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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

THOMAS EDWARD PERRY,  
Plaintiff,  
v.  
RICK HILL, et al.,  
Defendants.

No. 2:21-cv-01719 DAD DB P

ORDER VACATING FINDINGS AND  
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and in forma pauperis. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983. This matter is before the undersigned pursuant to Local Rule 302 and 28 U.S.C. § 636(b)(1).

By order filed October 4, 2021, the court found plaintiff had not filed a properly completed and signed an in forma pauperis affidavit or paid the required filing fee of \$350.00 plus the \$52.00 administrative fee.<sup>1</sup> In the same order, the court found plaintiff’s complaint did not state a claim and granted plaintiff thirty days leave to file an amended complaint. The time granted expired, and plaintiff did not file an amended complaint or otherwise respond to the

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<sup>1</sup> If leave to file in forma pauperis is granted, plaintiff will still be required to pay the filing fee but will be allowed to pay it in installments. Litigants proceeding in forma pauperis are not required to pay the \$52.00 administrative fee.

1 court's order. On March 28, 2023, the undersigned recommended this action be dismissed  
2 without prejudice. (ECF No. 5.)

3 In response to the recommendation to dismiss this action, plaintiff filed objections  
4 indicating he did not receive the October 4, 2021 order. (ECF Nos. 6, 7.) Plaintiff also requests  
5 that any the dismissal be without prejudice so he can re-file. (Id.)

6 Finding good cause, the undersigned will vacate the March 28, 2023 findings and  
7 recommendations and grant plaintiff 30 days to file an amended complaint. Plaintiff must also file  
8 a properly completed and signed in forma pauperis affidavit or pay the required filing fee of  
9 \$350.00 plus the \$52.00 administrative fee. Plaintiff is cautioned that the in forma pauperis  
10 application form includes a section that must be completed by a prison official, and the form must  
11 be accompanied by a certified copy of plaintiff's prison trust account statement for the six-month  
12 period immediately preceding the filing of this action.

13 Good cause appearing, IT IS HEREBY ORDERED:

- 14 1. The findings and recommendations filed March 28, 2023 (ECF No. 5) are VACATED.
- 15 2. The Clerk of the Court shall send plaintiff a blank civil rights complaint form and an  
16 Application to Proceed In Forma Pauperis By a Prisoner for use in a civil rights action.
- 17 3. Plaintiff is granted 30 days from the date of this order in which to file an amended  
18 complaint.
- 19 4. Plaintiff shall also submit, within thirty days from the date of this order, either the  
20 \$350.00 filing fee plus the \$52.00 administrative fee or a properly completed application to  
21 proceed in forma pauperis on the form provided with this order.
- 22 5. Plaintiff is cautioned that failure to comply with this order or seek an extension of time  
23 to do so will result in dismissal of this action without prejudice.

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6. If plaintiff wishes to voluntarily dismiss this case without prejudice, he may do so by filing a notice of voluntary dismissal which will terminate this action by operation of law without prejudice. Fed. R. Civ. P. 41(a)(1)(A)(i).

Dated: May 14, 2023

DLB7: perr1719.vacfrs



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DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE