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

JIMMIE EARL STEPHEN,

Appellant,

No. 11 MC 0037 MCE GGH PS

vs.

ALAN S. FUKUSHIMA, et al.,

ORDER

Appellees.

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Appellant is a state prisoner proceeding pro se with a bankruptcy action before the Ninth Circuit’s Bankruptcy Appellate Panel. The BAP has referred this matter to this district court for the limited purpose of ruling on appellant’s request for leave to proceed in forma pauperis. After appellant was ordered to file a certified copy of his prison trust account statement for the six month period immediately preceding the filing of the complaint, and an affidavit in support of his request to proceed in forma pauperis, within 21 days, but failed to do so, this court on June 30, 2011, recommended that appellant’s motion to proceed in forma pauperis be denied.

On July 8, 2001, appellant filed objections to the findings and recommendations, and submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). While not entirely clear why the required documentation was not filed within the time frame set by the district court, even considering the prison “mailbox” rule, the undersigned will give the prisoner

1 the benefit of the doubt. Accordingly, the findings and recommendations will be vacated, and the  
2 request to proceed in forma pauperis will be granted.

3 Appellant is required to pay the statutory filing fee of \$455.00 for this action. 28  
4 U.S.C. §§ 1914(a), 1915(b)(1). Appellant will not be assessed an initial filing fee. 28 U.S.C.  
5 § 1915(b)(1). Appellant will be obligated for monthly payments of twenty percent of the  
6 preceding month's income credited to appellant's prison trust account. These payments will be  
7 forwarded by the appropriate agency to the Clerk of the Court each time the amount in  
8 appellant's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

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

- 10 1. The findings and recommendations, filed June 30, 2011, are vacated.
- 11 2. Appellant's request for leave to proceed in forma pauperis is granted.
- 12 3. Appellant is obligated to pay the statutory filing fee of \$455.00 for this action.

13 Appellant will not be assessed an initial filing fee. All fees shall be collected and paid in  
14 accordance with this court's order to the Director of the California Department of Corrections  
15 and Rehabilitation filed concurrently herewith.

16 4. The Clerk of the Court is directed to serve a copy of this order on the  
17 Bankruptcy Appellate Panel of the Ninth Circuit (BAP case number EC-10-1511).

18 DATED: July 11, 2011

19 /s/ Gregory G. Hollows  
20 UNITED STATES MAGISTRATE JUDGE

21 GGH:076/Stephen0037.ifp2  
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