

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH WHITAKER,
Plaintiff,
v.
CRANE, et al.,
Defendants.

No. 2:13-cv-00505 KJM DAD P

FINDINGS AND RECOMMENDATIONS

On August 4, 2014, this court issued an order in this action denying plaintiff’s motion for a temporary restraining order, and dismissing plaintiff’s Second Amended Complaint with leave to amend. (See ECF No. 23.) At that time plaintiff was granted thirty days to file a Third Amended Complaint together with a new application to proceed in forma pauperis that included a certified copy of his prison trust account statement for the preceding six-month period. (Id.) Plaintiff was informed then that “[f]ailure . . . to timely file a new and properly completed application to proceed in forma pauperis and a Third Amended Complaint in accordance with this order will result in a recommendation that this action be dismissed.” (Id. at 8.)

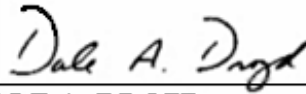
The thirty-day period has long since expired, and plaintiff has not responded to the court’s order. Plaintiff did file an untimely request, on October 24, 2014, for a blank USM-285 form and summons to allow him to serve a purported defendant not named in his Second Amended Complaint. (See ECF No. 24.) However, plaintiff’s untimely request was not responsive to the

1 court's August 4, 2014 order. Moreover, there is no operative pleading before the court, plaintiff
2 has failed to file a third amended complaint in the time provided for him to do so and has still not
3 filed a proper application to proceed in forma pauperis (see ECF No. 15).

4 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed without
5 prejudice.

6 These findings and recommendations are submitted to the United States District Judge
7 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
8 after being served with these findings and recommendations, plaintiff may file written objections
9 with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings
10 and Recommendations." Plaintiff is advised that failure to file objections within the specified
11 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153
12 (9th Cir. 1991).¹

13 Dated: December 2, 2014

14 

15 _____
DALE A. DROZD
16 UNITED STATES MAGISTRATE JUDGE

17 DAD:4
whit0505.ffp.tac

18
19
20
21
22
23
24
25
26 _____
27 ¹ If plaintiff wishes to proceed with this action he may submit with his objections to these
28 findings and recommendations a proper, fully supported application to proceed in forma pauperis
along with a proposed third amended complaint. If appropriate the undersigned would then
vacate these findings and recommendations.