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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BILLY DRIVER, JR.,  
Plaintiff,  
v.  
R. SPENCER, et al.,  
Defendants.

No. 2:20-cv-0839 JAM CKD P

ORDER AND  
FINDINGS AND RECOMMENDATIONS

On May 6, 2020, the court denied plaintiff’s request to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(g). A recent unpublished Ninth Circuit decision calls into question the ability of a magistrate judge in the Ninth Circuit to deny a request to proceed in forma pauperis.<sup>1</sup> Good cause appearing, the court will vacate the May 6, 2020 order. Instead, the court will recommend that the motion to proceed in forma pauperis be denied and that plaintiff be given 14 days within which to pay the filing fee.

Accordingly, IT IS HEREBY ORDERED that:

1. The court’s May 6, 2020 order is vacated; and
2. The court’s June 8, 2020 findings and recommendations, in which the court recommends, among other things, dismissal for plaintiff’s failure to pay the filing fee are vacated.

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<sup>1</sup> Cruz v. Smith, 2:19-cv-1027 JAM CKD P, ECF No. 27.

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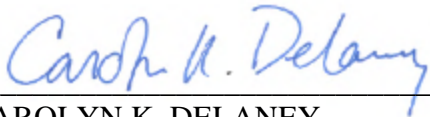
IT IS HEREBY RECOMMENDED that:

1. For the reasons stated in the court’s May 6, 2020 order, plaintiff’s motion to proceed in forma pauperis be denied.

2. Plaintiff be granted 14 days within which to pay the filing fee for this action.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen after being served with these findings and recommendations, plaintiff may file written objections with the court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within the specified time waives the right to appeal the District Court’s order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

Dated: August 3, 2020

  
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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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