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

MARVIN BERRIOS, 1:11-cv-01434-AWI-BAM-(PC)

Plaintiff, FINDINGS AND RECOMMENDATION TO DISMISS CASE FOR FAILURE TO OBEY A

vs. COURT ORDER

DR. DILEO, et al. OBJECTIONS DUE WITHIN FIFTEEN DAYS

Defendants.

On August 30,2011, the court issued an order for plaintiff to submit an application to proceed in forma pauperis on the correct form or pay the filing fee, within forty-five (45) days.

The forty-five (45) day period has now expired, and plaintiff has not filed the correct application

to proceed in forma pauperis, pay the filing fee or otherwise responded to the court's order.

A civil action may not proceed absent the submission of either the filing fee or an application to proceed in forma pauperis. 28 U.S.C. §§ 1914, 1915. Because Plaintiff has submitted neither and has not responded to the Court's order to do so, dismissal of this action is appropriate. In re Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217, 1226 (9th Cir. 2006); Local Rule 110.

Accordingly, it is HEREBY RECOMMENDED that this action be dismissed, without prejudice, for Plaintiff's failure to comply with a court order.

These findings and recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(l). Within fifteen (15) days after being served with these findings and recommendations, Plaintiff may file written objections with the Court. The 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).

IT IS SO ORDERED.

Dated:November 3, 2011/s/ Barbara A. McAuliffeUNITED STATES MAGISTRATE JUDGE