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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MANUEL HERRERA-GARCIA,
Plaintiff,
v.
SHERYLL,
Defendant.

Case No. 1:17-cv-00735-DAD-EPG (PC)

ORDER VACATING FINDINGS AND
RECOMMENDATIONS ENTERED ON
AUGUST 3, 2017

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT PLAINTIFF’S
APPLICATION TO PROCEED IN FORMA
PAUPERIS BE DENIED AND THAT
PLAINTIFF BE REQUIRED TO PAY THE
FILING FEE IN FULL

(ECF NO. 9)

TWENTY-ONE DAY DEADLINE

Manuel Herrera-Garcia (“Plaintiff”) is a state prisoner proceeding pro se with this civil rights action filed pursuant to 42 U.S.C. § 1983.

On May 31, 2017, the Court issued an order giving Plaintiff forty-five days to either pay the \$400 filing fee or submit an application to proceed in forma pauperis. (ECF No. 7). Plaintiff was warned that his case would be dismissed if he did not pay the filing fee or submit an application to proceed in forma pauperis. (Id.). The time period expired, and Plaintiff did not pay the filing fee, submit an application to proceed in forma pauperis, or otherwise respond to the Court’s order. Accordingly, on August 3, 2017, the Court issued findings and recommendations, recommending that this action be dismissed, without prejudice, for Plaintiff’s failure to pay the filing fee or file an application to proceed in forma pauperis. (ECF No. 8).

On August 16, 2017, Plaintiff filed an application to proceed in forma pauperis. (ECF

1 No. 9). Accordingly, the Court will vacate its findings and recommendations entered on
2 August 3, 2017.

3 However, after reviewing Plaintiff's application, it appears that Plaintiff can afford the
4 costs of this action. While the Court has not yet received a certified copy of Plaintiff's prison
5 trust account statement, according to Plaintiff's application, during the last six months Plaintiff
6 received an average deposit of \$500. Additionally, Plaintiff has stated that he has \$50,000 in
7 cash. Accordingly, the Court will recommend that Plaintiff's application to proceed in forma
8 pauperis be denied, and that Plaintiff be required to pay the full filing fee of \$400.00.

9 Accordingly, based on the foregoing, IT IS HEREBY RECOMMENDED that:

- 10 1. Plaintiff's application to proceed in forma pauperis be DENIED; and
11 2. If these findings and recommendations are adopted, that Plaintiff be required to
12 pay the \$400 filing fee in full within 30 days of the date the order adopting these findings and
13 recommendations is entered.

14 These findings and recommendations are submitted to the United States District Judge
15 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within twenty-
16 one (21) days after being served with these findings and recommendations, Plaintiff may file
17 written objections with the court. Such a document should be captioned "Objections to
18 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
19 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.
20 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394
21 (9th Cir. 1991)).

22 Additionally, IT IS HEREBY ORDERED that the Court's findings and
23 recommendations, entered on August 3, 2017, are VACATED.

24 IT IS SO ORDERED.

25 Dated: August 21, 2017

26 /s/ Eric P. Groj
27 UNITED STATES MAGISTRATE JUDGE
28