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UNITED STATES DISTRICT COURT
6
EASTERN DISTRICT OF CALIFORNIA
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8
9 DAE HENDERSON, JR., Case No. 1:21-cv-00697-NONE-SKO

10 Plaintiff,

11 v.

12 JEFFREY Y. HAMILTON, et al.,

13 Defendants.

14 ORDER DISCHARGING JUNE 14, 2021
15 ORDER TO SHOW CAUSE AND
16 GRANTING APPLICATION TO PROCEED
17 IN FORMA PAUPERIS AND DIRECTING
18 PAYMENT OF INMATE FILING FEE BY
19 THE CALIFORNIA DEPARTMENT OF
20 CORRECTIONS AND REHABILITATION

21 (Docs. 4, 7)

22 On June 14, 2021, the Court entered an Order to Show Cause requiring Plaintiff Dae
23 Henderson, Jr., a prisoner proceeding *pro se*, July 8, 2021, to file an amended application to proceed
24 *in forma pauperis*, to pay filing fee, or to otherwise show cause why the case should not be
25 dismissed.¹ (Doc. 4.) On July 12, 2021, Plaintiff filed an amended application to proceed *in forma*
26 *pauperis*. (Doc. 7.) Plaintiff's application is, therefore, untimely.

27 Although the Court may extend time to file a response after the deadline has expired because
28 of "excusable neglect," Fed. R. Civ. P. 6(b)(1)(B), no such excusable neglect has been articulated –
much less shown – here. Notwithstanding this deficiency, in view of the liberal construction of Fed.
R. Civ. 6(b)(1) to effectuate the general purpose of seeing that cases are tried on the merits, *see*

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1 *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1258-59 (9th Cir. 2010), the Court hereby
2 DISCHARGES its June 14, 2021 Order to Show Cause. (Doc. 4.)

3 Plaintiff has made the showing required by 28 U.S.C. § 1915, and, accordingly, the request
4 to proceed *in forma pauperis* will be granted. Plaintiff is obligated to pay the statutory filing fee of
5 \$350.00 for this action. 28 U.S.C. § 1915(b)(1). Plaintiff is obligated to make monthly payments
6 in the amount of twenty percent of the preceding month's income credited to Plaintiff's trust
7 account. The California Department of Corrections and Rehabilitation is required to send to the
8 Clerk of Court payments from Plaintiff's account each time the amount in the account exceeds
9 \$10.00, until the statutory filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

10 As to the status of his complaint, Plaintiff is advised that, pursuant to 28 U.S.C. § 1915(e)(2),
11 the court must conduct an initial review of every *pro se* complaint proceeding *in forma pauperis* to
12 determine whether it is legally sufficient under the applicable pleading standards. The court must
13 dismiss a complaint, or portion thereof, if the court determines that the complaint is legally frivolous
14 or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from
15 a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). If the court determines that
16 the complaint fails to state a claim, leave to amend may be granted to the extent that the deficiencies
17 in the complaint can be cured by amendment. Plaintiff's complaint will be screened in due course.
18 If appropriate after the case has been screened, the Clerk of Court will provide Plaintiff with the
19 requisite forms and instructions to request the assistance of the United States Marshal in serving the
20 defendants pursuant to Federal Rule of Civil Procedure 4.

21 In accordance with the above, and good cause appearing therefore, IT IS HEREBY ORDERED
22 that:

- 23 1. Plaintiff's application to proceed *in forma pauperis* (Doc. 7) is GRANTED;
24 2. **The Director of the California Department of Corrections and Rehabilitation or an
appropriate designee shall collect payments from Plaintiff's prison trust account in
an amount equal to twenty percent (20%) of the preceding month's income credited
to the prisoner's trust account, and shall forward those payments to the Clerk of
Court each time the amount in the account exceeds \$10.00, in accordance with 28**

U.S.C. § 1915(b)(2), until a total of \$350.00 has been collected and forwarded to the Clerk of Court. The payments shall be clearly identified by the name and number assigned to this action;

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

IT IS SO ORDERED.

Dated: **July 16, 2021**

/s/ Sheila K. Oberto

UNITED STATES MAGISTRATE JUDGE