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

JOHN NGUYEN,

No. CIV S-12-0493-KJM-CMK-P

Petitioner,

vs.

FINDINGS AND RECOMMENDATIONS

RICK HILL,

Respondent.

_____ /

Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pending before the court is petitioner’s application for leave to proceed in forma pauperis (Doc. 2).

Under 28 U.S.C. § 1915(a), the court may grant in forma pauperis status to parties who submit an affidavit showing that the party is unable to pay the filing fee. In this case, the filing fee is \$5.00. Petitioner has submitted a copy of his prison trust account statement reflecting that, as of February 6, 2012, he had \$561.55 in available funds in his prison trust account. Given this balance, the court cannot find that petitioner is unable to pay the \$5.00 filing fee. Therefore, petitioner’s application for leave to proceed in forma pauperis will be denied and petitioner shall be required to pre-pay the filing fee before this action can proceed. Petitioner is

1 cautioned that failure to pay the filing fee within the time provided by this order may result in
2 dismissal of the action. See Local Rule 110.

3 Based on the foregoing, the undersigned recommends that:

4 1. Petitioner's application for leave to proceed in forma pauperis (Doc. 2) be
5 denied; and

6 2. Petitioner be directed to pay the \$5.00 filing fee.

7 These findings and recommendations are submitted to the United States District
8 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
9 after being served with these findings and recommendations, any party may file written
10 objections with the court. Responses to objections shall be filed within 14 days after service of
11 objections. Failure to file objections within the specified time may waive the right to appeal.
12 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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14 DATED: March 22, 2012

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16 **CRAIG M. KELLISON**
17 UNITED STATES MAGISTRATE JUDGE
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