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

15 On August 4, 2008, Plaintiff Herbert Gordon Owen, who was then an inmate in the
16 California Substance Abuse Treatment Facility in Corcoran, California, filed a *pro se*
17 Complaint pursuant to 42 U.S.C. § 1983 with an Application to Proceed *In Forma Pauperis*.
18 (Doc.# 1, 2.)¹ The Court granted him *in forma pauperis* status on September 4, 2008. (Doc.#
19 9.) This case was then reassigned to the undersigned on November 24, 2008. (Doc.# 10.)
20 On January 20, 2009, Plaintiff filed a Notice of Change of Address, which appears to reflect
21 that he has been released from custody. (Doc.# 12). He will be ordered to pay the filing fee
22 or to show cause why he is unable to do so.

23 || I. **Payment of Filing Fee**

When bringing an action, a prisoner must either pay the filing fee in a lump sum or, if granted the privilege of proceeding *in forma pauperis*, pay the fee incrementally as set

¹ “Doc.#” refers to the docket number of filings in this case.

1 forth in 28 U.S.C. § 1915(b)(1). Plaintiff was an inmate when he commenced this action,
2 therefore, he is liable for the \$350.00 filing fee.

3 On January 20, 2009, Plaintiff filed a notice of change of address reflecting that he
4 has been released. None of the filing fee has been paid. Because Plaintiff has been released
5 and he has not paid the filing fee, he must notify the Court within 30 days from the filing date
6 of this Order whether he intends to pay the filing fee in full or show good cause in writing
7 why he cannot. Plaintiff may show cause by submitting an affidavit, signed under penalty
8 of perjury, demonstrating why he is presently unable to pay the filing fee. See 28 U.S.C.
9 § 1746 (the oath requirement may be satisfied when a person declares under penalty of
10 perjury that the submission is true and correct, and signs and dates the statement). An
11 application to proceed *in forma pauperis* is attached, which may assist Plaintiff in the
12 preparation of such an affidavit. Failure to comply with this Order will result in the dismissal
13 of this action.

14 **II. Warnings**

15 **A. Address Changes**

16 Plaintiff must file and serve a notice of a change of address in accordance with Rule
17 83-182(f) and 83-183(b) of the Local Rules of Civil Procedure. Plaintiff must not include
18 a motion for other relief with a notice of change of address. Failure to comply may result in
19 dismissal of this action.

20 **B. Copies**

21 Plaintiff must submit an additional copy of every filing for use by the Court. See
22 LRCiv 5-133(d)(2). Failure to comply may result in the filing being stricken without further
23 notice to Plaintiff.

24 **C. Possible Dismissal**

25 If Plaintiff fails to timely comply with every provision of this Order, including these
26 warnings, the Court may dismiss this action without further notice. See *Ferdik v. Bonzelet*,

1 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to
2 comply with any order of the Court).

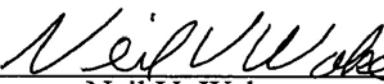
3 **IT IS ORDERED:**

4 (1) Within **30 days** from the filing date of this Order, Plaintiff must either pay the
5 \$350.00 balance of the filing fee **or** show good cause why he is unable to do so.

6 (2) If Plaintiff fails, within 30 days from the filing date of this Order, either to pay
7 the \$350.00 balance of the court filing fee or to show good cause why he is unable to pay the
8 balance of the filing fee, the Clerk of Court must enter a judgment of dismissal of this action
9 without prejudice or further notice.

10 (3) The Clerk of Court must mail Plaintiff a court-approved form for filing an
11 Application to Proceed *In Forma Pauperis* (Non-Habeas) as a guideline in the event that
12 Plaintiff seeks to show good cause why he is unable to pay the filing fee.

13 DATED this 13th day of February, 2009.

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Neil V. Wake
17 United States District Judge
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**Instructions for Prisoners Applying for Leave to Proceed *in Forma Pauperis*
Pursuant to 28 U.S.C. § 1915 in a Civil Action (Non-habeas) in Federal Court**

You must pay the full filing fee of \$350.00 for a civil action. If you later file an appeal, you will be obligated to pay the \$455.00 filing fee for the appeal.

If you have enough money to pay the full filing fee, you should send a cashier's check or money order payable to the Clerk of the Court with your complaint, petition, or notice of appeal.

If you do not have enough money to pay the full filing fee, you can file the action without prepaying the filing fee. However, the court will assess an initial partial filing fee. The initial partial filing fee will be the greater of 20% of the average monthly deposits or 20% of the average monthly balance in your prison or jail account for the six months immediately preceding the filing of the lawsuit. The court will order the agency that has custody of you to withdraw the initial partial filing fee from your prison or jail account as soon as funds are available and to forward the money to the court.

