UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

GREGORY ELL SHEHEE,

Plaintiff,

v.

FAITH PEREZ, et al.,

Defendants.

Case No. 1:16-cv-01346-AWI-BAM (PC)

ORDER REGARDING APPLICATION TO PROCEED IN FORMA PAUPERIS

(ECF Nos. 2)

THIRTY-DAY DEADLINE

Plaintiff Gregory Ell Shehee ("Plaintiff") is a pretrial detainee proceeding pro se in this civil rights action under 42 U.S.C. § 1983. Plaintiff initiated this action on September 12, 2016. (ECF No. 1.) On the same day, Plaintiff filed a motion to proceed in forma pauperis. (ECF No. 2.) On October 14, 2016, the Court issued an order denying Plaintiff's motion to proceed in forma pauperis and dismissing the action without prejudice to refiling with submission of the $400.00 filing fee. (ECF No. 3.) The Court had determined that Plaintiff was subject to the three strikes provision of 28 U.S.C. § 1915(g) and that he did not satisfy the imminent danger exception. (*Id.*) Plaintiff appealed. (ECF No. 5.)

On January 11, 2017, the Ninth Circuit of the Court of Appeals reversed the Court's denial of the application to proceed in forma pauperis, and remanded the matter for further proceedings. (ECF No. 9.) The Ninth Circuit determined that at least six of the eight dismissals that the district court relied upon do not constitute strikes because they were dismissals brought

when Plaintiff was a civil detainee. (*Id.*) The Ninth Circuit issued its mandate on February 2, 2017. (ECF No. 10.)

Based on the Ninth Circuit's order reversing and remanding this action, the Court must re-evaluate whether Plaintiff may be granted leave to proceed in forma pauperis. No application to proceed in forma pauperis is currently pending, however. Pursuant to 28 U.S.C. § 1915(a)(1), Plaintiff must submit an application for leave to proceed in forma pauperis.

Accordingly, IT IS HEREBY ORDERED that:

1. The Clerk's Office shall send to Plaintiff s an application to proceed in forma pauperis by a state prisoner; and

2. Plaintiff shall, within thirty days of the date of service of this order, complete and return the application to proceed in forma pauperis to the Court. Plaintiff's failure to do so will result in a recommendation that this action be dismissed for failure to prosecute and to obey a Court order.

IT IS SO ORDERED.

Dated: **February 6, 2017**

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE