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

BY:  DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

PHILLIP FIGURES,  
CDCR #19908047,

Plaintiff,

vs.

VICTORVILLE USP PRISON, et al.,  
Defendants.

Case No.: 3:17-cv-00082-BEN-MDD

**ORDER DISMISSING COMPLAINT  
FOR FAILURE TO PAY FILING  
FEES OR APPLICATION TO  
PROCEED *IN FORMA PAUPERIS***

Phillip Figures (“Plaintiff”), who is currently incarcerated at the U.S. Penitentiary located in Adelanto, California, has filed a civil rights action. (Doc. No. 1.) Plaintiff claims his constitutional rights were violated while housed at the Victorville U.S. Penitentiary. See Doc. No. 1 at 1.

**A. Filing Fee**

All parties instituting any civil action in a district court must pay a filing fee. 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff’s failure to prepay the entire fee only if the plaintiff is granted leave to proceed *in forma pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a).

1 Under 28 U.S.C. § 1915(a)(1),

2 any court of the United States may authorize the  
3 commencement, prosecution or defense of any suit, action or  
4 proceeding . . . without prepayment of fees or security therefor,  
5 by a person who submits an affidavit that includes a statement  
6 of all assets such [person] possesses that the person is unable to  
7 pay such fees or give security therefor.

8 Plaintiff has not paid the filing fee or filed an application to proceed IFP. Accordingly,  
9 Plaintiff's action is **DISMISSED without prejudice**. If Plaintiff decides to refile his  
10 complaint, he must pay the filing fee or file an application to proceed IFP pursuant to 28  
11 U.S.C. § 1915(a).

12 **B. Venue**

13 Additionally, upon initial review, the Court finds that Plaintiff's action appears to  
14 lack proper venue. Venue may be raised by a court *sua sponte* where the defendant has  
15 not yet filed a responsive pleading and the time for doing so has not run. Costlow v.  
16 Weeks, 790 F.2d 1486, 1488 (9th Cir. 1986).

17 Section 1391(b) of Title 28 of the U.S. Code provides, in pertinent part, that a  
18 "civil action may be brought in—(1) a judicial district in which any defendant resides, if  
19 all defendants are residents of the State in which the district is located; [or] (2) a judicial  
20 district in which a substantial part of the events or omissions giving rise to the claim  
21 occurred, or a substantial part of property that is the subject of the action is situated[.]"  
22 28 U.S.C. § 1391(b); Costlow, 790 F.2d at 1488; Decker Coal Co. v. Commonwealth  
23 Edison Co., 805 F.2d 834, 842 (9th Cir. 1986). "The district court of a district in which is  
24 filed a case laying venue in the wrong division or district shall dismiss, or if it be in the  
25 interests of justice, transfer such case to any district or division in which it could have  
26 been brought." 28 U.S.C. § 1406(a).

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1 Plaintiff alleges that the substantial part of the events or omissions giving rise to  
2 his claims occurred at the U.S. Penitentiary located in Adelanto, California, which is  
3 located in San Bernardino County. See Doc. No. 1 at 1-2; 28 U.S.C. § 84(c)(1))  
4 (including San Bernardino County within the jurisdictional boundaries of the Central  
5 District of California). Thus, no claim is alleged to have arisen and no Defendant is  
6 alleged to reside in either San Diego or Imperial County. See Doc. No. 1 at 2; 28 U.S.C.  
7 § 84(d) (“The Southern District comprises the counties of Imperial and San Diego.”).

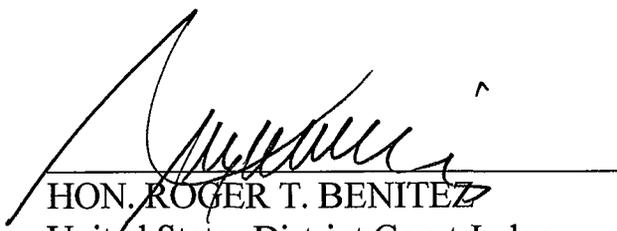
8 In short, the facts alleged in the Complaint indicate that venue is proper in the  
9 Central District of California pursuant to 28 U.S.C. § 84(c)(1), but not in the Southern  
10 District of California pursuant to 28 U.S.C. § 84(d). See 28 U.S.C. § 1391(b); Costlow,  
11 790 F.2d at 1488. As a result, the Court advises Plaintiff that if he decides to refile his  
12 action, his case should be filed in the Central District of California.

### 13 CONCLUSION & ORDER

14 The Complaint is **DISMISSED without prejudice** for failing to pay the filing fee.

15 **IT IS SO ORDERED.**

16  
17 DATED: February 13, 2017

18   
19 HON. ROGER T. BENITEZ  
20 United States District Court Judge  
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