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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

GUILLERMO TRUJILLO CRUZ,  
  
                                Plaintiff,  
  
                        v.  
  
B. VALDEZ,  
  
                                Defendant.

Case No. 1:18-cv-00571-DAD-EPG (PC)  
  
FINDINGS AND RECOMMENDATIONS  
RECOMMENDING THAT PLAINTIFF’S CASE  
BE DISMISSED FOR FAILURE TO PAY THE  
FILING FEE AND FOR FAILURE TO OBEY  
COURT ORDERS  
  
(ECF NO. 24)

Plaintiff Guillermo Trujillo Cruz (“Plaintiff”) is a state prisoner proceeding *pro se* with this civil rights action brought pursuant to 42 U.S.C. § 1983.

The Court originally granted Plaintiff’s motion to proceed *in forma pauperis*. (ECF No. 14.) On January 16, 2019, Defendant filed a motion for an order revoking Plaintiff’s *in forma pauperis* status due to his accumulation of three “strikes” under 28 U.S.C. § 1915(g) (ECF No. 22.)

On September 4, 2019, the Court adopted findings and recommendations issued by the undersigned recommending that Defendant’s motion for an order revoking Plaintiff’s *in forma pauperis status* be granted and finding that Plaintiff is subject to the three-strikes bar under 28 U.S.C. § 1915(g) and has not met the imminent danger exception to that provision. (ECF No. 37.)

The Court also vacated its prior order granting Plaintiff’s application to *proceed in forma pauperis* and ordered that, within forty-five days of service of the order adopting the findings and recommendations, Plaintiff shall pay the \$400.00 filing fee to proceed with this action. (*Id.*) The

1 Court warned that Plaintiff's action would be dismissed if he failed to pay the filing fee within the  
2 specified time. (*Id.*)

3 It has now been more than forty-five days since Plaintiff was served with the order  
4 adopting the findings and recommendations, and Plaintiff has failed to pay the \$400.00 filing fee  
5 necessary to proceed with this action.

6 "Parties filing actions...are required to pay a filing fee." *Rodriguez v. Cook*, 169 F.3d  
7 1176, 1177 (9th Cir. 1999). "An action may proceed despite failure to pay the filing fees only if  
8 the party is granted IFP status." *Id.*

9 Here, the Court has found that Plaintiff is not entitled to *in forma pauperis* status;  
10 accordingly, he must pay the filing fee. The Court ordered Plaintiff to pay the filing fee within 45  
11 days, but he failed to respond to the Court's order by paying the filing fee or seeking an  
12 extension. Plaintiff's failure to pay the filing fee and failure to respond to a Court order justify  
13 dismissal of his case without prejudice. *See e.g., Irby v. Warner*, 609 Fed. Appx. 423 (9th Cir.  
14 2015) (affirming district court's denial of *pro se* prisoner's request for *in forma pauperis* status  
15 and subsequent dismissal of his case without prejudice for failure to pay the filing fee); *Hill v.*  
16 *Katavich*, 2015 WL 7282873 at \*1 (E.D. Cal. Nov. 18, 2015) (denying *pro se* civil rights  
17 plaintiff's motion for reconsideration of order determining that "dismissal was appropriate since  
18 Plaintiff was ineligible to proceed in forma pauperis and had failed to pay the filing fee.");  
19 *Wagner v. Pepler*, No. EDCV 07-1537-CJC (MLG), 2008 WL 4830022 at \*2 (C.D. Cal. Nov. 5,  
20 2008) (dismissing prisoner's action for failure to pay filing fees after Plaintiff ignored the court's  
21 order to show cause on the matter).

22 Accordingly, based on the foregoing, it is **HEREBY RECOMMENDED** that:

- 23 1. Plaintiff's claims against Defendant be dismissed without prejudice for failure to pay  
24 the filing fee and for failure to obey Court orders; and
- 25 2. The Clerk of Court be instructed to close this case.

26 These findings and recommendations will be submitted to the United States district judge  
27 assigned to the case, pursuant to the provisions of Title 28 U.S.C. §  
28 636(b)91). Within twenty-one (21) days after being served with these findings and

1 recommendations, Plaintiff may file written objections with the Court. the document should be  
2 captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is  
3 advised that failure to file objection within the specified time may result in the waiver of rights on  
4 appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*,  
5 923 F.2d 1391, 1394 (9th Cir. 1991)).

6  
7 IT IS SO ORDERED.

8 Dated: October 30, 2019

/s/ Eric P. Gray  
UNITED STATES MAGISTRATE JUDGE

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