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6 UNITED STATES DISTRICT COURT
7 SOUTHERN DISTRICT OF CALIFORNIA
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9 Case No.: 3:18-cv-00259-CAB-MDD

10 ALLEN HAMMLER,
11 CDCR #F-73072,

12 Plaintiff,

13 vs.

14 J. HERNANDEZ, Correctional Officer;
15 A. MAGALLANES, Correctional Officer,
16 Defendants.

**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)**

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18 ALLEN HAMMLER (“Plaintiff”), proceeding pro se and while incarcerated at
19 Kern Valley State Prison in Delano, California, filed a civil rights Complaint pursuant to
20 42 U.S.C. § 1983 on February 2, 2018. *See* Compl., ECF No. 1.

21 Plaintiff claims two correctional officers at Richard J. Donovan Correctional
22 Facility (“RJD”), in San Diego, California, retaliated against him and subjected him to
23 cruel and unusual punishment in violation of the First and Eighth Amendments while he
24 was incarcerated there in November and December 2016. *Id.* at 1-25.¹

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27 ¹ The Court takes judicial notice that Plaintiff has two other civil rights action currently
pending in this Court, one before Judge Battaglia in *Hammler v. Aviles*, S.D. Cal. Civil

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).

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14 Case No. 3:17-cv-01185-AJB-WVG (“*Aviles*”), and another before Judge Houston in
15 *Hammler v. Alvarez, et al.*, S.D. Cal. Civil Case No. 3:17-cv-01533-JAH-WVG
16 (“*Alvarez*”). *See Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (court ““may take
17 notice of proceedings in other courts, both within and without the federal judicial system,
18 if those proceedings have a direct relation to matters at issue.””) (quoting *Bennett v.*
19 *Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)). Both *Aviles* and *Alvarez* involve
20 alleged incidents of excessive force at RJD, but those cases appear unrelated to each other
21 insofar as they involve different correctional officer defendants and allege separate causes
22 of action arising more than several weeks apart. *See Aviles*, ECF No. 1 at 1, 3-9; *Alvarez*,
23 ECF No. 1 at 1-15. Plaintiff’s retaliation claims in this case appear to arise *after* Plaintiff
24 filed administrative grievances related to the excessive force incidents at issue in *Aviles*.
See ECF No. 1 at 3. Plaintiff is cautioned that while the Court has yet to screen his latest
Complaint given his failure to pay filing fees and/or move to proceed IFP, he may not raise
duplicative claims in separate actions. *See Cato v. United States*, 70 F.3d 1103, 1105 n.2
(9th Cir. 1995) (prisoner’s complaint is considered frivolous under 28 U.S.C. § 1915 if it
“merely repeats pending or previously litigated claims.”).

25 ² 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 Plaintiff has not prepaid the \$400 in filing and administrative fees required to
2 commence this civil action, nor has he filed a properly supported Motion to Proceed IFP
3 pursuant to 28 U.S.C. § 1915(a). Therefore, his case cannot yet proceed. *See* 28 U.S.C.
4 § 1914(a); *Andrews*, 493 F.3d at 1051.

5 **II. Conclusion and Order**

6 Accordingly, the Court:

7 (1) **DISMISSES** this action sua sponte without prejudice for failure to pay the
8 \$400 civil filing and administrative fee or to submit a Motion to Proceed IFP pursuant to
9 28 U.S.C. §§ 1914(a) and 1915(a); and

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

15 The Court further **DIRECTS** the Clerk of the Court to provide Plaintiff with the
16 Court’s approved form “Motion and Declaration in Support of Motion to Proceed *In*
17 *Forma Pauperis*.”³ If Plaintiff fails to either prepay the \$400 civil filing fee or complete
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19 ³ Plaintiff is further cautioned that if he chooses to proceed further by either prepaying the
20 full \$400 civil filing fee, or submitting a properly supported Motion to Proceed IFP, his
21 Complaint will be reviewed before service and may be dismissed sua sponte pursuant to
22 28 U.S.C. § 1915A(b) and/or 28 U.S.C. § 1915(e)(2)(B), regardless of whether he pays or
23 is obligated to pay filing fees. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000)
24 (en banc) (noting that 28 U.S.C. § 1915(e) “not only permits but requires” the court to sua
25 sponte dismiss an in forma pauperis complaint that is frivolous, malicious, fails to state a
26 claim, or seeks damages from defendants who are immune); *see also Rhodes v. Robinson*,
27 621 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.”). Because Plaintiff has chosen to file
several civil actions in this Court, he will be required to pay separate filing fees for each of
them. *Bruce v. Samuels*, 136 S. Ct. 627, 632 (2016) (“Just as § 1915(b)(1) calls for

1 and submit the enclosed Motion to Proceed IFP within 45 days, this action will remain
2 dismissed without prejudice based on Plaintiff's failure to satisfy 28 U.S.C. § 1914(a)'s
3 fee requirements and without further Order of the Court.

4 **IT IS SO ORDERED.**

5 Dated: February 13, 2018

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8 Hon. Cathy Ann Bencivengo
9 United States District Judge
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25 assessment of 'an initial partial filing fee' each time a prisoner 'brings a civil action or files
26 an appeal' (emphasis added), so its allied provision, § 1915(b)(2), triggered immediately
27 after, calls for 'monthly payments of 20 percent of the preceding month's income'
simultaneously for each action pursued.").