Plaintiff fails to either prepay the \$350 civil filing fee, along with the \$50
21 administrative fee or complete and submit the enclosed Motion to Proceed IFP within that time,
22 this action shall remain dismissed without prejudice and without further Order of the Court.

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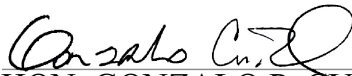
24 DATED: May 31, 2013

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HON. GONZALO P. CURIEL
United States District Judge