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

DAVID E. GIVENS,

Plaintiff,

No. 2:12-cv-0687 KJN P

vs.

L.D. ZAMORA, et al.,

Defendants.

ORDER

\_\_\_\_\_ /

Plaintiff is a state prisoner proceeding without counsel in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff has consented to the jurisdiction of the undersigned magistrate judge for all purposes. (Dkt. No. 5.) See 28 U.S.C. § 636(c); Local Rule 305(a).


By order filed on September 21, 2012, this court informed plaintiff that it had inadvertently granted plaintiff in forma pauperis status, because the undersigned was then unaware that plaintiff is subject to the “three strikes rule” set forth in 28 U.S.C. § 1915(g). (See Dkt. No. 12.) The court directed plaintiff to file, within fourteen (14) days, a declaration that: (1) demonstrates that plaintiff should retain in forma pauperis status because, under the exception to the three strikes rule, plaintiff “is under imminent danger of serious physical injury,” 28 U.S.C. § 1915(g), or (2) concedes that plaintiff is unable to make the showing required for application of this exception and, therefore, that plaintiff chooses to either (a) pay the full filing

1 fee (\$350.00) in this action, or (b) request that this action be dismissed without prejudice.

2           The time for responding to the court's order has expired, and plaintiff has neither  
3 filed a declaration nor otherwise communicated with the court. The court construes plaintiff's  
4 inaction as a request for voluntary dismissal of this action, pursuant to Rule 41(a)(2), Federal  
5 Rules of Civil Procedure. While dismissal of this action is also warranted by plaintiff's failure to  
6 respond to an order of this court, see Fed. R. Civ. P. 42(b); Local Rule 110, the court will dismiss  
7 this action without prejudice.

8           Accordingly, for good cause shown, IT IS HEREBY ORDERED that this action is  
9 dismissed without prejudice. Fed. R. Civ. P. 41(a)(2).

10 DATED: October 18, 2012

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13 KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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