After the initial partial filing fee has been paid, you will owe the balance of the filing fee. Until the filing fee is paid in full, each month you will owe 20% of your preceding month's income. ~~The agency that holds you in custody will collect~~ that money and forward it to the court any time the amount in your account exceeds \$10.00. The balance of the filing fee may be collected even if the action is later dismissed, summary judgment is granted against you, or you fail to prevail at trial.

To file an action without prepaying the filing fee, and to proceed with an action *in forma pauperis*, you must complete the attached form and return it to the court with your complaint. You must have a prison or jail official complete the certificate on the bottom of the form and attach a certified copy of your prison or jail account statement for the last six months. If you were incarcerated in a different institution during any part of the past six months, you must attach a certificate and a certified copy of your account statement from each institution at which you were confined. If you submit an incomplete form or do not submit a prison or jail account statement with the form, your request to proceed *in forma pauperis* will be denied.

Even if some or all of the filing fee has been paid, the court is required to dismiss your action if: (1) your allegation of poverty is untrue; (2) the action is frivolous or malicious; (3) your complaint does not state a claim upon which relief can be granted; or (4) your complaint makes a claim against a defendant for money damages and that defendant is immune from liability for money damages.

If you file more than three actions or appeals which are dismissed as frivolous or malicious or for failure to state a claim on which relief can be granted, you will be prohibited from filing any other action *in forma pauperis* unless you are in imminent danger of serious physical injury.

Place of Confinement

Mailing Address _____

City, State, Zip Code _____

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

Plaintiff, vs.)
_____,) CASE NO. _____

Defendant(s).)
_____,)

APPLICATION TO PROCEED
IN FORMA PAUPERIS

)
,) BY A PRISONER
) CIVIL (NON-HABEAS)
)

I, _____, declare, in support of my request to proceed in the above entitled case without prepayment of fees under 28 U.S.C. § 1915, that I am unable to pay the fees for these proceedings or to give security therefor and that I believe I am entitled to relief.

In support of this application, I answer the following questions under penalty of perjury:

1. Have you ever before brought an action or appeal in a federal court while you were incarcerated or detained?

Yes No If "Yes," how many have you filed? _____.

Were any of the actions or appeals dismissed because they were frivolous, malicious, or failed to state a claim upon which relief may be granted? Yes No If "Yes," how many of them? _____.

Yes No

2. Are you currently employed at the institution where you are confined?

If "Yes," state the amount of your pay and where you work. _____

3. Do you receive any other payments from the institution where you are confined? Yes No If "Yes," state the source and amount of the payments. _____

4. Do you have any other sources of income, savings, or assets either inside or outside of the institution where you are confined? Yes No If "Yes," state

the sources and amounts of the income, savings, or assets. _____

I declare under penalty of perjury that the above information is true and correct.

DATE

SIGNATURE OF APPLICANT

CONSENT TO COLLECTION OF FEES FROM TRUST ACCOUNT

I, _____, hereby consent to having the designated correctional officials at this institution release to the Court my trust account information. I further consent to having the designated correctional officials at this institution withdraw from my trust account the funds required to comply with the order of this Court for the payment of filing fees in accordance with 28 U.S.C. § 1915(b).

My consent includes withdrawal from my account by correctional officials of partial initial payments to this Court equal to 20% of the greater of:

- (A) the average monthly deposits to my account for the six-month period preceding my filing of this action, or
- (B) the average monthly balance in my account for the six-month period preceding my filing of this action.

My consent also includes monthly withdrawals from my account by correctional officials of an amount equal to 20% of each month's income. Whenever the amount in my account reaches \$10.00, correctional officials will withdraw that amount and forward it to the Court until the required filing fee is paid in full. I understand that I am liable for paying the entire fee, even if my case is dismissed by the Court before the fee is fully paid.

DATE

SIGNATURE OF APPLICANT

CERTIFICATE OF CORRECTIONAL OFFICIAL AS TO STATUS OF APPLICANT'S TRUST ACCOUNT

I, _____, certify that as of the date applicant signed this application:
(Printed name of official)

The applicant's trust account balance at this institution is: \$ The applicant's
average monthly deposits during the prior six months is: \$ The applicant's average monthly
balance during the prior six months is: \$ The attached certified account statement
accurately reflects the status of the applicant's account.

DATE

AUTHORIZED SIGNATURE

TITLE/ID NUMBER

INSTITUTION