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

JAMES R. O'BRIEN,

No. 2:14-cv-0702-CMK-P

Plaintiff,

vs.

ORDER

FRED FOULK, et al.

Defendants.

\_\_\_\_\_ /

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

Pending before the court is plaintiff's application to proceed in forma pauperis (Doc. 2). Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). The request to proceed in forma pauperis will, therefore, be granted.

Plaintiff has also filed a motion for an extension of time to submit a summons and amended complaint, which has now been received by the court. Pursuant to Federal Rule of Civil Procedure 15(a)(1), a party may amend his pleading once as a matter of right at any time before being served with a responsive pleading. A review of the docket reflects that no responsive pleading has been served. Therefore, no order is required in order for plaintiff to file

1 an amended complaint. This action shall now proceed on the amended complaint (Doc. 7),  
2 which supercedes the prior complaint. The amended complaint will be addressed by separate  
3 order. In addition, petitioner's request for time to submit a summons is unnecessary. Once the  
4 court screens the amended complaint, as required by 28 U.S.C. § 1915A(a), and if it is found  
5 sufficient for service, the court will issue the necessary orders for service, including a summons.

6  
7 To: The California Department of Corrections and Rehabilitation  
8 1515 S Street, Sacramento, California 95814:

9 Plaintiff is obligated to pay the full statutory filing fee of \$350.00 for this action.  
10 In addition to any initial partial filing fee required to be assessed, plaintiff will be obligated to  
11 make monthly payments in the amount of twenty percent of the preceding month's income  
12 credited to plaintiff's inmate trust account. The agency referenced above is required to send to  
13 the Clerk of the Court the initial partial filing fee and thereafter payments from plaintiff's inmate  
14 trust account each time the amount in the account exceeds \$10.00, until the statutory filing fee of  
15 \$350.00 is paid in full. See 28 U.S.C. § 1915(b)(2).

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. Plaintiff's motion for leave to proceed in forma pauperis (Doc. 2) is  
18 granted;
- 19 2. Plaintiff is required to pay the full statutory filing fee of \$350.00 for this  
20 action pursuant to 28 U.S.C. §§ 1914(a) and 1915(b)(1);
- 21 3. The director of the agency referenced above, or a designee, shall collect  
22 from plaintiff's inmate trust account an initial partial filing fee in accordance with the provisions  
23 of 28 U.S.C. § 1915(b)(1) and shall forward the amount to the Clerk of the Court, such payment  
24 to be clearly identified by the name and number assigned to this action;
- 25 4. Thereafter, the director of the agency referenced above, or a designee, shall  
26 collect from plaintiff's inmate trust account the balance of the filing fee by collecting monthly

1 payments from plaintiff's inmate trust account in an amount equal to twenty percent (20%) of the  
2 preceding month's income credited to plaintiff's inmate trust account and forwarding payments to  
3 the Clerk of the Court each time the amount in the account exceeds \$10.00 in accordance with 28  
4 U.S.C. § 1915(b)(2), until the \$350.00 filing fee for this action has been paid in full, such  
5 payments to be clearly identified by the name and number assigned to this action;

6           5.       The Clerk of the Court is directed to serve a copy of this order and a copy  
7 of plaintiff's signed in forma pauperis affidavit to the address shown above;

8           6.       The Clerk of the Court is further directed to serve a copy of this order on  
9 the Financial Department of the court; and

10           7.       Plaintiff's motion for an extension of time (Doc. 5) is denied as  
11 unnecessary.

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13 DATED: February 27, 2015

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