UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

WARNER LIVINGSTON,		CASE NO. 1:10-cv-01152-AWI-SKO PC
v. J. SANCHEZ, et al.,	Plaintiff,	FINDINGS AND RECOMMENDATIONS RECOMMENDING THAT PLAINTIFF'S APPLICATION TO PROCEED IN FORMA PAUPERIS BE DENIED
	Defendants.	OBJECTIONS DUE WITHIN 30 DAYS
		(Doc. 2)

Plaintiff Warner Livingston ("Plaintiff") is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on June 25, 2010. (Doc. #1.) Pending before the Court is a motion from Plaintiff requesting leave to proceed in forma pauperis in this action. (Doc. #2.) Under 28 U.S.C. § 1915(a)(1), the Court may authorize a litigant to proceed in forma pauperis, or commence a lawsuit without the prepayment of the filing fee. A person seeking to proceed in forma pauperis must "submit[] an affidavit that includes a statement that the person is unable to pay such fees or give security therefor." 28 U.S.C. § 1915(a)(1).

In Plaintiff's application to proceed in forma pauperis, Plaintiff states that "[he] do[es] have the funds in [his] inmate trust account to pay for the filing fees[sic] that is required to file this cause of action." (Application To Proceed In Forma Pauperis By A Prisoner 1, ECF No. 2.) Plaintiff further states that he will "within sixty days from the date of this application[,] forward to the court the \$ 350 filing fees[sic] required to proceed with this cause of action." (Application To Proceed In Forma Pauperis By A Prisoner 1, ECF No. 2.) Thus, Plaintiff has indicated that he can afford to

pay the filing fee for this action and is not entitled to proceed in forma pauperis. The Court will recommend that Plaintiff's application to proceed in forma pauperis be denied and that Plaintiff be ordered to pay the filing fee within sixty (60) days of the date he filed his in forma pauperis application. Plaintiff is forewarned that the failure to pay the filing fee in full will result in dismissal of this action.

Accordingly, it is HEREBY RECOMMENDED that:

- 1. Plaintiff's application to proceed in forma pauperis be DENIED; and
- 2. Plaintiff be required to pay the \$350 filing fee by August 24, 2010 – sixty (60) days after the date on which he filed his in forma pauperis application.

These Findings and Recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30) days after being served with these Findings and Recommendations, any party may file written objections with the Court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be served and filed within ten (10) days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: July 16, 2010 /s/Sheila K. Oberto **UNITED STATES MAGISTRATE JUDGE**

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