

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BENJAMIN F. ELLIS,  
Plaintiff,  
v.  
R. BROWN, et al.,  
Defendants.

No. 2:21-cv-1635-EFB P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. Plaintiff has filed an in forma pauperis application in which he states that he has no cash. ECF No. 5 at 2. However, his attached inmate trust account statement reflects that he has a balance of \$5,417.99. *Id.*

The court may authorize the commencement of an action “without prepayment of fees or security therefor” by an individual who submits an application evidencing an inability to pay such fees or give security therefor. 28 U.S.C. § 1915(a). Plaintiff has made an inadequate showing of indigency in the application before the court. It will therefore be recommended that the application to proceed in forma pauperis be denied and that plaintiff be required to pay the \$402.00 before this action can proceed.

Accordingly, it is hereby ORDERED that the Clerk of the Court shall randomly assign a United States District Judge to this action.


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Further, it is RECOMMENDED that:

1. Plaintiff’s motion for leave to proceed in forma pauperis, ECF No. 5, be DENIED.
2. Plaintiff be given thirty days from any order adopting this recommendation to pay the filing fee or face dismissal of the case.

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 days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections within the specified time may waive the right to appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

Dated: December 7, 2021.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE