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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LEANTHONY T. WINSTON,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

No. 1:23-cv-01166 GSA (PC)

ORDER DIRECTING CLERK OF COURT TO
RANDOMLY ASSIGN DISTRICT JUDGE TO
THIS ACTION

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL OF ACTION
FOR FAILURE TO OBEY COURT ORDER

(ECF No. 3)

PLAINTIFF’S OBJECTIONS TO FINDINGS
AND RECOMMENDATIONS TO BE FILED
BY **DECEMBER 12, 2023**

Plaintiff, a federal prisoner proceeding pro se, has filed this civil rights action in August 2023, seeking relief under 42 U.S.C. § 1983.¹ ECF No. 1. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. For the reasons stated below, the undersigned will recommend that this matter be dismissed for failure to obey a court order.

¹ On August 9, 2023, the complaint was stricken for lack of signature. ECF No. 3 (Court’s order stating same and directing Plaintiff to file amended complaint).

1 I. RELEVANT FACTS

2 On August 4, 2023, Plaintiff's Complaint was docketed. ECF No. 1. On August 9, 2023,
3 the undersigned struck Plaintiff's complaint and directed him to file an amended complaint that
4 was signed. ECF No. 3. At that time, he was given until September 15, 2023, to do so. Id. at 2.

5 On August 15, 2023, Plaintiff was also ordered either to submit an application to proceed
6 in forma pauperis or to pay the filing fee in full. ECF No. 4. The date by which Plaintiff was to
7 do so was also September 15, 2023. Id.

8 II. APPLICABLE LAW

9 In order to commence an action, a litigant must file a complaint as required by Rule 3 of
10 the Federal Rules of Civil Procedure, and he must either pay the appropriate filing fee or file an
11 application requesting leave to proceed in forma pauperis. See 28 U.S.C. §§ 1914(a), 1915(a)(1)-
12 (2); Fed. R. Civ. P. 3. The Court will not issue any orders granting or denying relief until an
13 action has been properly commenced.

14 Moreover, it is well established that all documents filed in court by litigants must be
15 signed. See Fed. R. Civ. P. 11(a); Local Rule 131(b). Documents that are not signed must be
16 stricken. Fed. R. Civ. P. 11(a).

17 III. DISCUSSION

18 Although Plaintiff has filed a complaint, it has been stricken because it was not signed.
19 Therefore, currently there is no operative complaint before the Court. In addition, because
20 Plaintiff has failed to file an application to proceed in forma pauperis or to pay the filing fee in
21 full, this also prevents this matter from proceeding any further.

22 Plaintiff has been given adequate time to file a signed amended complaint with the Court
23 as well as to either file an in forma pauperis application or to pay the filing fee in full. However,
24 he has failed to comply with the Court's orders within the time allotted. Specifically, he has
25 failed to respond to both of the Court's directives. For these reasons, the undersigned will
26 recommend that this matter dismissed for failure to obey court orders.

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Accordingly, IT IS HEREBY ORDERED that:

1. The Clerk of Court shall randomly assign a District Judge to this action, and
2. Plaintiff’s objections to this order, if any, shall be filed by **December 12, 2023**.

IT IS FURTHER RECOMMENDED that this matter be DISMISSED without prejudice for failure to obey court orders. See Fed. R. Civ. P. 41(b); Local Rule 110.

These findings and recommendations are submitted to the United States District Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, Plaintiff may file written objections with the Court. Such a 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 waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: November 28, 2023

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE