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

LEE WILSON,

No. CIV S-09-2191-LKK-CMK-P

Plaintiff,

vs.

ORDER

SANDRA LEE WEVER, et al.,

Defendants.

_____ /

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983.

Plaintiff initially filed a defective application to proceed in forma pauperis in that it was not accompanied by a certified copy of plaintiff's inmate trust account statement. On September 1, 2009, the court issued an order providing plaintiff 30 days within which to cure the defect or otherwise resolve the fee status for this case. A second application to proceed in forma pauperis filed on September 14, 2009, was likewise defective. Again, on October 2, 2009, the court issued an order providing plaintiff an additional opportunity to either cure the defect or resolve the fee status. Two more in forma pauperis applications filed on October 14, 2009, and October 16, 2009, were also defective. Given plaintiff's apparent inability or unwillingness to

1 comply with the court's prior orders by curing the defect or paying the filing fees, the court
2 issued findings and recommendations on October 22, 2009, that this action be dismissed for lack
3 of prosecution.

4 On November 3, 2009, plaintiff filed: (1) a fifth application for leave to proceed in
5 forma pauperis (Doc. 18); and (2) a motion for default judgment (Doc. 17). Plaintiff has
6 submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). The request to
7 proceed in forma pauperis will, therefore, be granted and the October 22, 2009, dismissal
8 findings and recommendations will be vacated.

9 As to plaintiff's request for default judgment, the court has not yet screened
10 plaintiff's complaint to determine whether service is appropriate and no defendant has been
11 served. Because no response to plaintiff's complaint is due, default is not appropriate. See Fed.
12 R. Civ. P. 55. Now that the fee status of this case has been resolved, plaintiff's complaint will be
13 addressed by separate order.

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. Plaintiff's motion for leave to proceed in forma pauperis (Doc. 18) is
16 granted;
- 17 2. Plaintiff is required to pay the full statutory filing fee of \$350.00 for this
18 action pursuant to 28 U.S.C. §§ 1914(a) and 1915(b)(1);
- 19 3. No initial partial filing fee will be assessed pursuant to 28 U.S.C.
20 § 1915(b)(1);
- 21 4. Plaintiff will be obligated for monthly payments of twenty percent of the
22 preceding month's income credited to plaintiff's inmate trust account, such payments to be
23 forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's
24 account exceeds \$10.00, until the statutory filing fee is paid in full, pursuant to 28 U.S.C.
25 § 1915(b)(2);

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- 5. Plaintiff's motion for default judgment (Doc. 17) is denied; and
- 6. The findings and recommendations issued on October 22, 2009, are vacated.

DATED: November 9, 2009



CRAIG M. KELLISON
UNITED STATES MAGISTRATE JUDGE