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

9 ROGER HICKS,

10 Plaintiff,

CIV S-11-0148 GGH

VS.

MICHAEL J. ASTRUE,

ORDER AND FINDINGS AND

Commissioner of Social Security,

RECOMMENDATIONS

Defendant.

Plaintiff, proceeding pro se in this action, has filed an application to proceed in forma pauperis. This court, after examining plaintiff's affidavit, hereby recommends plaintiff's application to proceed with this action in forma pauperis pursuant to 28 U.S.C. § 1915(a) be DENIED.

Pursuant to federal statute, a filing fee of \$350.00 is required to commence a civil action in federal district court. 28 U.S.C. § 1914(a). The court, however, may authorize the commencement of an action "without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefor." 28 U.S.C. § 1915(a)(1). Plaintiff's application does not demonstrate that because of his poverty plaintiff cannot meet court costs and still provide himself with the necessities of life. Plaintiff's

1 income and assets demonstrate that he is able to pay the filing fee and costs. Thus, plaintiff has 2 made an inadequate showing of indigence. See Alexander v. Carson Adult High Sch., 9 F.3d 3 1448 (9th Cir. 1993); California Men's Colony v. Rowland, 939 F.2d 854, 858 (9th Cir. 1991) rev'd on other grounds, Rowland v. California Men's Colony, 506 U.S. 194, 113 S. Ct. 716 4 5 (1993); United States v. McQuade, 647 F.2d 938, 1940 (9th Cir. 1981) (per curiam); Stehouwer 6 v. Hennessey, 841 F. Supp. 316, (N.D. Cal. 1994), aff'd in part, vacated in part, sub. nom. 7 Olivares v. Marshall, 59 F.3d 109 (9th Cir. 1995). 8 Accordingly, IT IS ORDERED that the Clerk of the Court assign this case to a 9 District Judge. 10 IT IS RECOMMENDED that plaintiff's application to proceed in forma pauperis 11 be DENIED, and that plaintiff pay the filing fee within fourteen days of the adoption of this 12 order. 13 These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within 14 15 fourteen (14) days after being served with these findings and recommendations, any party may 16 file written objections with the court and serve a copy on all parties. Such a document should be 17 captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the 18 objections shall be served and filed within fourteen (14) days after service of the objections. The 19 parties are advised that failure to file objections within the specified time may waive the right to 20 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991). 21 DATED: February 22, 2011 22 /s/ Gregory G. Hollows 23 UNITED STATES MAGISTRATE JUDGE GGH:076/Hicks0148.ifpden.wpd 24

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