UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MONICO J. QUIROGA, III, Plaintiff, v. DONNY YOUNGBLOOD, et al., Defendants.	**Case No. 1:17-cv-00859-DAD-SKO (PC)** **FINDINGS AND RECOMMENDATIONS TO DISMISS AS FRIVOLOUS AND FOR FAILURE TO OBEY A COURT ORDER** **(Docs. 14, 21)** **TWENTY-ONE (21) DAY DEADLINE**

Plaintiff, Monico J. Quiroga, III, is a state prisoner proceeding *pro se* in this civil action which he filed on June 28, 2017. That same day, Plaintiff filed an application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (Doc. 2.) On September 29, 2017, Plaintiff's application to proceed *in forma pauperis* was denied and he was ordered to pay the $400 filing fee in full within twenty-one days. (Doc. 14.) More than the time allowed has passed without Plaintiff having paid the filing fee. Instead, Plaintiff appealed the order denying his *in forma pauperis* application. (Doc. 15.)

On December 3, 2018, the Ninth Circuit affirmed this Court's decision, finding the denial of *in forma pauperis* status proper because Plaintiff's Complaint in this action "is obviously frivolous." (Doc. 21.) As noted by the Ninth Circuit, a complaint "that is obviously frivolous does not confer federal subject matter jurisdiction, and may be dismissed *sua sponte* before service of process." *Franklin v. Murphy*, 745 F.2d 1221, 1227 n.6 (9th Cir. 1984) (citation and internal quotation marks omitted).

A civil action may not proceed absent the submission of either the filing fee or an approved application to proceed *in forma pauperis*. 28 U.S.C. §§ 1914, 1915. Plaintiff's application to proceed *in forma pauperis* was denied since he had more than three strikes against him and he did not meet the imminent danger of serious physical exception under 28 U.S.C. § 1915(g) at the time this action was filed. (Docs. 12, 14.) Here, despite having been given time to pay the filing fee, Plaintiff has failed to do so.

Based on Plaintiff's ineligibility to proceed *in forma pauperis*, his failure to comply with the Court's order to pay the filing fee in full, and the finding by the Ninth Circuit that this action is "obviously frivolous," 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** because it is frivolous and Plaintiff has failed to pay a filing fee.

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 twenty-one (21) 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 result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: **December 6, 2018**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE