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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MIGUEL CONTRERAS,
CDCR #K-71716,

Plaintiff,

vs.

J. HERRERA, Correctional Officer,

Defendant.

Case No.: 3:18-cv-00717-MMA-AGS

**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)**

MIGUEL CONTRERAS (“Plaintiff”), currently incarcerated at California State Prison in Corcoran, California, and proceeding pro se, has filed a civil rights complaint pursuant to 42 U.S.C. § 1983. *See* Compl. (Doc. No. 1).

Plaintiff claims a correctional officer at Richard J. Donovan Correctional Facility violated his Eighth and Fourteenth Amendment rights by falsely accusing him of sexual misconduct during a visit with his wife and daughter while he was incarcerated there in December 2016. *Id.* at 1-5. Plaintiff seeks compensatory and punitive damages, as well as declaratory and injunctive relief expunging the disciplinary conviction and restoring the visitation privileges he lost as a result of the violation. *Id.* at 5.

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). An action may proceed despite a plaintiff’s failure to
5 prepay the entire fee only if he is granted leave to proceed in forma pauperis (“IFP”)
6 pursuant to 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th
7 Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, if the
8 Plaintiff is a prisoner at the time of filing, as Plaintiff is here, and even if he is granted
9 leave to commence his suit IFP, he will remain obligated to pay the entire filing fee in
10 “increments” *see Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), and
11 regardless of whether his case is dismissed for any other reason. *See* 28 U.S.C.
12 § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

13 Plaintiff has not prepaid the \$400 in filing and administrative fees required to
14 commence this civil action, nor has he filed a properly supported Motion to Proceed IFP
15 pursuant to 28 U.S.C. § 1915(a). Therefore, his case cannot yet proceed. *See* 28 U.S.C.
16 § 1914(a); *Andrews*, 493 F.3d at 1051.

17 **II. Conclusion and Order**

18 Accordingly, the Court:

19 (1) **DISMISSES** this action sua sponte without prejudice for failure to pay the
20 \$400 civil filing and administrative fee or to submit a Motion to Proceed IFP pursuant to
21 28 U.S.C. §§ 1914(a) and 1915(a); and

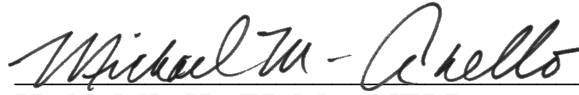
22 (2) **GRANTS** Plaintiff **forty-five (45)** days leave from the date this Order is
23 filed to: (a) prepay the entire \$400 civil filing and administrative fee in full; or (b)
24 complete and file a Motion to Proceed IFP which includes a certified copy of his prison
25 trust account statements for the 6-month period preceding the filing of his Complaint. *See*
26 28 U.S.C. § 1915(a)(2); S.D. Cal. CivLR 3.2(b).

27 The Court further **DIRECTS** the Clerk of the Court to provide Plaintiff with the
28 Court’s approved form “Motion and Declaration in Support of Motion to Proceed *In*

1 *Forma Pauperis.*”¹ If Plaintiff fails to either prepay the \$400 civil filing fee or fully
2 complete and submit the enclosed Motion to Proceed IFP within 45 days, this action will
3 remain dismissed without prejudice based on his failure to satisfy 28 U.S.C. § 1914(a)’s
4 fee requirement and without further Order of the Court.

5 **IT IS SO ORDERED.**

6 DATE: April 23, 2018



7 HON. MICHAEL M. ANELLO

8 United States District Judge

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21 ¹ 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 the
25 full \$400 filing fee at once, or is granted IFP status and is obligated to pay the full filing
26 fee in installments. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)
27 (noting that 28 U.S.C. § 1915(e) “not only permits but requires” the court to sua sponte
28 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.”).