

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALLEN HAMMLER,
CDCR #F-73072,

Plaintiff,

vs.

J. ALVAREZ, Correctional Officer;
SOTO, Correctional Officer;
J. NEVAREZ, Correctional Officer;
HOUGH, Correctional Officer,

Defendants.

Case No.: 3:17-cv-01533-JAH-WVG

**ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
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)**

ALLEN HAMMLER (“Plaintiff”), proceeding pro se and while incarcerated at California State Prison, Sacramento (“SAC”), in Represa, California, has filed a civil rights Complaint pursuant to 42 U.S.C. § 1983 (ECF No. 1). Plaintiff claims several Correctional Officers at Richard J. Donovan Correctional Facility (“RJD”) in San Diego violated his Eighth Amendment rights by employing excessive force against him while he was incarcerated there on October 20, 2016. See Compl., ECF No. 1 at 1-2, 3, 14.¹

¹ The Court takes judicial notice that Plaintiff has another civil rights action currently pending before Judge Battaglia in Hammler v. Aviles, S.D. Cal. Civil Case No. 3:17-cv-01185-AJB-WVG (“Aviles”).

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).² 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
8 even if he is granted leave to commence his suit IFP, he remains obligated to pay the
9 entire filing fee in “increments,” see *Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir.
10 2015), regardless of whether his case is ultimately dismissed. See 28 U.S.C. § 1915(b)(1)
11 & (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, 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

21 See *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (court ““may take notice of proceedings in
22 other courts, both within and without the federal judicial system, if those proceedings have a direct
23 relation to matters at issue.””) (quoting *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir.
24 2002)). While *Aviles* also involves an alleged incident of excessive force at RJD, the two cases appear
25 unrelated insofar as they involve different correctional officer defendants and allege separate causes of
26 action arising more than two weeks apart. See *Aviles*, ECF No. 1 at 1, 3-9.

27 ² In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$50.
See 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 28 U.S.C. §§ 1914(a) and 1915(a); and

2 (2) **GRANTS** Plaintiff **forty-five (45)** days leave from the date this Order is
3 filed to: (a) prepay the entire \$400 civil filing and administrative fee in full; or (b)
4 complete and file a Motion to Proceed IFP which includes a certified copy of his trust
5 account statement for the 6-month period preceding the filing of his Complaint. See 28
6 U.S.C. § 1915(a)(2); S.D. Cal. CivLR 3.2(b).

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

13 **IT IS SO ORDERED.**

14
15 Dated: September 25, 2017

16 
17 _____
18 HON. JOHN A. HOUSTON
19 United States District Judge
20
21

22 ³ 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.”).