UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

KEITH CANDLER, Plaintiff, v. BAKER et al., Defendants.	No. 2:17-cv-1885 AC P ORDER

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

On September 11, 2017, this case was removed to this court by defendants. ECF No. 2. On October 17, 2017, the court determined that allegations within the complaint were sufficient to state several First and Eighth Amendment claims against multiple named defendants. See ECF No. 10 at 3-4. At that time, it was also determined that of the relevant defendants, all had been served except defendant Rashid. See id. at 4. As a result, plaintiff was sent and ordered to return copies of the first amended complaint as well as the requisite service documents so that service upon defendant Rashid could be effected. See id. at 4.

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Plaintiff did not timely respond to the court's service order. Consequently, on January 11, 2018, a second order was issued. See ECF No. 12. Shortly thereafter, on January 22, 2018, plaintiff returned the service documents. See ECF No. 13.

On April 11, 2018, in order to permit service of the removed complaint upon defendant Rashid by the United States Marshal, the court sent and ordered plaintiff to submit an Application to Proceed In Forma Pauperis By A Prisoner. ECF No. 14. Plaintiff submitted the application on April 30, 2018. ECF No. 15.

The application makes the showing required by 28 U.S.C. § 1915(a). Accordingly, plaintiff's request to proceed in forma pauperis (ECF No. 15) will be granted. However, because it was defendants, not plaintiff, who brought this action before the court, and they have paid the filing fee, plaintiff shall not be assessed the partial filing fee required by 28 U.S.C. § 1915(b)(1) while proceeding in forma pauperis. See 28 U.S.C. § 1915(b)(3) (stating filing fee shall not exceed amount of fees permitted by statute for commencement of civil action).

The first amended complaint states a cognizable claim for relief pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b). If the allegations of the complaint are proven, plaintiff has a reasonable opportunity to prevail on the merits of this action.

In accordance with the above, IT IS HEREBY ORDERED that plaintiff's request for leave to proceed in forma pauperis (ECF No. 15) is GRANTED.

Plaintiff need not attempt service on defendant Rashid and need not request waiver of service. Under separate order, the court will direct the United States Marshal to serve defendant Rashid pursuant to Federal Rule of Civil Procedure 4 without payment of costs.

DATED: June 11, 2018

Allison Claire

ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE