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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SERGIO A. OSEJO,
Plaintiff,
v.
HURTADO, et al.,
Defendants.

Case Number 1:21-cv-01178-EPG (PC)
FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT PLAINTIFF’S
APPLICATION TO PROCEED IN FORMA
PAUPERIS BE DENIED
(ECF No. 2)
OBJECTIONS, IF ANY, DUE WITHIN
TWENTY-ONE DAYS
ORDER DIRECTING CLERK TO ASSIGN
DISTRICT JUDGE

Sergio Osejo (“Plaintiff”) is a state prisoner proceeding *pro se* in this civil rights action filed pursuant to 42 U.S.C. § 1983.

Plaintiff filed the complaint commencing this action on July 30, 2021. (ECF No. 1). On that same day, Plaintiff filed an application to proceed in forma pauperis. (ECF No. 2).

According to Plaintiff’s Prisoner Trust Fund Account Statement (ECF No 8), Plaintiff’s balance as of the date of the last transaction was \$1,262.26. Thus, Plaintiff can afford to pay the filing fee for this action.¹ Therefore, the Court will recommend that Plaintiff’s application

¹ The Court notes that the majority, if not all, of the funds in Plaintiff’s account may be from pandemic stimulus payments. However, Plaintiff has not cited to any law, and the Court is not aware of any, preventing pandemic stimulus payments from being included when determining whether a plaintiff can afford to pay the filing fee. Additionally, other courts in this district have included the funds when making the determination. See, e.g.,

1 to proceed in forma pauperis be denied and that Plaintiff be required to pay the filing fee of
2 \$402.00 for this action in full.

3 Based on the foregoing, the Court HEREBY RECOMMENDS that:

- 4 1. Plaintiff's application to proceed in forma pauperis be DENIED; and
- 5 2. Plaintiff be directed to pay the \$402.00 filing fee in full if he wants to proceed
6 with this action.

7 These findings and recommendations will be submitted to the United States district
8 judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
9 twenty-one (21) days after being served with these findings and recommendations, Plaintiff
10 may file written objections with the Court. The document should be captioned "Objections to
11 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
12 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.
13 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394
14 (9th Cir. 1991)).

15 Additionally, IT IS ORDERED that the Clerk of Court is directed to assign a district
16 judge to this case.

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18 IT IS SO ORDERED.

19 Dated: August 9, 2021

20 /s/ Eric P. Gray
21 UNITED STATES MAGISTRATE JUDGE

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26 Hammler v. Zydus Pharmacy, 2021 WL 3048380, at *1-2 (E.D. Cal. July 20, 2021) (considering the plaintiff's
27 "economic impact payments" when determining that the plaintiff was "financially able to pay the filing fee");
28 Corral v. California Highway Patrol, 2021 WL 2268877, at *1 (E.D. Cal. June 3, 2021) (findings and
recommendations pending before district judge) (considering the plaintiff's "pandemic stimulus payments" in
determining that the "plaintiff has made an inadequate showing of indigency").