

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Richard D. Casity v. Monivirin Son, et al.

Casity v. Son · No. 2:22-cv-1983 TLN AC P · Decided March 8, 2023

SUMMARY

A magistrate judge recommends dismissal without prejudice because the plaintiff failed to file a properly completed in forma pauperis application or pay the filing fee after multiple opportunities to do so. The findings and recommendations advise the plaintiff of the fourteen-day period for filing objections and the potential waiver of appellate rights.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Allison Claire
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 8, 2023
DOCKET	2:22-cv-1983 TLN AC P
DISPOSITION	other
PROCEDURAL POSTURE	Findings and recommendations by a magistrate judge recommending dismissal without prejudice after the prisoner-plaintiff failed to file a properly completed in forma pauperis application or pay the filing fee.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Richard D. Casity v. Monivirin Son, et al.

TOPICS

civil procedure

PRACTICE AREAS

civil procedureprisoner civil rights

QUESTIONS PRESENTED

- Whether the action should be dismissed without prejudice because plaintiff failed, after repeated orders, to submit a properly completed in forma pauperis application or pay the filing fee.

HOLDINGS

1. The magistrate judge recommended that the action be dismissed without prejudice because plaintiff failed to file a properly completed in forma pauperis application or pay the filing fee after being given multiple opportunities to do so.

KEY QUOTATIONS

“Accordingly, *IT IS HEREBY RECOMMENDED* that this action be *DISMISSED* without prejudice.” (1)

FACTUAL BACKGROUND

Plaintiff was given three opportunities to file a properly completed in forma pauperis application, and each order included a new application form. After the final thirty-day deadline expired, plaintiff had neither filed a proper application nor paid the filing fee.

PROCEDURAL HISTORY

Plaintiff was ordered three times to submit a properly completed in forma pauperis application, most recently on January 24, 2023, with thirty days to comply. The deadline expired without a proper application or payment of the filing fee. The magistrate judge recommended dismissal without prejudice and advised plaintiff of the procedure and deadline for objections under 28 U.S.C. § 636(b)(1).

DISPOSITION

other

CASES CITED

- Martinez v. Yist, 951 F.2d 1153 (9th Cir. 1991)

OPINION

(PC) Casity v. Son

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 RICHARD D. CASITY, No. 2:22-cv-1983 TLN AC P

12 Plaintiff,

13 v. FINDINGS AND RECOMMENDATIONS

14 MONIVIRIN SON, et al., 15 Defendants. 16 17 On January 24, 2023, plaintiff was ordered to
file a completed in forma pauperis affidavit, 18 and he was given thirty days to do so. ECF No. 11.
This was the third time plaintiff had been 19 ordered to file a properly completed in forma

pauperis application. See ECF Nos. 4, 8, 11. With 20 each order, he was sent a new in forma pauperis application. See id. 21 The thirty-day period has now expired, and plaintiff still has not filed a properly 22 completed in forma pauperis application, nor, in the alternative, has he paid the filing fee. Given 23 the number of opportunities plaintiff has been given to file a proper in forma pauperis application, 24 it appears that he is unable or unwilling to do so. 25 Accordingly, IT IS HEREBY RECOMMENDED that this action be DISMISSED without 26 prejudice. 27 These findings and recommendations are submitted to the United States District Judge 28 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days 1 | after being served with these findings and recommendations, plaintiff may file written objections 2 || with the court and serve a copy on all parties. Such a document should be captioned “Objections 3 || to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file 4 || objections within the specified time may waive the right to appeal the District Court’s order. 5 || Martinez v. Yist, 951 F.2d 1153 (9th Cir. 1991). 6 || DATED: March 7, 2023 ~ 7 Htttenr— Lhor— e_

ALLISON CLAIRE

8 UNITED STATES MAGISTRATE JUDGE

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