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

CHARLES FOX,

Plaintiff,

No. 2:12-cv-01187 KJN

v.

MICHAEL J. ASTRUE, Commissioner
of Social Security,

Defendant.

ORDER and
FINDINGS AND RECOMMENDATIONS

_____/

Plaintiff, who is represented by an attorney, filed his complaint without paying the applicable filing fee.¹ Instead, plaintiff filed an application to proceed in forma pauperis (Dkt. No. 2). Plaintiff’s declaration in support of his application to proceed in forma pauperis reflects that plaintiff is not employed, but is paid, or was paid until recently, the following in “Take home amounts”:

- \$343 per month for life, as a result of plaintiff’s “Boeing Corp. Retirement”;
- \$118 per month for life, as a result of plaintiff’s “EBASCO Corp.

¹ This case was referred to the undersigned pursuant to Eastern District of California Local Rule 302(c)(15) and 28 U.S.C. § 636(c).

1 Retirement”;

- 2 • \$1,382 per month, until April 2012, in Social Security “early retirement”;
- 3 and
- 4 • \$1,520 in Social Security disability payments.

5 Additionally, plaintiff declares that he maintains an average balance of approximately \$2,000 in
6 his checking or savings account. He further declares that he owns one vehicle outright, is making
7 payments on a 2005 model year vehicle, and is making payments on a 2004 model year mobile
8 home. Finally, he declares that his spouse is employed and is the “primary wage earner.”

9 Pursuant to federal statute, a filing fee of \$350 is required to commence a civil
10 action in federal district court. 28 U.S.C. § 1914(a). The court may authorize the
11 commencement of an action “without prepayment of fees and costs or security therefor” by a
12 person that is unable to pay such fees or provide security therefor. 28 U.S.C. § 1915(a)(1).

13 Plaintiff’s declaration of the amount of his earnings and money on hand demonstrates that
14 plaintiff is able to pay the filing fee and costs or provide security therefor. Thus, plaintiff has
15 made an inadequate showing of indigency with respect to payment of the initial filing fee. See
16 Olivares v. Marshall, 59 F.3d 109, 112 (9th Cir. 1995); Alexander v. Carson Adult High Sch., 9
17 F.3d 1448, 1449 (9th Cir. 1993); cf. Adkins v. E.I. DuPont de Nemours & Co., 335 U.S. 331,
18 339 (1948).

19 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court shall randomly
20 select a district judge to review and resolve these proposed findings and recommendations.

21 It is FURTHER RECOMMENDED that:

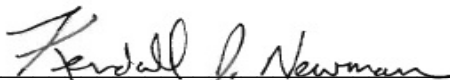
- 22 1. Plaintiff’s application to proceed in forma pauperis (Dkt. No. 2) be denied.
- 23 2. Plaintiff be provided twenty-one days following resolution of these
24 findings and recommendations within which to pay the initial filing fee of \$350.00.

25 These findings and recommendations are submitted to the United States District
26 Judge to be assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within

1 fourteen days after being served with these findings and recommendations, any party may file
2 written objections with the court and serve a copy on all parties. Id.; see also E. Dist. Local Rule
3 304(b). Such a document should be captioned “Objections to Magistrate Judge’s Findings and
4 Recommendations.” Any response to the objections shall be filed with the court and served on
5 all parties within fourteen days after service of the objections. E. Dist. Local Rule 304(d).
6 Failure to file objections within the specified time may waive the right to appeal the District
7 Court’s order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d
8 1153, 1156-57 (9th Cir. 1991).

9 IT IS SO ORDERED AND RECOMMENDED.

10 DATED: May 9, 2012

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KENDALL J. NEWMAN
14 UNITED STATES MAGISTRATE JUDGE
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