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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 MICHAEL SCHMITT,  
12 CDCR #BB-8941,

13 Plaintiff,

14 v.

15 U.S. MARSHAL SERVICE;  
16 AGENT WALKER, Fugitive Task Force,  
17 Defendants.  
18  
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Case No.: 17cv817-JLS (KSC)

**ORDER DISMISSING CIVIL  
ACTION WITHOUT PREJUDICE  
FOR FAILING TO EITHER PAY  
FILING FEE REQUIRED  
BY 28 U.S.C. § 1914(a) OR MOVE TO  
PROCEED *IN FORMA PAUPERIS*  
PURSUANT TO  
28 U.S.C. § 1915(a)**

20 Plaintiff Michael Schmitt, proceeding pro se while incarcerated at North Kern State  
21 Prison in Delano, California, has filed a civil action using a “Standard Form 95” “Claim  
22 for Damage, Injury or Death” pursuant to the Federal Tort Claims Act, 28 U.S.C. §§  
23 1346(b), 2671–80.

24 Plaintiff claims the U.S. Marshal Service and a Fugitive Task Force Agent named  
25 Walker caused \$750 in property damage by breaking a door and locks when entering his  
26 home at 1425 14th Street in San Diego to arrest him on a “County Probation Violations  
27 Warrant” on November 2, 2016. (ECF No. 1.)

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).<sup>1</sup> 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, and even  
8 if he is granted leave to commence his suit IFP, he remains obligated to pay the entire filing  
9 fee in "increments," *see Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015),  
10 regardless of whether his case is ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2);  
11 *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, nor has he filed a properly supported Motion to Proceed IFP  
14 pursuant to 28 U.S.C. § 1915(a). Therefore, his case cannot yet proceed. *See* 28 U.S.C.  
15 § 1914(a); *Andrews*, 493 F.3d at 1051.

16 **II. Conclusion and Order**

17 Accordingly, the Court:

18 (1) **DISMISSES** this action *sua sponte* without prejudice for failure to pay the  
19 \$400 civil filing and administrative fee or to submit a Motion to Proceed IFP pursuant to  
20 28 U.S.C. §§ 1914(a) and 1915(a); and

21 (2) **GRANTS** Plaintiff **forty-five (45)** days leave from the date this Order is filed  
22 to: (a) prepay the entire \$400 civil filing and administrative fee; or (b) complete and file a  
23 Motion to Proceed IFP which includes a certified copy of his trust account statement for  
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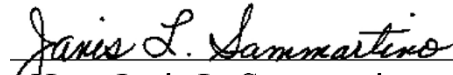
25 <sup>1</sup> In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$50. *See*  
26 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14 (eff.  
27 June 1, 2016)). The additional \$50 administrative fee does not apply to persons granted leave to proceed  
IFP. *Id.*

1 the 6-month period preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2); S.D.  
2 Cal. Civ. L.R. 3.2(b).

3 The Court further **DIRECTS** the Clerk of the Court to provide Plaintiff with the  
4 Court's approved form "Motion and Declaration in Support of Motion to Proceed *In Forma*  
5 *Pauperis*."<sup>2</sup> If Plaintiff fails to either prepay the \$400 civil filing fee or complete and submit  
6 the enclosed Motion to Proceed IFP within 45 days, this action will remain dismissed  
7 without prejudice based on Plaintiff's failure to satisfy 28 U.S.C. § 1914(a)'s fee  
8 requirements and without further Order of the Court.

9 **IT IS SO ORDERED.**

10 Dated: August 1, 2017

  
11 Hon. Janis L. Sammartino  
12 United States District Judge  
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22 <sup>2</sup> Plaintiff is cautioned that if he chooses to proceed further by either prepaying the full \$400 civil filing  
23 fee, or submitting a properly supported Motion to Proceed IFP, his Complaint will be reviewed before  
24 service and may be dismissed *sua sponte* pursuant to 28 U.S.C. § 1915A(b) and/or 28 U.S.C.  
25 § 1915(e)(2)(B), regardless of whether he pays or is obligated to pay filing fees. *See Lopez v. Smith*, 203  
26 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (noting that 28 U.S.C. § 1915(e) "not only permits but  
27 requires" the court to *sua sponte* dismiss an in forma pauperis complaint that is frivolous, malicious, fails  
to state a claim, or seeks damages from defendants who are immune); *see also Rhodes v. Robinson*, 621  
F.3d 1002, 1004 (9th Cir. 2010) (discussing similar screening required by 28 U.S.C. § 1915A of all  
complaints filed by prisoners "seeking redress from a governmental entity or officer or employee of a  
governmental entity").