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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

MARIO ANTON LEE,  
Plaintiff,  
v.  
MATEVOUSIAN,  
Defendant.

**Case No. 1:18-cv-00141-SKO (PC)**  
**ORDER TO SHOW CAUSE WHY THE CASE SHOULD NOT BE DISMISSED BECAUSE OF PLAINTIFF’S UNTRUE ALLEGATION OF POVERTY IN APPLICATION FOR *IN FORMA PAUPERIS* STATUS**  
**(Doc. 5)**  
**TWENTY-ONE (21) DAY DEADLINE**

Plaintiff, Mario Anton Lee, is a federal prisoner proceeding *pro se* in this civil rights action pursuant to *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971) which he filed on January 26, 2018. (Doc. 1.) Plaintiff filed a motion to proceed *in forma pauperis* on February 16, 2018. (Doc. 2.) Upon review, Plaintiff’s trust account reflects an average monthly balance of roughly \$300.00, with an average of \$183.35 in monthly deposits for the five months prior to the date that he filed this action.

Proceeding “*in forma pauperis* is a privilege not a right.” *Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir. 1965). While a party need not be completely destitute to proceed *IFP*, *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339-40 (1948), “the same even-handed care must be employed to assure that federal funds are not squandered to underwrite, at public expense, either frivolous claims or the remonstrances of a suitor who is financially able, in whole or in material part, to pull his own oar.” *Doe v. Educ. Enrichment Sys.*, No. 15cv2628-MMA (MDD), 2015

1 U.S. Dist. LEXIS 173063, \*2 (S.D. Cal. Dec. 30, 2015) (citing *Temple v. Ellerthorpe*, 586 F.  
2 Supp. 848, 850 (D.R.I. 1984)). “[T]he court shall dismiss the case at any time if the court  
3 determines the allegation of poverty is untrue.” 28 U.S.C. § 1915(e)(2)(A). Based upon his trust  
4 account statement, Plaintiff was not impoverished when he filed this action and when he filed the  
5 motion to proceed *in forma pauperis*.

6 It also appears that Plaintiff may have intended to file a *habeas corpus* action rather than  
7 an action for civil rights violation under *Bivens*. As an initial matter, there are only three actions  
8 for damages which may be brought against federal officers: (1) violation of the Fourth  
9 Amendment’s prohibition against unreasonable searches and seizures, *Bivens v. Six Unknown*  
10 *Fed. Narcotics Agents*, 403 U.S. 388 (1971); (2) Fifth Amendment violation for gender-  
11 discrimination, *Davis v. Passman*, 442 U. S. 228 (1979); and (3) violation of the Eighth  
12 Amendment’s Cruel and Unusual Punishments Clause, *Carlson v. Green*, 446 U.S. 14 (1980).  
13 *Ziglar v. Abbasi, et al.*, --- U.S. ---, 137 S.Ct. 1843, 1848 (June 19, 2017).

14 Additionally, Plaintiff’s allegations are based on disciplinary proceedings. (Doc. 1.)  
15 Plaintiff states that he lost “good time” and seeks “[t]o have the incident report overturned,  
16 vacated, expunged, or reversed.” (*Id.*) However, the United States Supreme Court has  
17 determined that an inmate may not bring a civil action if its success would release the claimant  
18 from confinement or shorten its duration, *Preiser v. Ridrugyez*, 411 U.S. 475, 500 (1973); *Young*  
19 *v. Kenny*, 907 F.2d 874 (9th Cir. 1990), *cert. denied* 11 S.Ct. 1090 (1991), or would necessarily  
20 imply the invalidity of the conviction or sentence, *Heck v. Humphrey*, 512 U.S. 477, 487 (1994).  
21 Where a plaintiff’s success in an action would necessarily imply the invalidity of his underlying  
22 conviction or sentence, he must first “prove that the conviction or sentence has been reversed on  
23 direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to  
24 make such determination, or called into question by a federal court’s issuance of a writ of habeas  
25 corpus, 28 U.S.C. § 2254.” *Heck* at 487-88. “A claim for damages bearing that relationship to a  
26 conviction or sentence that has not been so invalidated is not cognizable under § 1983.” *Id.* at  
27 488. This “favorable termination” requirement has been extended to actions that, if successful,  
28 would imply the invalidity of prison administrative decisions which result in a forfeiture of good-

