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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

HARRY ZELIG,

Plaintiff,

v.

FELIX IGBINOSA, et al.,

Defendants.

CASE NO. 1:11-CV-01515-LJO-DLB PC

ORDER VACATING FINDINGS AND
RECOMMENDATIONS (DOC. 8)

ORDER GRANTING PLAINTIFF’S MOTION
TO PROCEED IN FORMA PAUPERIS (DOC.
2)

Plaintiff Harry Zelig is a California state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this Court by Local Rule 302 and pursuant to 28 U.S.C. § 636(b)(1). On September 22, 2011, the Court issued a Findings and Recommendations recommending that Plaintiff’s motion to proceed in forma pauperis be denied. Doc. 7. Upon reconsideration of the Findings and Recommendations, the Court finds that Plaintiff may proceed in forma pauperis in this action.¹

Plaintiff has submitted a declaration that makes the showing required by § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.² 28 U.S.C. § 1915(a).

¹ The Court may reconsider all orders or decisions prior to final adjudication of all claims for all parties. Fed. R. Civ. P. 54(b).

² Plaintiff is advised that the court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief.

1 Pursuant to 28 U.S.C. § 1915(b)(1), Plaintiff is required to pay the statutory filing fee of
2 \$350.00 for this action.³ An initial partial filing fee of \$302.50 will be assessed by this order.⁴
3 28 U.S.C. § 1915(b)(1). By separate order, the Court will direct the appropriate agency to collect
4 the initial partial filing fee from Plaintiff's trust account and forward it to the Clerk of the Court.
5 Thereafter, Plaintiff will be obligated for monthly payments of twenty percent of the preceding
6 month's income credited to Plaintiff's prison trust account. These payments will be forwarded
7 by the appropriate agency to the Clerk of the Court each time the amount in Plaintiff's account
8 exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

9 In accordance with the above, IT IS HEREBY ORDERED that:

- 10 1. The Court's Findings and Recommendations, filed September 22, 2011, is
11 vacated;
- 12 2. Plaintiff's request for leave to proceed in forma pauperis is granted; and
- 13 3. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.
14 Plaintiff is assessed an initial partial filing fee of \$302.50. All fees shall be
15 collected and paid in accordance with this Court's order to the Director of the
16 California Department of Corrections and Rehabilitation filed concurrently
17 herewith.

18 IT IS SO ORDERED.

19 **Dated: November 28, 2011**

/s/ Dennis L. Beck
20 UNITED STATES MAGISTRATE JUDGE

21 _____
22 28 U.S.C. § 1915A(b)(1),(2). The Court will direct the United States Marshal to serve Plaintiff's
23 complaint only after the Court has screened the complaint and determined that it contains
24 cognizable claims for relief against the named defendants. The Court has a large number of
prisoner civil rights cases pending before it and will screen Plaintiff's complaint in due course.

25 ³ The statutory filing fee for all civil actions except applications for writs of habeas
corpus is \$350.00. 28 U.S.C. § 1914(a).

26 ⁴ The Court calculates Plaintiff's average monthly account balance for the six-month
27 period prior to the filing of the complaint as \$1512.49, which is greater than Plaintiff's average
28 monthly deposits of \$183.33. The Court is required to assess and collect an initial partial filing
fee of twenty percent of the greater amount. 28 U.S.C. § 1915(b)(1).