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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GREGORY KONRATH,
Inmate #254068,

Plaintiff,

vs.

LOS ANGELES POLICE DEPT.,

Defendant.

Case No.: 3:17-cv-00345-BAS-PCL

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 Los Angeles Police Department, on behalf of the estate of his late brother, for using excessive force while effecting his brother’s arrest in 1994. (Id. at 1-2.)

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

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

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

16 **II. Venue**

17 While the Court would normally grant Plaintiff an opportunity to either pay the full
18 filing fee or file a Motion to Proceed IFP, an initial review of his Complaint further reveals
19 that, among other pleading deficiencies, he has filed his case in the wrong district. Venue
20 may be raised by a court sua sponte where the defendant has not yet filed a responsive
21 pleading and the time for doing so has not run. *Costlow v. Weeks*, 790 F.2d 1486, 1488 (9th
22 Cir. 1986).

23 Section 1391(b) of Title 28 of the U.S. Code provides, in pertinent part, that a “civil
24 action may be brought in – (1) a judicial district in which any defendant resides, if all
25

26 ¹ In addition to the \$350 statutory fee, civil litigants must pay an additional administrative
27 fee of \$50. See 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court
28 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 defendants are residents of the State in which the district is located; [or] (2) a judicial
2 district in which a substantial part of the events or omissions giving rise to the claim
3 occurred, or a substantial part of property that is the subject of the action is situated[.]” 28
4 U.S.C. § 1391(b); see also Costlow, 790 F.2d at 1488; Decker Coal Co. v. Commonwealth
5 Edison Co., 805 F.2d 834, 842 (9th Cir. 1986). “The district court of a district in which is
6 filed a case laying venue in the wrong division or district shall dismiss, or if it be in the
7 interests of justice, transfer such case to any district or division in which it could have been
8 brought.” 28 U.S.C. § 1406(a).

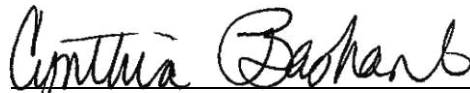
9 Plaintiff is currently incarcerated in Indiana, and he seeks to sue the Los Angeles
10 Police Department based on an incident occurring in a Los Angeles hair salon in 1994.
11 (ECF No. 1 at 1.) The City of Los Angeles is located in the County of Los Angeles,
12 California, and it is within the Central District of California, Western Division. 28 U.S.C.
13 § 84(c)(2). Thus, no claim is alleged to have arisen in, and no Defendant is alleged to reside
14 in, this district—the Southern District of California. See 28 U.S.C. § 84(d). Consequently,
15 the Court finds dismissal of the action without prejudice based on a lack of proper venue
16 is also appropriate. See 28 U.S.C. § 1406(a).

17 **III. Conclusion and Order**

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

22 **IT IS SO ORDERED.**

23
24 **Dated: April 19, 2017**

25 
26 Hon. Cynthia Bashant
27 United States District Judge
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