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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JIMMIE STEPHEN,  
Plaintiff,  
v.  
E. MONTEJO, et al.,  
Defendants.

No. 2:18-cv-1796 KJM DB P

ORDER

Plaintiff is a state prisoner proceeding pro se. In an order filed November 30, 2020, Chief Judge Mueller granted defendants’ motion to revoke plaintiff’s in forma pauperis status. (ECF No. 93.) Plaintiff must pay the \$400 filing fee within thirty days of the date of that order if he wishes to proceed with this action.

Plaintiff filed two motions on October 19, 2020. In the first, plaintiff requests a settlement conference. (ECF No. 91.) Because plaintiff must pay the filing fee to proceed, any settlement conference is premature. Plaintiff’s request will be denied.

In his second filing, plaintiff makes several requests: (1) he asks that a “lien” be placed on his inmate trust account to pay the \$400 fee or, in the alternative, that this case be stayed until he can obtain the money to pay the fee; (2) he argues that requiring payment of the filing fee is unconstitutional under Griffin v. Illinois, 351 U.S. 12 (1956); and (3) he asks for the appointment of counsel. (ECF No. 92.) Placing a lien on plaintiff’s account is essentially what this court

1 orders when an inmate is granted in forma pauperis status. In forma pauperis status permits  
2 inmates to pay off the filing fee over time as money accrues in their trust accounts. See 28 U.S.C.  
3 § 1915(a), (b). A plaintiff who is not proceeding in forma pauperis must pay the filing fee before  
4 proceeding with a civil action. See 28 U.S.C. § 1914(a) (“The clerk of each district court shall  
5 require the parties instituting any civil action, suit or proceeding in such court, whether by  
6 original process, removal or otherwise, to pay a filing fee of \$350 . . . .”); 28 U.S.C. 1914(c)  
7 (“Each district court by rule or standing order may require advance payment of fees.”); E.D. Cal.  
8 R. 121(c) (“[T]he Clerk shall not file any paper, issue any process, or render any other service for  
9 which a fee is prescribed by statute . . . unless the fee is prepaid.”)

10 With respect to plaintiff’s request for a stay, plaintiff cites no legal basis for one. If  
11 plaintiff is unable to pay the \$400 fee within the time required by Chief Judge Mueller’s order,  
12 this action will be dismissed without prejudice. Once plaintiff has the funds to pay the filing fee,  
13 he may institute a new proceeding.

14 Plaintiff’s argument that he must be permitted to proceed without payment of the filing  
15 fee based on the decision in Griffin v. Illinois is essentially a challenge to this court’s  
16 recommendation that plaintiff’s in forma pauperis status be revoked. It is baseless. The Court in  
17 Griffin addressed the ability of a criminal defendant to challenge the charges against him and his  
18 conviction. See Griffin, 351 U.S. at 17 (Criminal “defendants unable to pay court costs in  
19 advance” may not “be denied the right to plead not guilty or to defend themselves in court.”).  
20 Griffin is inapplicable to a plaintiff in a civil suit. See Rodriguez v. Cook, 169 F.3d 1176, 1180  
21 (9th Cir. 1999) (Griffin stands for the proposition that the Constitution requires the waiver of  
22 filing fees in criminal cases) (citing Mayer v. Chicago, 404 U.S. 189, 195–96 (1971) and Griffin,  
23 351 U.S. at 18-20). Moreover, to the extent plaintiff’s Griffin argument is considered an  
24 objection to this court’s recommendation, it is untimely. (See June 12, 2020 Findings and  
25 Recommendations (ECF No. 86) (objections due within thirty days).)

26 Finally, with respect to plaintiff’s request for the appointment of counsel. Plaintiff makes  
27 no argument as to why counsel should be appointed at this juncture. Because plaintiff must pay  
28 the filing fee before he can proceed, appointment of counsel is premature.

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Accordingly, IT IS HEREBY ORDERED that

1. Plaintiff’s motion for a settlement conference (ECF No. 91) is denied as premature;

2. Plaintiff’s motion for placement of a lien on his trust account (ECF No. 92) is denied;

3. Plaintiff’s motion for a stay of these proceedings to permit him to pay the filing fee (ECF No. 92 ) is denied;

4. Plaintiff’s challenge to the order revoking his in forma pauperis status based on Griffin v. Illinois (ECF No. 92) is rejected; and

5. Plaintiff’s motion for the appointment of counsel (ECF No. 92) is denied as premature.

Dated: December 14, 2020



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DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE

DLB:9  
DB/prisoner-civil rights/step1796.10 20 mtns