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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MONICO J. QUIROGA,
Plaintiff,
v.
AGUILARA, et al.,
Defendant.

1:15-cv-01202-MJS (PC)
ORDER DIRECTING PLAINTIFF TO SUBMIT
NOTICE OF CLARIFICATION

Plaintiff has filed this civil rights action pursuant to 42 U.S.C. § 1983 and also filed a prisoner’s motion to proceed in forma pauperis.

The address listed on the complaint indicates Plaintiff was not incarcerated at the time he initiated the action. (See ECF No. 1 at 1.) However, Plaintiff’s contemporaneously-filed application to proceed in forma pauperis states he is incarcerated at the Lerdo Detention Facility in Kern County.¹ (ECF No. 2)

The in forma pauperis statute, 28 U.S.C. § 1915, distinguishes unincarcerated indigent people from incarcerated ones. Under § 1915(a)(1), a non-prisoner plaintiff may file suit without prepaying fees, provided he or she submits an affidavit demonstrating “that the person is unable to pay such fees or give security therefor.” Escobedo v.

¹ Whether or not he was incarcerated at the time of filing this action, it is clear that he is now in custody at the Lerdo Pretrial Facility following a September 5, 2015 arrest. See Kern County Sheriff’s Office Inmate Search website, <http://www.kernsheriff.com/misc/inmatesearch/Pages/default.aspx>.

1 Applebees, 787 F.3d 1226, 1232 (9th Cir. 2015); Ingle v. Cir. City Stores, Inc., 328 F.3d
2 1165, 1177 (9th Cir. 2003). An indigent prisoner, by contrast, is not exempt from
3 prepayment. 28 U.S.C. § 1915(b)(1). Instead, the prisoner must submit a copy of his or
4 her trust account statement, make an initial upfront payment, followed by subsequent
5 monthly installments, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(1)-(2). In this
6 case, a ruling on Plaintiff's motion to proceed in forma pauperis by a prisoner turns on
7 whether Plaintiff was incarcerated at the time that he filed this action.

8 Accordingly, IT IS HEREBY ORDERED that Plaintiff shall file a notice within
9 twenty-one (21) days from the date of this order clarifying whether he was incarcerated
10 when he initiated suit on August 3, 2015 and setting forth his current mailing address.

11 IT IS SO ORDERED.

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13 Dated: September 21, 2015

14 */s/ Michael J. Seng*
15 UNITED STATES MAGISTRATE JUDGE
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