

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANTHONY SILVA,

Plaintiff,

v.

WORTH, et al.,

Defendants.

1:16-cv-01131-AWI-SKO (PC)

**ORDER DISCHARGING ORDER TO
SHOW CAUSE; WITHDRAWING
FINDINGS AND RECOMMENDATION TO
DISMISS; and GRANTING PLAINTIFF'S
APPLICATION TO PROCEED *IN FORMA*
*PAUPERIS***

(Docs. 10, 11, 12, 13)

Plaintiff, Anthony Silva, is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. On September 2, 2016, an order issued for Plaintiff to submit a correct application to proceed *in forma pauperis*, or to pay the filing fee within 45 days. (Doc. 6.) Despite lapse of more than the time allowed, Plaintiff did not comply with or otherwise responded to the Court's order. (*Id.*) Plaintiff was warned that recommendation for dismissal would issue if he failed to obey the order. (*Id.*) On December 2, 2016, an order issued for Plaintiff to show cause within thirty days why the action should not be dismissed for his failure to prosecute and comply with the Court's order. (Doc. 10.) Despite lapse of more than the allowed time, Plaintiff failed to file any response.

On January 12, 2017, Findings and Recommendation issued to dismiss this action without prejudice based on Plaintiff's failure to obey a court order and to pay the filing fee or file the

1 proper application to proceed *in forma pauperis*. (Doc. 11.) On January 17, 2017, Plaintiff filed
2 the correct application to proceed *in forma pauperis* and a motion for an extension of time to file
3 objections to the Findings and Recommendation. (Docs. 12, 13.)

4 Plaintiff has made the showing required by § 1915(a) and accordingly, the request to
5 proceed in forma pauperis will be granted. Plaintiff is obligated to pay the statutory filing fee of
6 \$350.00 for this action. 28 U.S.C. § 1915(b)(1). Plaintiff is obligated to make monthly payments
7 in the amount of twenty percent of the proceeding month's income credited to plaintiff's trust
8 account. The California Department of Corrections is required to send to the Clerk of the Court
9 payments from Plaintiff's account each time the amount in the account exceeds \$10.00, until the
10 statutory filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

11 Since Plaintiff filed the correct application to proceed *in forma pauperis* the order to show
12 cause and the Findings and Recommendation to dismiss are no longer necessary.

13 Accordingly, it is HEREBY ORDERD that:

- 14 (1) the Order to Show Cause which issued on December 2, 2016, is DISCHARGED;
- 15 (2) the Findings and Recommendation for dismissal of this action based on Plaintiff's
16 failure to obey a court order and to prosecute this action, which issued on January
17 12, 2017, is WITHDRAWN;
- 18 (3) Plaintiff's motion to proceed *in forma pauperis* is GRANTED;
- 19 (4) **The Director of the California Department of Corrections or his designee**
20 **shall collect payments from plaintiff's prison trust account in an amount**
21 **equal to twenty percent (20%) of the preceding month's income credited to**
22 **the prisoner's trust account and shall forward those payments to the Clerk of**
23 **the Court each time the amount in the account exceeds \$10.00, in accordance**
24 **with 28 U.S.C. § 1915(b)(2), until a total of \$350.00 has been collected and**
25 **forwarded to the Clerk of the Court. The payments shall be clearly identified**
26 **by the name and case number assigned to this action;**
- 27 (4) The Clerk of the Court is directed to serve a copy of this order and a copy of
28 Plaintiff's *in forma pauperis* application on the Director of the California

1 Department of Corrections, via the court's electronic case filing system
2 (CM/ECF); and

3 (5) Plaintiff's Complaint is now in line for screening under 28 U.S.C. § 1915A(a).
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5 IT IS SO ORDERED.

6 Dated: January 24, 2017

/s/ Sheila K. Oberto
7 UNITED STATES MAGISTRATE JUDGE
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