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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ALEXANDER FRANCO,

 Plaintiff,

 v.

LEVIN, et al.,

 Defendants.

CASE NO. 1:19-cv-0764 JLT (PC)

**ORDER VACATING ORDER TO SHOW
CAUSE;**

**ORDER DIRECTING CLERK OF COURT
TO ASSIGN A DISTRICT JUDGE; AND**

**FINDINGS AND RECOMMENDATIONS
TO DENY PLAINTIFF’S MOTION TO
PROCEED *IN FORMA PAUPERIS***
(Docs. 2, 11)

FOURTEEN-DAY DEADLINE

Previously, the Court direct plaintiff to show cause why his application to proceed in forma pauperis should not be denied considering that the Certificate of Funds in Prisoner’s Account submitted in support of plaintiff’s application to proceed *in forma pauperis* revealed average deposits each month totaling \$160, and an average monthly prisoner balance of \$160. (Docs. 2, 11.) Additionally, the Inmate Statement Report submitted by the California Department of Corrections and Rehabilitation shows an account balance fluctuating between \$57.46 and \$641.61. (Doc. 8.) Plaintiff has not responded to the order to show cause, and the time for doing so has now passed.

As the Court informed plaintiff, proceeding “*in forma pauperis* is a privilege not a right.”

1 Smart v. Heinze, 347 F.2d 114, 116 (9th Cir. 1965). Though a party need not be completely
2 destitute to proceed in forma pauperis, Adkins v. E.I. DuPont de Nemours & Co., 335 U.S. 331,
3 339-40 (1948), “the same even-handed care must be employed to assure that federal funds are not
4 squandered to underwrite, at public expense, either frivolous claims or the remonstrances of a
5 suitor who is financially able, in whole or in material part, to pull his own oar.” Alvarez v.
6 Berryhill, 2018 WL 6265021, at *1 (S.D. Cal. Oct. 1, 2018) (citing Temple v. Ellerthorpe, 586 F.
7 Supp. 848, 850 (D.R.I. 1984)). “[T]he court shall dismiss the case at any time if the court
8 determines the allegation of poverty is untrue.” 28 U.S.C. § 1915(e)(2)(A). It appears that
9 plaintiff has had sufficient funds over the last several months to be required to pay the filing fee
10 in full to proceed in this action, but he chose to spend his money elsewhere. Accordingly, the
11 Court **ORDERS** as follows:

- 12 1. The order to show cause is **VACATED**;
- 13 2. The Clerk of Court is directed to assign a district judge to this case; and

14 The Court **RECOMMENDS** that plaintiff’s application to proceed *in forma pauperis* be
15 **DENIED** and plaintiff be required to pay the filing fee in full before proceeding with this action.

16 These Findings and Recommendations will be submitted to the United States District
17 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
18 fourteen days after being served with these Findings and Recommendations, the parties may file
19 written objections with the Court. The document should be captioned “Objections to Magistrate
20 Judge’s Findings and Recommendations.” The parties are advised that failure to file objections
21 within the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772
22 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

23
24 IT IS SO ORDERED.

25 Dated: April 14, 2020

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE