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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES ROY McNEIL,

Plaintiff,

No. CIV S-08-2432 MCE GGH PS

vs.

INTERNAL REVENUE SERVICE,

Defendant.

ORDER

_____ /

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. § 1914(a), 1915(b)(1). Plaintiff has been without funds for six months and is currently without funds. Accordingly, the court will not assess an initial partial filing fee. 28 U.S.C. § 1915(b)(1). Plaintiff is obligated to make monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments shall be collected

1 and forwarded by the appropriate agency to the Clerk of the Court each time the amount in
2 plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.
3 § 1915(b)(2).

4 The determination that plaintiff may proceed in forma pauperis does not complete
5 the required inquiry. Pursuant to 28 U.S.C. § 1915(e)(2), the court is directed to dismiss the case
6 at any time if it determines the allegation of poverty is untrue, or the action is frivolous or
7 malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against
8 an immune defendant. The court cannot make this determination on the present record.
9 Therefore, the court reserves decision on these issues until the record is sufficiently developed.

10 In accordance with the above, IT IS HEREBY ORDERED that:

- 11 1. Plaintiff's request for leave to proceed in forma pauperis is granted.
- 12 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.

13 The fee shall be collected and paid in accordance with this court's order to the Director of the
14 California Department of Corrections and Rehabilitation filed concurrently herewith.

15 3. Service is appropriate for the following defendant: Internal Revenue Service.

16 4. The Clerk of the Court shall send plaintiff one USM-285 form, one summons,
17 an instruction sheet and a copy of the complaint filed October 14, 2008.

18 5. Within thirty days from the date of this order, plaintiff shall complete the
19 attached Notice of Submission of Documents and submit the following documents to the court:

- 20 a. The completed Notice of Submission of Documents;
- 21 b. One completed summons;
- 22 c. One completed USM-285 form for each defendant listed in number 3
23 above; and
- 24 d. Two copies of the endorsed complaint filed October 14, 2008.

25 6. Plaintiff need not attempt service on defendants and need not request waiver of
26 service. Upon receipt of the above-described documents, the court will direct the United States

1 Marshal to serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4
2 without payment of costs.

3 DATED: April 14, 2009

4
5 /s/ Gregory G. Hollows
6 UNITED STATES MAGISTRATE JUDGE

7 GGH:076/McNeil2432.1a.wpd

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES ROY McNEIL,

Plaintiff,

No. CIV S-08-2432 MCE GGH PS

vs.

INTERNAL REVENUE SERVICE,

Defendant.

NOTICE OF SUBMISSION

OF DOCUMENTS

_____/_____
Plaintiff hereby submits the following documents in compliance with the court's
order filed _____:

_____ completed summons form

_____ completed USM-285 forms

_____ copies of the _____
Complaint/Amended Complaint

DATED:

Plaintiff