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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PAUL NIVARD BEATON,

Plaintiff,

v.

IRS,

Defendant.

No. 2:23-cv-0669 DB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a former state inmate proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff alleges that the Internal Revenue Service (“IRS”) assessed a \$5,000 penalty and improperly withheld his economic impact payments. For the reasons set forth below, the undersigned will deny plaintiff’s motion pursuant to Federal Rule of Civil Procedure 7 and recommend that this action be dismissed.

I. Motion under Federal Rule of Civil Procedure 7

Plaintiff states he is filing a motion under Rule 7(b) of the Federal Rules of Civil Procedure and Local Rule 7.1.¹ (ECF No. 6 at 1.) He further states “a mistake has been made by this court or [him].” (Id.) He states that on his complaint it states (Employment Discrimination) but it’s about an act of U.S. Congress which was signed First by President Joseph Biden Jr. The

¹ The court notes the Eastern District of California Local Rules do not contain a rule 7.1. However, there is a rule 7.1 in the Federal Rules of Civil Procedure.

1 American Rescue Plan.” (Id.) Plaintiff further seeks to “invoke Rules 8 and 10 of the Federal
2 Rules of Civil Procedure as pro se which this court make a change bee stil [sic] a civil rights case
3 being this a lawsuit under 18 U.S.C. 1331 and by an act of congress.” (Id. at 2.)

4 At the outset, the court notes that the October 17, 2023, screening order characterized this
5 case as a civil rights action pursuant to 42 U.S.C. § 1983. (ECF No. 6.) The court can find no
6 reference to this case being construed as an employment discrimination claim. Accordingly, the
7 undersigned will deny the motion without prejudice to its renewal.

8 **II. Failure to file an Amended Complaint**

9 By order dated October 17, 2023, the undersigned screened and dismissed the complaint
10 for failure to state a claim. (ECF No. 9.) Plaintiff was granted thirty days leave to file an
11 amended complaint and advised that failure to file an amended complaint would result in a
12 recommendation that this action be dismissed. (Id.) Those thirty days have passed, and plaintiff
13 has not filed an amended complaint, requested additional time to file an amended complaint, or
14 otherwise responded to the court’s order. Accordingly, the undersigned will recommend that this
15 action be dismissed for failure to prosecute and failure to comply with court orders.

16 **III. Conclusion**

17 For the foregoing reasons, IT IS HEREBY ORDERED that:

- 18 1. The Clerk of the Court shall randomly assign this action to a United States District
19 Judge; and
- 20 2. Plaintiff’s motion under Rule 7 of the Federal Rules of Civil Procedure (ECF No. 6) is
21 denied without prejudice.

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

24 These findings and recommendations are submitted to the United States District Judge
25 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one (21)
26 days after being served with these findings and recommendations, plaintiff may file written
27 objections with the court and serve a copy on all parties. Such a document should be captioned
28 “Objections to Magistrate Judge’s Findings and Recommendations.”

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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: December 8, 2023



DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

DB:12
DB/DB Prisoner Inbox/Civil Rights/R/bail1670.fta.f&r