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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LUNDY MURPHY,

Plaintiff,

v.

PAAT, et al.,

Defendants.

CASE NO. 1:10-cv-1942-LJO-MJS (PC)

FINDINGS AND RECOMMENDATION THAT
CASE BE DISMISSED WITHOUT
PREJUDICE FOR FAILURE TO PAY FILING
FEE AND/OR APPLY TO PROCEED IN
FORMA PAUPERIS

OBJECTIONS DUE WITHIN THIRTY DAYS

_____ /

Plaintiff Lundy Murphy (“Plaintiff”), a former state prisoner proceeding pro se, initiated this civil rights action pursuant to 42 U.S.C. § 1983 on October 18, 2010. (ECF No. 1.) The Court ordered Plaintiff to either pay the filing fee or complete an application to proceed in forma pauperis (“IFP”). (ECF No. 3.)

Because Plaintiff was incarcerated, the Court originally mailed Plaintiff the IFP form used by incarcerated prisoners. On November 1, 2010, Plaintiff filed a change of address indicating that he had been released from prison. (ECF No. 5.) On November 8, 2010, Plaintiff submitted the IFP form intended for incarcerated prisoners. (ECF No. 7.) The Court denied the application because Plaintiff was no longer incarcerated. The Court mailed Plaintiff the non-prisoner IFP form and instructed him to complete and return it by December 22, 2010. (ECF No. 8.) Plaintiff was warned that “[f]ailure to obey this order will result in dismissal of this action.” (Id.)

To date, the Court has yet to receive Plaintiff’s completed non-prisoner IFP application.

1 A civil action may not proceed absent the submission of either the filing fee or the
2 grant of in forma pauperis status. 28 U.S.C. §§ 1914, 1915. Because Plaintiff has neither
3 applied to proceed in forma pauperis nor paid the filing fee, dismissal of this action is
4 appropriate. In re Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217,
5 1226 (9th Cir. 2006); Local Rule 11-110.

6 Accordingly, the Court HEREBY RECOMMENDS that this action be dismissed
7 without prejudice for Plaintiff's failure to pay the filing fee or file the proper request to
8 proceed in forma pauperis.

9 These Findings and Recommendations are submitted to the United States District
10 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).
11 Within thirty days after being served with these Findings and Recommendations, any party
12 may file written objections with the court and serve a copy on all parties. Such a document
13 should be captioned "Objections to Magistrate Judge's Findings and Recommendations."
14 Any reply to the objections shall be served and filed within ten days after service of the
15 objections. The parties are advised that failure to file objections within the specified time
16 may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153
17 (9th Cir. 1991).

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20 IT IS SO ORDERED.

21 Dated: January 7, 2011

1st Michael J. Seng
UNITED STATES MAGISTRATE JUDGE