

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CARLOS ROMERO BURNETT,) Case No.: 1:17-cv-01135-DAD-BAM (PC)
Plaintiff,)
v.) ORDER VACATING FINDINGS AND
KAMMACK, et al.,) RECOMMENDATIONS
Defendants.) (ECF No. 12)
) ORDER GRANTING MOTION TO PROCEED IN
) FORMA PAUPERIS
) (ECF No. 14)
)
)
)

Plaintiff Carlos Romero Burnett (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action on August 23, 2017, together with a motion requesting leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. (ECF Nos. 1, 2.)

On August 29, 2017, the Court issued an order denying without prejudice Plaintiff's application to proceed in forma pauperis because it was incomplete. (ECF No. 3.) Plaintiff submitted a renewed motion on September 21, 2017, but this application was also incomplete, and the Court directed Plaintiff to submit a new application or pay the filing fee within forty-five (45) days. (ECF Nos. 5, 6.) Following two notices of change of address, the Court directed the Clerk of the Court to re-serve the Court's September 22, 2017 order on Plaintiff at his updated address of record. (ECF No. 11.)

1 On November 27, 2017, after Plaintiff failed to file an application to proceed in forma pauperis
2 within the deadline, the Court issued findings and recommendations recommending dismissal of this
3 action, without prejudice, for Plaintiff's failure to obey the Court's order and failure to prosecute this
4 action. (ECF No. 12.)

5 On December 7, 2017, Plaintiff filed objections to the findings and recommendations. (ECF
6 No. 13.) In his objections, Plaintiff states that the CDCR Trust Office maintains a procedure for
7 fulfilling requests to provide certified copies of trust account statements. Plaintiff appears to argue
8 that he completed the appropriate procedures, and the Trust Office was responsible for forwarding the
9 appropriate documents to the Court. (Id.)

10 Along with his objections, Plaintiff has filed the instant motion to proceed in forma pauperis.
11 (ECF No. 14.) Pursuant to the filing of Plaintiff's completed application to proceed in forma pauperis,
12 the Court finds it proper to vacate its findings and recommendations of November 27, 2017.

13 Plaintiff has made the showing required by § 1915(a) and accordingly, the request to proceed
14 in forma pauperis will be granted. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for
15 this action. 28 U.S.C. § 1915(b)(1). Plaintiff is obligated to make monthly payments in the amount of
16 twenty percent (20%) of the preceding month's income credited to Plaintiff's trust account. The
17 California Department of Corrections is required to send to the Clerk of the Court payments from
18 Plaintiff's trust account each time the amount in the account exceeds \$10.00, until the statutory filing
19 fee is paid in full. 28 U.S.C. § 1915(b)(2).

20 Accordingly, IT IS HEREBY ORDERED that:

21 1. The findings and recommendations issued on November 27, 2017, (ECF No. 12), are
22 VACATED;

23 2. Plaintiff's motion to proceed in forma pauperis (ECF No. 14) is GRANTED;

24 3. **The Director of the California Department of Corrections or his/her designee shall**
25 **collect payments from Plaintiff's prison trust account in an amount equal to twenty per cent**
26 **(20%) of the preceding month's income credited to the prisoner's trust account and shall**
27 **forward those payments to the Clerk of the Court each time the amount in the account exceeds**
28 **\$10.00, in accordance with 28 U.S.C. § 1915(b)(2), until a total of \$350.00 has been collected and**

1 forwarded to the Clerk of the Court. The payments shall be clearly identified by the name and
2 number assigned to this action;

3 4. The Clerk of the Court is directed to serve a copy of this order and a copy of Plaintiff's
4 in forma pauperis application on the Director of the California Department of Corrections, via the
5 court's electronic case filing system (CM/ECF); and

6 5. The Clerk of the Court is directed to serve a copy of this order on the Financial
7 Department, U.S. District Court, Eastern District of California.

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9 IT IS SO ORDERED.

10 Dated: December 8, 2017

11 /s/ *Barbara A. McAuliffe*
12 UNITED STATES MAGISTRATE JUDGE

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