

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.,

Defendant.

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

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On January 20, 2015, the magistrate judge filed findings and recommendations, which were served on plaintiff and which contained notice to plaintiff that any objections to the findings and recommendations were to be filed within fourteen days. Plaintiff has filed objections to the findings and recommendations.¹ In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a *de novo* review of this case.

¹ Plaintiff filed objections to the findings and recommendations on January 29, 2015 and on February 20, 2015, ECF Nos. 28 and 31. Plaintiff's January 29, 2015 objections are accompanied by a copy of his inmate trust account statement not certified by prison officials, ECF No. 29. Plaintiff's February 20, 2015 objections are accompanied by a complete in forma pauperis application.

1 The magistrate judge recommends dismissal of this action due to plaintiff's failure to file
2 a complete application to proceed in formal pauperis. The magistrate judge also finds that
3 plaintiff's third amended complaint fails to state a claim against any named defendant. It appears,
4 however, that the recommendation to dismiss this action without prejudice is grounded in the fact
5 that plaintiff had not, at the time of the findings and recommendations, complied with orders to
6 file a complete application to proceed in forma pauperis and not on the basis of identified
7 deficiencies in the third amended complaint. Since plaintiff has now filed a complete application
8 to proceed in forma pauperis the court will not adopt the findings and recommendations and will,
9 instead, refer the matter back to the magistrate judge for further proceedings.

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. The findings and recommendations filed January 20, 2015 (ECF No. 27) are not
12 adopted; and
- 13 2. This matter is referred back to the assigned magistrate judge for further proceedings.

14 DATED: March 18, 2015.

15
16 
17 _____
18 UNITED STATES DISTRICT JUDGE
19
20
21
22
23
24
25
26
27
28