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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 ROBERT L. NELSON,
12 aka JAMAL MYXZ,
13 Booking No. 17145564 ,

14 Plaintiff,

15 vs.

16 CITY OF IMPERIAL BEACH;
17 IMPERIAL BEACH SHERIFF'S DEPT.,
18 Defendants.
19

Case No.: 3:17-cv-01913-GPC-KSC

**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)**

20 ROBERT L. NELSON, also known as Jamal Myxz (Plaintiff), proceeding pro se
21 and while detained at George Bailey Detention Facility in San Diego, California, has
22 filed a civil rights Complaint pursuant to 42 U.S.C. § 1983 (ECF No. 1).

23 While his Complaint is devoid of specifics, Plaintiff claims he was “attacked” by
24 the Imperial Beach Sheriff’s Department, and has been defamed and detained by them
25 through the use of drugged and diseased informants who used “unlawful advantage” to
26 “gain entry to [his] residence.” (*Id.* at 1-3).

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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
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 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
22 filed to: (a) prepay the entire \$400 civil filing and administrative fee in full; or (b)
23 complete and file a Motion to Proceed IFP which includes a certified copy of his trust
24 _____


25 ¹ In addition to the \$350 statutory fee, civil litigants must pay an additional administrative
26 fee of \$50. *See* 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court
27 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 account statement for the 6-month period preceding the filing of his Complaint. *See* 28
2 U.S.C. § 1915(a)(2); S.D. Cal. CivLR 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*
5 *Forma Pauperis*.”² If Plaintiff fails to either prepay the \$400 civil filing fee or complete
6 and submit the enclosed Motion to Proceed IFP within 45 days, this action will remain
7 dismissed without prejudice based on Plaintiff’s failure to satisfy 28 U.S.C. § 1914(a)’s
8 fee requirements and without further Order of the Court.

9 **IT IS SO ORDERED.**

10 Dated: October 4, 2017


11 Hon. Gonzalo P. Curiel
12 United States District Judge
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21 ² Plaintiff is cautioned that if he chooses to proceed further by either prepaying the full
22 \$400 civil filing fee, or submitting a properly supported Motion to Proceed IFP, his
23 Complaint will be reviewed before service and may be dismissed sua sponte pursuant to
24 28 U.S.C. § 1915A(b) and/or 28 U.S.C. § 1915(e)(2)(B), regardless of whether he pays or
25 is obligated to pay filing fees. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000)
26 (en banc) (noting that 28 U.S.C. § 1915(e) “not only permits but requires” the court to sua
27 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.”).