

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL SCHMITT,
CDCR #BB-8941,

Plaintiff,

V.

U.S. MARSHAL SERVICE;
AGENT WALKER, Fugitive Task Force.

Defendants.

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)**

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

Plaintiff claims the U.S. Marshal Service and a Fugitive Task Force Agent named Walker caused \$750 in property damage by breaking a door and locks when entering his home at 1425 14th Street in San Diego to arrest him on a “County Probation Violations 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).*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, 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

25

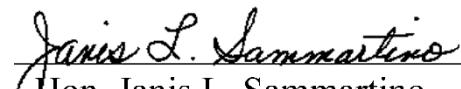
26 ¹ In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$50. *See*
27 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14 (eff.
June 1, 2016)). The additional \$50 administrative fee does not apply to persons 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*."² 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

22 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").