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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JESSE GONZALES ROMERO,

Plaintiff,

v.

BILL WITTMAN,

Defendant.

CASE NO. 1:12-cv-01553-AWI-GBC (PC)

FINDINGS AND RECOMMENDATIONS TO
DISMISS ACTION, WITHOUT PREJUDICE,
FOR FAILURE TO EITHER PAY FILING FEE
OR SUBMIT AN APPLICATION TO
PROCEED IN FORMA PAUPERIS AND FOR
FAILURE TO PROSECUTE

Docs. 3, 5

/ OBJECTIONS DUE WITHIN FIFTEEN DAYS

Findings and Recommendations

On January 26, 2012, Plaintiff Jesse Gonzales Romero (“Plaintiff”), a former state prisoner proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983. Doc. 1.

On September 24, 2012, the Court ordered Plaintiff to either consent to or decline Magistrate Judge jurisdiction within thirty days. Doc. 3. On October 10, 2012, the Court ordered Plaintiff to submit an application to proceed in forma pauperis by a non-prisoner or pay the filing fee within thirty days. Doc. 5. To date, Plaintiff has failed to pay the \$350.00 filing fee in full, submit an application to proceed in forma pauperis, or respond to the Court’s orders.

The Court has the inherent power to control its docket and may, in the exercise of that power, impose sanctions where appropriate, including dismissal of the action. *Bautista v. Los Angeles County*, 216 F.3d 837, 841 (9th Cir. 2000). “In determining whether to dismiss an action for lack of prosecution, the district court is required to consider several factors: ‘(1) the public’s interest in

1 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of
2 prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and
3 (5) the availability of less drastic sanctions.'" *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988)
4 (quoting *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986)). These factors guide a court
5 in deciding what to do, and are not conditions that must be met in order for a court to take action.
6 *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 1226 (9th Cir.
7 2006).

8 A civil action may not proceed absent the submission of either the filing fee or an application
9 to proceed in forma pauperis. 28 U.S.C. §§ 1914, 1915. Because Plaintiff has not submitted an
10 application to proceed in forma pauperis, paid the filing fee, or responded to the Court's order to do
11 so, dismissal of this action is appropriate. *In re Phenylpropanolamine (PPA) Products Liability*
12 *Litigation*, 460 F.3d at 1226; Local Rule 110.

13 Accordingly, the Court HEREBY RECOMMENDS that this action be dismissed, without
14 prejudice, for failure to pay the filing fee or submit a completed application to proceed in forma
15 pauperis and for failure to prosecute.

16 These Findings and Recommendations will be submitted to the United States District Judge
17 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fifteen (15) days**
18 after being served with these Findings and Recommendations, Plaintiff may file written objections
19 with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and
20 Recommendations." Plaintiff is advised that failure to file objections within the specified time may
21 waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153, 1156-57 (9th
22 Cir. 1991).

23
24 IT IS SO ORDERED.

25 Dated: November 27, 2012

26 
UNITED STATES MAGISTRATE JUDGE