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

WILLIAM JOSEPH HEDGCOTH,

Plaintiff,

No. CIV S-11-1328 JAM EFB PS

vs.

KEN ELWER, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

On May 17, 2011, plaintiff, proceeding in pro se, requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.¹ However, because the affidavit was not signed or dated, on May 26, 2011, the undersigned issued an order directing plaintiff to file, within fourteen days, a further affidavit that was dated and signed under penalty of perjury. Dckt. No. 3. The court stated that it would then resume consideration of plaintiff’s application to proceed in forma pauperis. *Id.*

Because plaintiff failed to file a further affidavit, on July 5, 2011, the undersigned issued findings and recommendations herein, finding that plaintiff failed to demonstrate that he has insufficient assets to pay the filing fee and costs and provide the necessities of life for himself

¹ The matter was referred to the undersigned by Local Rule 302(c)(21), pursuant to 28 U.S.C. § 636(b)(1).

1 and his dependents, and therefore recommending that plaintiff's application to proceed in forma
2 pauperis be denied and that plaintiff be given thirty days in which to pay the filing fee of
3 \$350.00. Dckt. No. 4. On September 29, 2011, the assigned district judge issued an order
4 adopting the July 5 findings and recommendations, denying plaintiff's application to proceed in
5 forma pauperis, and granting plaintiff thirty days to pay the filing fee. Dckt. No. 5. The order
6 further stated that "[f]ailure to pay the required filing fee will result in a recommendation by the
7 assigned magistrate judge that this action be dismissed." *Id.* at 2.

8 Although the deadline has passed, the court docket reflects that plaintiff has not paid the
9 filing fee as ordered. Therefore, the undersigned will recommend that this action be dismissed
10 for failure to prosecute. *See* Fed. R. Civ. P. 41(b); L.R. 110.

11 Accordingly, IT IS HEREBY RECOMMENDED that:

- 12 1. This action be dismissed pursuant to Federal Rule of Civil Procedure 41(b), based on
13 plaintiff's failure to prosecute the action and for failure to comply with this court's orders; and
14 2. The Clerk be directed to close this case.

15 These findings and recommendations are submitted to the United States District Judge
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
17 after being served with these findings and recommendations, any party may file written
18 objections with the court and serve a copy on all parties. Such a document should be captioned
19 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
20 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
21 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

22 DATED: November 8, 2011.

23 
24 EDMUND F. BRENNAN
25 UNITED STATES MAGISTRATE JUDGE
26