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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

GREGORY KONRATH,  
Inmate #254068,  
  
Plaintiff,  
  
vs.  
  
LOMA LINDA UNIVERSITY  
MEDICAL CENTER,  
  
Defendant.

Case No.: 3:16-cv-03013-WQH-JMA

**ORDER DISMISSING CIVIL  
ACTION:**

**1) 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)**

**AND**

**2) FOR LACK OF PROPER VENUE  
PURSUANT TO 28 U.S.C. § 1391(b)  
AND § 1406(a)**

Plaintiff, a prisoner currently incarcerated at Westville Correctional Facility in Westville, Indiana, and proceeding pro se, has filed a civil rights complaint pursuant to 42 U.S.C. § 1983 (ECF No. 1). Plaintiff seeks to sue the Loma Linda University Medical Center, in Loma Linda, California, for discriminating against him and failing to accommodate his “Type II bi-polar disorder” while he was employed as an orthopedic

1 surgeon there almost twenty years ago, in July 1998. (ECF No. 1 at 1-3).

2 **I. Failure to Pay Filing Fee or Request In Forma Pauperis (“IFP”) Status**

3 All parties instituting any civil action, suit or proceeding in a district court of the  
4 United States, except an application for writ of habeas corpus, must pay a filing fee of  
5 \$400. *See* 28 U.S.C. § 1914(a).<sup>1</sup> An action may proceed despite a plaintiff’s failure to  
6 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.  
7 § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*  
8 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, as Plaintiff is a prisoner in this  
9 case, even if he is granted leave to commence his suit IFP, he will remain obligated to  
10 pay the entire filing fee in “increments[,]” *see Williams v. Paramo*, 775 F.3d 1182, 1185  
11 (9th Cir. 2015), regardless of whether his case is ultimately dismissed. *See* 28 U.S.C.  
12 § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

13 Plaintiff has not prepaid the \$400 in filing and administrative fees required to  
14 commence this civil action and he has not filed a Motion to Proceed IFP which complies  
15 with 28 U.S.C. § 1915(a)(1) and (2). Therefore, his case cannot yet proceed. *See* 28  
16 U.S.C. § 1914(a); *Andrews*, 493 F.3d at 1051.

17 **II. Venue**

18 Venue may be raised by a court sua sponte where the defendant has not yet filed a  
19 responsive pleading and the time for doing so has not run. *Costlow v. Weeks*, 790 F.2d  
20 1486, 1488 (9th Cir. 1986). Section 1391(b) of Title 28 of the U.S. Code provides, in  
21 pertinent part, that a “civil action may be brought in – (1) a judicial district in which any  
22 defendant resides, if all defendants are residents of the State in which the district is  
23 located; [or] (2) a judicial district in which a substantial part of the events or omissions  
24 giving rise to the claim occurred, or a substantial part of property that is the subject of the

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27 <sup>1</sup> In addition to the \$350 statutory fee, civil litigants must pay an additional administrative  
28 fee of \$50. *See* 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court  
Misc. Fee Schedule, § 14 (eff. Dec. 1, 2014)). The additional \$50 administrative fee does  
not apply to persons granted leave to proceed IFP. *Id.*

1 action is situated[.]” 28 U.S.C. § 1391(b); *Costlow*, 790 F.2d at 1488; *Decker Coal Co. v.*  
2 *Commonwealth Edison Co.*, 805 F.2d 834, 842 (9th Cir. 1986). “The district court of a  
3 district in which is filed a case laying venue in the wrong division or district shall  
4 dismiss, or if it be in the interests of justice, transfer such case to any district or division  
5 in which it could have been brought.” 28 U.S.C. § 1406(a).

6 While the Court would normally grant Plaintiff an opportunity to either pay the full  
7 filing fee or file a Motion to Proceed IFP, an initial review of his Complaint further  
8 reveals that he has filed his case in the wrong district. Plaintiff is currently incarcerated in  
9 Indiana, and he seeks to sue the Loma Linda University Medical based on incidents that  
10 took place there. (ECF No. 1 at 1).

11 The City of Loma Linda is located in the County of San Bernardino, California,  
12 and it is within the Central District of California, Eastern Division. *See* 28 U.S.C.  
13 § 84(c)(1). *See also* 28 U.S.C. § 84(d) (“The Southern District [of California] comprises  
14 the counties of Imperial and San Diego.”); 28 U.S.C. § 1391(b); *Costlow*, 790 F.2d at  
15 1488. Because no claim is alleged to have arisen in, and no Defendant is alleged to reside  
16 in either San Diego or Imperial County, the Court finds dismissal of the action without  
17 prejudice based on lack of proper venue is also appropriate. *See* 28 U.S.C. § 1406(a).

### 18 **III. Conclusion and Order**

19 Accordingly, the Court **DISMISSES** this action sua sponte without prejudice  
20 based on Plaintiff’s failure to pay the \$400 filing fee required by 28 U.S.C. § 1914(a), his  
21 failure to file a Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a), and for lack of  
22 proper venue pursuant to 28 U.S.C. § 1391(b) and § 1406(a).

### 23 **IT IS SO ORDERED.**

24 Dated: May 3, 2017

25   
26 Hon. William Q. Hayes  
27 United States District Court  
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