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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 **BARON BOWER,**

12 **Plaintiff,**

13 **v.**

14 **FOSTER FARMS,**

15 **Defendant.**

Case No. 1:15-cv-00079-GEB-SAB

**FINDINGS AND RECOMMENDATIONS
RECOMMENDING DENYING
APPLICATION TO PROCEED IN FORMA
PAUPERIS**

(ECF No. 4)

**OBJECTIONS OR FILING FEE DUE
WITHIN FOURTEEN DAYS**

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18 On January 16, 2015, Plaintiff Baron Bower (“Plaintiff”) filed the complaint in this
19 action. (ECF No. 1.) Plaintiff also filed an application to proceed in forma pauperis without
20 prepayment of the filing fee on the same day. (ECF No. 2.) On January 22, 2015, Plaintiff
21 application was denied without prejudice and he was ordered to file a long form application in
22 forma pauperis. Plaintiff filed a second application to proceed in forma pauperis on February 9,
23 2015. (ECF No. 4.) This Court reviewed the application and found that Plaintiff was not entitled
24 to proceed without prepayment of fees on February 12, 2015 and Plaintiff was ordered to pay the
25 filing fee within thirty days. (ECF No. 7.) This action has been assigned to a district judge and
26 the Court now issues findings and recommendations based upon the finding that Plaintiff is not
27 entitled to proceed without prepayment of fees.

28 In order to proceed in court without prepayment of the filing fee, Plaintiff must submit an

1 affidavit demonstrating that he “is unable to pay such fees or give security therefor.” 28 U.S.C.
2 § 1915(a)(1). In assessing whether a certain income level meets the poverty threshold under
3 Section 1915(a)(1), courts look to the federal poverty guidelines developed each year by the
4 Department of Health and Human Services. See, e.g., Lint v. City of Boise, No. CV09-72-S-
5 E JL, 2009 WL 1149442, at *2 (D. Idaho Apr. 28, 2009) (and cases cited therein).

6 Plaintiff’s application states that his three children, ages 23, 20, and 19, depend upon
7 Plaintiff for support. The 2015 Poverty Guidelines for the 48 contiguous states for a household
8 of five is \$28,410.00. 2015 Poverty Guidelines, <http://aspe.hhs.gov/poverty/15poverty.cfm> (last
9 visited January 21, 2015).

10 Plaintiff states that he receives \$2,083.00 per month from retirement and disability
11 payments. Plaintiff’s wife receives \$2,750.00 per month income from her employment. This
12 amounts to \$57,996.00 per year, more than double the poverty guidelines for a family of five.
13 Plaintiff also indicated that he and his wife are owed over \$6 million dollars from Foster Farms.¹
14 Further, the Court notes that Plaintiff has received a settlement from Foster Farms in a prior
15 action.

16 Plaintiff’s application to proceed in forma pauperis demonstrates that Plaintiff is able to
17 pay the \$400.00 filing fee in this action as his reported annual income is significantly higher than
18 the 2015 Poverty Guidelines.

19 Based upon the foregoing, the Court finds that Plaintiff is not eligible to proceed in forma
20 pauperis under 28 U.S.C. § 1915.

21 Accordingly, it is HEREBY RECOMMENDED that:

- 22 1. Plaintiff’s application to proceed in forma pauperis be DENIED; and
- 23 2. If Plaintiff fails to either pay the filing fee or file objections within fourteen days,
24 this action be dismissed.

25 These findings and recommendations are submitted to the district judge assigned to this
26 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court’s Local Rule 304. Within fourteen

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28 ¹ The Court does not find that the monies owed by Foster Farms is dispositive on Plaintiff’s liquidity to pay the
filing fee in this action.

1 (14) days of service of this recommendation, Plaintiff shall either pay the filing fee or file written
2 objections to these findings and recommendations with the Court and serve a copy on all parties.
3 Such a document should be captioned "Objections to Magistrate Judge's Findings and
4 Recommendations." The district judge will review the magistrate judge's findings and
5 recommendations pursuant to 28 U.S.C. § 636(b)(1)(C). The parties are advised that failure to
6 file objections within the specified time may result in the waiver of rights on appeal. Wilkerson
7 v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394
8 (9th Cir. 1991)).

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10 IT IS SO ORDERED.

11 Dated: March 11, 2015


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UNITED STATES MAGISTRATE JUDGE