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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

THOMAS ALFRED USHER,

Plaintiff,

No. CIV S-10-3366 EFB P

vs.

TIM VIRGA,

Defendant.

ORDER

_____/

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1) and is before the undersigned pursuant to plaintiff's consent. *See* 28 U.S.C. § 636; *see also* E.D. Cal. Local Rules, Appx. A, at (k)(4).

On January 5, 2011, the court found that plaintiff had failed to pay the filing fee required by 28 U.S.C. § 1914(a) or a request to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a)(1). The court further found that plaintiff had failed to file a complaint, which is necessary to commence a civil action under Fed. R. Civ. P. 3.

Accordingly, the court granted plaintiff thirty days in which to (1) pay the filing fee or request leave to proceed *in forma pauperis* and (2) to file a complaint. The order admonished plaintiff that failure to comply would result in dismissal.

1 The 30-day period has expired and plaintiff has not paid the filing fee, filed an
2 application for leave to proceed *in forma pauperis*, a complaint or otherwise responded to the
3 court's order.

4 Accordingly, this action is dismissed without prejudice.

5 Dated: February 14, 2011.

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7 EDMUND F. BRENNAN
8 UNITED STATES MAGISTRATE JUDGE
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