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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JOHN FREDERICK WHEELER,)	Case No.: 1:12-cv-00541 - AWI - JLT
)	
Plaintiff,)	FINDINGS AND RECOMMENDATIONS
)	DISMISSING PLAINTIFF’S FIRST AMENDED
v.)	COMPLAINT WITHOUT PREJUDICE FOR
)	FAILURE TO PAY THE FILING FEE
UNITED STATES, et al.,)	
)	
Defendants.)	

John Frederick Wheeler (“Plaintiff”) seeks to proceed with an action for racial discrimination and violation of his civil rights against the United States and Jon Van Boening, the president of Bakersfield Memorial Hospital (collectively, “Defendants”). Plaintiff initiated this action by filing a complaint on April 9, 2012. (Doc. 1). Plaintiff requested to proceed in forma pauperis (Doc. 2). After screening the Complaint, the Court recommended the motion to proceed in forma pauperis be denied. (Doc. 4). On July 16, 2012, the District Judge adopted the recommendation denying Plaintiff’s motion to proceed in forma pauperis, but granted Plaintiff leave to file an amended complaint. (Doc. 8).

Significantly, as a general rule, all parties instituting any civil action, suit or proceeding in a United States District Court must pay a filing fee. 28 U.S.C § 1914(a). An action may proceed despite a party’s failure to pay **only if** the party is granted leave to proceed in forma pauperis pursuant to 28 U.S.C § 1915(a). *See Andrews v. Cervantes*, 492 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez*, 169 F.3d at 1177. As noted above, Plaintiff’s motion to proceed in forma pauperis was denied, and but he has

1 failed to pay the requisite filing fee pursuant to 28 U.S.C. § 1914(a). Accordingly, the action may not
2 proceed before the Court at this time.

3 Based upon the foregoing, **IT IS HEREBY RECOMMENDED:**

- 4 1. Plaintiff's First Amended Complaint be **DISMISSED WITHOUT PREJUDICE**; and
- 5 2. Plaintiff's the Clerk of Court be **DIRECTED** to close this matter.

6 These findings and recommendations are submitted to the United States District Judge
7 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local
8 Rules of Practice for the United States District Court, Eastern District of California. Within fourteen
9 days after being served with these findings and recommendations, Plaintiff may file written objections
10 with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings and
11 Recommendations." Plaintiff is advised failure to file objections within the specified time may waive
12 the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

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16 IT IS SO ORDERED.

17 Dated: September 19, 2012

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE