## 1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 No. 1:17-cv-00735-DAD-EPG MANUEL HERRERA-GARCIA, 12 Plaintiff. 13 v. ORDER ADOPTING FINDINGS AND RECOMMENDATIONS AND DENYING 14 PLAINTIFF'S MOTION TO PROCEED IN SHERYLL, **FORMA PAUPERIS** 15 Defendant. (Doc. Nos. 9, 12) 16 17 Manuel Herrera-Garcia is a state prisoner proceeding pro se with this civil rights action 18 brought pursuant to 42 U.S.C. § 1983. 19 On August 16, 2017, plaintiff filed a motion to proceed in forma pauperis. (Doc. No. 9.) 20 On August 22, 2017, the assigned magistrate judge issued findings and recommendations, 21 recommending that plaintiff's application to proceed in forma pauperis be denied, and that he be 22 required to pay the \$400 filing fee within 30 days of the date the order adopting the findings and recommendations is entered. (Doc. No. 12.) Plaintiff was provided twenty-one days to file 23 objections to those findings and recommendations. (Id.) To date, plaintiff has not done so, and 24 25 the time for doing so has passed. 26 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Rule 304, this 27 court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the

28

/////

/////

/////

except that plaintiff's application to proceed *in forma pauperis* will be denied without prejudice to being renewed.

Based upon what is now before the court, the undersigned cannot conclude that plaintiff is unable to pay the \$400 filing fee. In plaintiff's application to proceed *in forma pauperis* filed with the court on August 16, 2017, he stated under penalty of perjury that he possesses cash in the amount of \$50,000 and, in addition, indicated that he had received an average deposit into his prisoner's trust account of \$500.00 per month over the past six months with his average balance in that account being \$500 as well. (Doc. No. 9 at 3, 5.) However, an "Inmate Statement Report" submitted by the California Department of Corrections and Rehabilitation to the court on August 18, 2017, appears to state that as of that date plaintiff had a \$0.00 balance in his prisoner's trust account. (Doc. No. 11.) Because the evidence before the court as to plaintiff's financial wherewithal is inconclusive, the court will adopt the pending findings and recommendations and deny plaintiff's motion to proceed *in forma pauperis*. However, this denial will be without prejudice to plaintiff filing another application to proceed *in forma pauperis* clarifying his financial condition and adequately demonstrating financial hardship.

For these reasons,

- The findings and recommendations dated August 22, 2017 (Doc. No. 12) are adopted in full, except that the denial of plaintiff's motion shall be without prejudice;
- 2. Plaintiff's motion to proceed *in forma pauperis* (Doc. No. 9) is denied without prejudice;
- 3. Plaintiff shall pay the \$400 filing fee in full within 30 days of the date of issuance of this order or submit a renewed application to proceed *in forma pauperis* clarifying his financial condition and adequately demonstrating financial hardship; and

1	4. The Clerk of Court is directed to serve a copy of this order on the Financial		
2	Department, U.S. District Court, Eastern District of California, Fresno Division		
3	IT IS SO ORDERED.		
4	Dated:	<b>November 27, 2017</b>	Dale A. Drogd
5	Buteu.	110101111111111111111111111111111111111	UNITED STATES DISTRICT JUDGE
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21 22			
23			
23 24			
25			
26			
27			
- ·			