

1 I. RELEVANT FACTS

2 On July 10, 2023, Plaintiff's complaint along with his application to proceed in forma
3 pauperis were docketed. ECF Nos. 1, 2). Shortly thereafter the Court reviewed Plaintiff's in
4 forma pauperis application and found that it had not been submitted on the correct form. ECF
5 No. 4. As a result, Plaintiff was ordered to submit a second in forma pauperis application or, in
6 the alternative, to pay the filing fee. ECF No. 4 at 1. Plaintiff was given forty-five days within
7 which to do so. Id. At that time, Plaintiff was also cautioned that failure to comply with the
8 Court's order would result in a dismissal of this matter. Id.

9 On July 25, 2023, the Court's order was returned to it as "Undeliverable, Out to Court."
10 To date, Plaintiff has not filed a new application to proceed in forma pauperis, nor has he
11 responded to the Court's order. In addition, Plaintiff has failed to file a change of address form
12 with the Court.

13 II. DISCUSSION

14 In order to commence an action, a litigant must file a complaint as required by Rule 3 of
15 the Federal Rules of Civil Procedure, and he must either pay the appropriate filing fee or file an
16 application requesting leave to proceed in forma pauperis. See Fed. R. Civ. P. 3; 28 U.S.C. §§
17 1914(a), 1915(a), respectively. The Court will not issue orders granting or denying any relief
18 until an action has been properly commenced.

19 Although it appears from the file that Plaintiff's copy of the order directing him to file an
20 application to proceed in forma pauperis was returned, Plaintiff was properly served. It is a
21 plaintiff's responsibility to keep a court apprised of his current address at all times. Pursuant to
22 Local Rule 182(f), service of documents at the record address of the party is fully effective.

23 Because Plaintiff has neither filed a proper application to proceed in forma pauperis, nor
24 paid the filing fee within the time allotted, this matter cannot be commenced. The fact that
25 Plaintiff may not have received the Court's order because he did not provide it with a current
26 mailing address is irrelevant. Therefore, it will be recommended that Plaintiff's improper
27 application to proceed in forma pauperis be denied and that this case be dismissed without
28 prejudice for failure to obey a court order. See Local Rule 110.

1 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court shall randomly assign a
2 District Judge to this action.

3 IT IS FURTHER RECOMMENDED that:

- 4 1. Plaintiff’s application to proceed in forma pauperis (ECF No. 2) be DENIED, and
- 5 2. This action be DISMISSED without prejudice for failure to obey a court order. See
6 Local Rule 110.

7 Plaintiff’s objections to these findings and recommendations shall be filed by **December**
8 **18, 2023**.

9 These findings and recommendations will be submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
11 after being served with these findings and recommendations, Plaintiff may file written objections
12 with the Court. The document should be captioned “Objections to Magistrate Judge's Findings
13 and Recommendations.” Failure to file objections within the specified time may result in a
14 waiver of the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153, 1157
15 (9th Cir. 1991).

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18 IT IS SO ORDERED.

19 Dated: December 4, 2023

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

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