UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

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| DAVID W. WILSON,<br>Plaintiff,<br>v.<br>MICHAEL C. SMITH, et al.,<br>Defendants. | No. 2:16-cv-2091 MCE CKD P<br><br>ORDER &<br>FINDINGS AND RECOMMENDATIONS |

On October 7, 2016, plaintiff, a Three Strikes litigant, was ordered to pay the filing fee within fourteen days or face dismissal of this action. (ECF No. 7.) That period has now expired, and plaintiff has filed a second motion to proceed in forma pauperis, but has not paid the filing fee. Plaintiff's motion will be denied for the reasons set forth in the October 7, 2016 order.

Accordingly, IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis (ECF No. 8) is denied.

IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice. See Local Rule 110; Fed. R. Civ. P. 41(b).

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fourteen days after being served with these findings and recommendations, plaintiff may file written objections with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings

and Recommendations." Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: October 28, 2016

CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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