

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

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALBERT CRUZ,

Plaintiff,

No. CIV S-06-1387 DFL EFB P

vs.

UNKNOWN,

Defendant.

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. On September 26, 2006, a magistrate judge issued findings and recommendations herein recommending dismissal for failure to file a completed *in forma pauperis* application or pay the filing and failure to file an amended complaint, all directed by the court on August 2, 2006. On December 5, 2006, plaintiff filed a completed application to proceed *in forma pauperis*. The September 26, 2006 findings and recommendations will be vacated.

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

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). An initial partial filing fee of \$1.02 will be assessed by this order. 28

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

7 Good cause appearing, IT IS HEREBY ORDERED that:

- 8 1. The September 26, 2006, findings and recommendations are vacated.
- 9 2. Plaintiff's request for leave to proceed in forma pauperis is granted.
- 10 3. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
11 is assessed an initial partial filing fee of \$1.02. All fees shall be collected and paid in accordance
12 with this court's order to the Director of the California Department of Corrections and
13 Rehabilitation filed concurrently herewith.
- 14 4. Plaintiff has thirty days from the date this order is served in which to file an amended
15 complaint pursuant to the court's August 2, 2006, order. Failure to timely file an amended
16 complaint will result in a recommendation that this action be dismissed.
- 17 5. The Clerk of the Court is directed to serve a copy of the order filed August 2, 2006,
18 with this order.

19 DATED: January 9, 2007.

20 
21 EDMUND F. BRENNAN
22 UNITED STATES MAGISTRATE JUDGE
23
24
25
26