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

JAMES SMITH,

Plaintiff,

vs.

1: 08 CV 0607 AWI WMW PC

ORDER RE MOTION (DOC 8)

WARDEN HEDGPETH, et al.,

Defendants.

On July 7, 2008, findings and recommendations were entered, recommending that Plaintiff's application to proceed in forma pauperis be denied pursuant to 28 U.S.C. § 1915(g). On August 21, 2008, Plaintiff filed objections to the findings and recommendations. On September 3, 2008, the court granted Plaintiff an extension of time in which to show cause why he should not be granted leave to proceed in forma pauperis. Plaintiff was cautioned that should he fail to do so, the recommendation of dismissal would be submitted to the District Court. Plaintiff failed to do so, and on October 30, 2008, the findings and recommendations were adopted by the District Court, denying Plaintiff leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(g).<sup>1</sup>

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<sup>1</sup>On October 29, 2008, findings and recommendations were inadvertently entered. These findings and recommendations are duplicative of the July 7, 2008, findings and recommendations. The court therefore vacates the October 29, 2008, findings and recommendations.

1 On November 19, 2008, Plaintiff filed objections to the findings and recommendations.  
2 On November 17, 2008, Plaintiff filed a document titled as a motion regarding costs. In his  
3 objections and motion, Plaintiff indicates that he is having difficulty paying the filing fee, though  
4 he has the ability to do so. Plaintiff will therefore be granted an opportunity to submit evidence  
5 that he is able to pay the filing fee. Plaintiff is directed to submit a certified copy of his trust  
6 account statement and a copy of his request to have the \$350 filing fee withdrawn from his prison  
7 trust account. Plaintiff's failure to do so within thirty days will result in dismissal of this action  
8 without prejudice for Plaintiff's failure to pay the filing fee.

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. The October 29, 2008, findings and recommendations are vacated.
- 11 2. Plaintiff's motion for costs filed on November 17, 2008, is denied.
- 12 3. Plaintiff is directed to submit, within thirty days, a certified copy of his trust account  
13 statement and a copy of his request to have the \$350 filing fee withdrawn from his prison trust  
14 account. Plaintiff's failure to do so within thirty days will result in dismissal of this action  
15 without prejudice for Plaintiff's failure to pay the filing fee.

16  
17 IT IS SO ORDERED.

18 **Dated:** February 10, 2009

/s/ William M. Wunderlich  
UNITED STATES MAGISTRATE JUDGE