

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

AARON D. MARCUS,)	No. C 10-03805 JF (PR)
)	
Plaintiff,)	ORDER REOPENING ACTION;
)	GRANTING MOTION FOR LEAVE
vs.)	TO PROCEED <i>IN FORMA</i>
)	<i>PAUPERIS</i>
D. A. ADAMS, et al.,)	
)	
Defendants.)	
)	
_____)	(Docket No. 5)

On October 29, 2010, the Court dismissed this civil rights action because Plaintiff, a state prisoner, had failed to timely pay the filing fee or file a completed application for leave to proceed in forma pauperis in the time provided by the Court. (See Docket No. 6.) On November 29, 2010, Plaintiff filed “objections to order of dismissal,” stating that he filed an In Forma Pauperis Application in a timely manner. (Docket No. 8.) The Court notes that a completed application signed and dated by Plaintiff on September 6, 2010, was not filed in the Court until October 18, 2010. In the interest of justice, the Court construes the objection as a request to reopen the case and good cause appearing, GRANTS the request. The Court will conduct an initial review of the complaint in a separate order.

Plaintiff’s motion for leave to proceed in forma pauperis is GRANTED.

(Docket No. 6.) The total filing fee that ultimately will be due is \$350.00. Due to the lack of funds in Plaintiff's account, no initial fee is due at this time. Funds for the filing fee will be taken from income to Plaintiff's account in accordance with 28 U.S.C. § 1915(B)(1). A copy of this Order and the attached instructions will be sent to Plaintiff, the prison's trust account office, and the Court's financial office.

For the foregoing reasons, the Order of Dismissal (Docket No. 6) and Judgment (Docket No. 7) are VACATED.

The clerk shall reopen the file.

IT IS SO ORDERED.

DATED: 1/3/11


JEREMY FOGEL
United States District Judge

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

INSTRUCTIONS FOR PAYMENT OF PRISONER'S FILING FEE

The prisoner shown as the plaintiff or petitioner on the attached order has filed a civil action in forma pauperis in this court and owes to the court a filing fee. Pursuant to 28 U.S.C. § 1915, the fee is to be paid as follows:

The initial partial filing fee listed on the attached order should be deducted by the prison trust account office from the prisoner's trust account and forwarded to the clerk of the court as the first installment payment on the filing fee. This amount is twenty percent of the greater of (a) the average monthly deposits to the prisoner's account for the 6-month period immediately preceding the filing of the complaint/petition or (b) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint/petition.

Thereafter, on a monthly basis, 20 percent of the preceding month's income credited to the prisoner's trust account should be deducted and forwarded to the court each time the amount in the account exceeds ten dollars (\$10.00). The prison trust account office should continue to do this until the filing fee has been paid in full.

If the prisoner does not have sufficient funds in his/her account to pay the initial partial filing fee, the prison trust account office should forward the available funds, and carry the balance forward each month until the amount is fully paid.

If the prisoner has filed more than one complaint, (s)he is required to pay a filing fee for each case. The trust account office should make the monthly calculations and payments for each case in which it receives an order granting in forma pauperis and these instructions.

The prisoner's name and case number must be noted on each remittance. The initial partial filing fee is due **within thirty days** of the date of the attached order. Checks should be made payable to Clerk, U.S. District Court and sent to Prisoner Accounts Receivable, U.S. District Court, 450 Golden Gate Avenue, Box 36060, San Francisco, CA 94102.

cc: Plaintiff
Finance Office

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

AARON D MARCUS,
Plaintiff,

Case Number: CV10-03805 JF

CERTIFICATE OF SERVICE

v.

D.G. ADAMS, et al.,
Defendants.

_____/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 1/10/11, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Aaron D. Marcus K-53046
Pelican Bay State Prison
P.O. Box 7500
Crescent City, CA 95532

Dated: 1/10/11

Richard W. Wieking, Clerk