

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANTHONY SILVA,
Plaintiff,
v.
WORTH, et al.,
Defendants.

Case No. 1:16-cv-01131-AWI-SKO (PC)
FINDINGS AND RECOMMENDATION TO DISMISS ACTION WITHOUT PREJUDICE FOR FAILURE TO OBEY A COURT ORDER AND TO PAY FILING FEE OR FILE APPLICATION TO PROCEED *IN FORMA PAUPERIS*
(Doc. 10)
30-DAY DEADLINE

Plaintiff, Anthony Silva, is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. On September 2, 2016, an order issued for Plaintiff to submit a correct application to proceed *in forma pauperis*, or to pay the filing fee within 45 days. (Doc. 6.)¹ Despite lapse of more than the time allowed, Plaintiff has not complied with or otherwise responded to the Court’s order. (*Id.*) Plaintiff was warned that recommendation for dismissal would issue if he failed to obey the order. (*Id.*) Further, on December 2, 2016, an order issued for Plaintiff to show cause within thirty days why the action should not be dismissed for his failure to prosecute and comply with the Court’s order. (Doc. 10.) Despite lapse of more than the allowed time, Plaintiff has failed to file any response.

A civil action may not proceed absent the submission of either the filing fee or a completed application to proceed *in forma pauperis*. 28 U.S.C. §§ 1914, 1915. Based on

¹ The proper form was provided with that order for Plaintiff’s use. (*See* Doc. 6-1, pp. 2-3.)

1 Plaintiff's failure to comply with the Court's order, dismissal of this action is appropriate. *In re*
2 *Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 1226 (9th Cir. 2006);
3 Local Rule 110.

4 Accordingly, it is HEREBY RECOMMENDED that this action be dismissed without
5 prejudice for Plaintiff's failure to comply with the Court's order and to pay the filing fee or file
6 the correct application to proceed *in forma pauperis*.

7 These Findings and Recommendations will be submitted to the United States District
8 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
9 **thirty (30) days** after being served with these Findings and Recommendations, Plaintiff may file
10 written objections with the Court. The document should be captioned "Objections to Magistrate
11 Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections
12 within the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772
13 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

14
15 IT IS SO ORDERED.

16 Dated: January 11, 2017

17 /s/ Sheila K. Olerto
18 UNITED STATES MAGISTRATE JUDGE