IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMISI JERMAINE CALLOWAY,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, et al.,

Defendants.

No. 2:16-CV-2532-WBS-DMC-P

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983.

On August 8, 2018, the court issued findings and recommendations that plaintiff's application for leave to proceed in forma pauperis be denied because, according to plaintiff's prison trust account statement on file at the time, plaintiff had $6,369.68 in his account. Plaintiff filed objections on August 17, 2018, and a renewed application for leave to proceed in forma pauperis on August 30, 2018. In his objections, plaintiff claims he no longer has any funds in his trust account, though he did not submit a current certified copy of his trust account statement with his renewed in forma pauperis application.

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On December 6, 2018, the court directed plaintiff to submit a current certified copy of his trust account statement within 30 days. On January 4, 2019, plaintiff filed a third application for leave to proceed in forma pauperis, again without a current certified copy of his trust account statement. Despite this failure to comply with the court's December 6, 2018, order, the court has obtained plaintiff's current trust account statement directly from the prison.[1] This current statement shows plaintiff has $2.20 on account as of January 9, 2019. Because the factual basis for the court's August 8, 2018, recommendation that plaintiff's in forma pauperis application be denied is no longer accurate, the court will vacate the findings and recommendations.

Pending before the court are plaintiff's motions for leave to proceed in forma pauperis (Docs. 2, 12, and 16). Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). The requests to proceed in forma pauperis will, therefore, be granted.

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[1] Plaintiff's motion for an extension of time to submit his trust account statement (Doc. 15) will be denied as moot.

To: The California Department of Corrections and Rehabilitation
1515 S Street, Sacramento, California 95814:

Plaintiff is obligated to pay the full statutory filing fee of $350.00 for this action. In addition to any initial partial filing fee required to be assessed, plaintiff will be obligated to make monthly payments in the amount of twenty percent of the preceding month's income credited to plaintiff's inmate trust account. The agency referenced above is required to send to the Clerk of the Court the initial partial filing fee and thereafter payments from plaintiff's inmate trust account each time the amount in the account exceeds $10.00, until the statutory filing fee of $350.00 is paid in full. See 28 U.S.C. § 1915(b)(2).

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations issued on August 8, 2018, are vacated;

2. Plaintiff's motion for an extension of time (Doc. 15) is denied as moot;

3. Plaintiff's motions for leave to proceed in forma pauperis (Docs. 2, 12, and 16) are granted;

4. Plaintiff is required to pay the full statutory filing fee of $350.00 for this action pursuant to 28 U.S.C. §§ 1914(a) and 1915(b)(1);

5. The director of the agency referenced above, or a designee, shall collect from plaintiff's inmate trust account an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1) and shall forward the amount to the Clerk of the Court, such payment to be clearly identified by the name and number assigned to this action;

6. Thereafter, the director of the agency referenced above, or a designee, shall collect from plaintiff's inmate trust account the balance of the filing fee by collecting monthly payments from plaintiff's inmate trust account in an amount equal to twenty percent (20%) of the preceding month's income credited to plaintiff's inmate trust account and forwarding payments to the Clerk of the Court each time the amount in the account exceeds $10.00 in accordance with 28 U.S.C. § 1915(b)(2), until the $350.00 filing fee for this action has been paid in full, such payments to be clearly identified by the name and number assigned to this action;

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7. The Clerk of the Court is directed to serve a copy of this order and a copy of plaintiff's signed in forma pauperis affidavit to the address shown above; and

8. The Clerk of the Court is further directed to serve a copy of this order on the Financial Department of the court.

Dated: January 11, 2019



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE