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| 8 | UNITED STATES DISTRICT COURT | |
| 9 | FOR THE EASTERN DISTRICT OF CALIFORNIA | |
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| 11 | JAMES E. POTTS, | No. 1:19-cv-01574-DAD-GSA (PC) |
| 12 | Plaintiff, | |
| 13 | V. | ORDER ADOPTING FINDINGS AND RECOMMENDATIONS, DENYING |
| 14 | M. SOLEIMANI, et al., | PLAINTIFF'S MOTION TO PROCEED IN FORMA PAUPERIS |
| 15 | Defendants. | (Doc. Nos. 2, 10.) |
| 16 | | (100:1105:2,10.) |
| 17 | | |
| 18 | Plaintiff James E. Potts is a state prisoner proceeding pro se with this civil rights action | |
| 19 | pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge | |
| 20 | pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. | |
| 21 | On November 15, 2019, the assigned magistrate judge issued findings and | |
| 22 | recommendations, recommending that plaintiff's application to proceed in forma pauperis be | |
| 23 | denied due to his failure to show indigence under 28 U.S.C. § 1915. (Doc. No. 12.) The findings | |
| 24 | and recommendations were served on plaintiff and contained notice that any objections thereto | |
| 25 | were to be filed within fourteen days of service. (Id.) Although the deadline passed without | |
| 26 | plaintiff objecting or otherwise responding, he later filed untimely objections on December 19, | |
| 27 | 2019. (Doc. No. 13.) | |
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| 1 | In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this | |
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| 2 | court has conducted a <i>de novo</i> review of this case. Having carefully reviewed the entire file, | |
| 3 | including plaintiff's untimely objections, the court concludes that the findings and | |
| 4 | recommendations are supported by the record and proper analysis. | |
| 5 | In his objections, plaintiff does not dispute that he has sufficient funds to pay the filing fee | |
| 6 | and instead claims that he has been trying to pay the \$400.00 filing fee to the court since | |
| 7 | November 6, 2019, when he signed a form requesting a withdrawal from his prison trust account. | |
| 8 | (Doc. No. 13 at 1.) Plaintiff asserts that his counselor approved a withdrawal from his trust | |
| 9 | account on November 6, 2019, and raises the possibility that the filing fee was accidentally sent | |
| 10 | to the U.S. District Court for the Northern District of California, the court in which he originally | |
| 11 | filed his complaint. (Id.) | |
| 12 | However, there is no record at this court or the Northern District that any payment was | |
| 13 | received for the filing fee in this case. See Potts v. Soleimani, et al., 4:19-cv-06645-KAW (PR) | |
| 14 | (N.D. Cal. 2019). Plaintiff is advised to follow up with the trust account office at his prison to | |
| 15 | determine whether the filing fee was withdrawn from his account and, if so, where it was mailed. | |
| 16 | If plaintiff obtains evidence of what happened to the filing fee, he should file a declaration with | |
| 17 | the court and submit a copy of the evidence. | |
| 18 | Accordingly: | |
| 19 | 1. The findings and recommendations issued on November 15, 2019 (Doc. No. 10), | |
| 20 | are adopted in full; | |
| 21 | 2. Plaintiff's application to proceed <i>in forma pauperis</i> , filed on October 16, 2019 | |
| 22 | (Doc. No. 2), is denied for failure to show indigence under 28 U.S.C. § 1915; | |
| 23 | 3. Within thirty days from the date of service of this order, plaintiff must pay the | |
| 24 | \$400.00 filing fee in full in order to proceed with this action; | |
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| 1 | 4. Failure to comply with this order shall result in the dismissal of this action without |
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| 2 | prejudice to refiling upon payment of the filing fee; and |
| 3 | 5. This case is referred back to the magistrate judge for further proceedings. |
| 4 | IT IS SO ORDERED. |
| 5 | Dated: March 9, 2020 Jale A. Dryd |
| 6 | UNITED STATES DISTRICT JUDGE |
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