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

ERIC WILTON BURTON,

Plaintiff,

No. 2:11-cv-2187 KJN P

vs.

M. McDONALD, et al.,

Defendants.

ORDER

\_\_\_\_\_ /

Plaintiff, a state prisoner proceeding without counsel, has filed a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has not, however, filed an in forma pauperis affidavit or paid the required filing fee. See 28 U.S.C. §§ 1914(a), 1915(a). (Plaintiff has submitted only a copy of his prisoner trust fund account statement. (Dkt. No. 2.)) Therefore, plaintiff will be provided the opportunity either to submit the appropriate affidavit in support of a request to proceed in forma pauperis or to submit the appropriate filing fee.

The court further notes that plaintiff’s request to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(g) (based on plaintiff’s assertion that he “is under imminent danger of serious physical injury”) does not apply under these circumstances. The cited language applies only to requests for an exception to application of that provision, which precludes in forma pauperis status to prisoners who have had three or more cases dismissed because they were

1 found to be frivolous, malicious, or failed to state a claim upon which relief could be granted. Id.  
2 Review of plaintiff's filings indicates that he has not, to date, been designated a "three strikes"  
3 plaintiff under this provision (although it is clear that plaintiff has been a frequent litigator).  
4 Therefore, there is no basis for application of the cited provision.<sup>1</sup>

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

6 1. Plaintiff shall submit, within thirty days from the date of this order, an affidavit  
7 in support of his request to proceed in forma pauperis on the form provided by the Clerk of  
8 Court, or the appropriate filing fee; plaintiff's failure to comply with this order may result in the  
9 dismissal of this action; and

10 2. The Clerk of Court is directed to send plaintiff a new Application to Proceed In  
11 Forma Pauperis By a Prisoner.

12 DATED: August 29, 2011

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15 KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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25 <sup>1</sup> If plaintiff is, instead, seeking preliminary injunctive relief, he must, together with his  
26 completed application to proceed in forma pauperis, file a separate motion seeking such relief;  
such motion should be short and concise, referencing without reiterating the allegations of  
plaintiff's complaint.

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No. 2:11-cv-2187 KJN P

vs.

M. McDONALD, et al.,

Defendants.

SUBMISSION OF

IFP or FILING FEE

\_\_\_\_\_ /

Plaintiff hereby submits the following document in compliance with the court's  
order filed \_\_\_\_\_:

\_\_\_\_\_

IFP affidavit

\_\_\_\_\_

The appropriate filing fee

\_\_\_\_\_

Date

\_\_\_\_\_

Plaintiff