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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

SEAVON PIERCE,  
Plaintiff,  
v.  
SACRAMENTO NEWS & REVIEW, et  
al.,  
Defendant.

No. 2:15-cv-2650-KJM-CMK-P

**ORDER**

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge as provided by Eastern District of California local rules.

On April 11, 2017, the Magistrate Judge filed findings and recommendations, which were served on the parties and which contained notice that the parties may file objections within a specified time. No objections to the findings and recommendations have been filed.

The court presumes that any findings of fact are correct. *See Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge’s conclusions of law are reviewed de novo. *See Britt v. Simi Valley Unified School Dist.*, 708 F.2d 452, 454 (9th Cir. 1983). Having reviewed the file, the court will adopt the findings and recommendations in part.

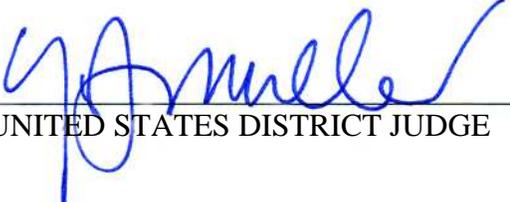
The magistrate judge finds, correctly, that plaintiff is barred from proceeding in forma pauperis under the provisions of 28 U.S.C. § 1915. He recommends both denial of

1 plaintiff's application to proceed in forma pauperis and dismissal of this action "without prejudice  
2 to re-filing upon pre-payment of the filing fees." ECF No. 8 at 3. The court agrees denial of  
3 plaintiff's in forma pauperis is required by 28 U.S.C. § 1915(g). However, nothing in the  
4 language of 28 U.S.C. § 1915(g) authorizes the court to dismiss an action where a plaintiff is  
5 barred from proceeding in forma pauperis under its provisions. For that reason, the court will  
6 grant plaintiff an opportunity to pre-pay the filing fee for this action. The filing fee for this action  
7 is four hundred dollars (\$400.00). See 28 U.S.C. § 1914 and District Court Miscellaneous Fee  
8 Schedule, ¶ 14. Plaintiff shall pay this amount in full within thirty days. Failure to comply with  
9 this order will result in dismissal of the action. See Fed. R. Civ. P. 41.

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. The findings and recommendations filed April 11, 2017, are adopted in part;
- 12 2. Plaintiff's application for leave to proceed in forma pauperis (Doc. 3) is  
13 denied;
- 14 3. Plaintiff shall pay the full amount of the four hundred dollar (\$400.00) filing  
15 fee for this action within thirty days from the date of this order; and
- 16 4. Failure to comply with this order will result in dismissal of the action without  
17 prejudice.

18 DATED: September 25, 2017.

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21 UNITED STATES DISTRICT JUDGE  
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