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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

EDWARD JAMES SERVIN,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

No. 2:14-cv-2999 JAM AC P

FINDINGS AND RECOMMENDATIONS

Plaintiff, a California state prisoner proceeding pro se, filed a complaint seeking declaratory and injunctive relief against the California Department of Corrections (“CDCR”), CDCR Secretary J. Beard, CDCR Chief Counsel B. Rice, and Folsom State Prison Warden R. Rackley. ECF No. 1.

By order dated January 15, 2015, the court construed plaintiff’s complaint as a civil rights action¹ pursuant to 42 U.S.C. § 1983 and directed plaintiff to pay the \$400 filing fee or submit an application to proceed in forma pauperis within 30 days of the date of the order. ECF No. 5. In response, plaintiff filed a document entitled “Plaintiff’s Objections to Reclassification of
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¹ Although the complaint is extremely vague, the exhibit attached to the complaint suggests that plaintiff seeks to enjoin defendants from transferring him to an out of state prison. See ECF No. 1, Exh. A at 13 (letter to plaintiff from defendant Warden Rackley).

1 Declaratory Judgment,”² ECF No. 6, but did not file an in forma pauperis affidavit or pay the
2 required filing fees totaling \$400.00.

3 By order filed June 18, 2015, plaintiff was given one final opportunity to pay the required
4 fees for a civil rights action, in the amount of \$400.000, or an application to proceed in forma
5 pauperis. ECF No. 8. Plaintiff was cautioned that failure to pay the filing fees or submit an
6 application to proceed in forma pauperis would result in a recommendation that this action be
7 dismissed.

8 On July 14, 2015,³ plaintiff filed a request for reconsideration of the magistrate judge’s
9 June 18, 2015 order. ECF No. 9. By order filed August 20, 2015, the district judge denied
10 plaintiff’s request for reconsideration as untimely. ECF No. 10.

11 To date, plaintiff still has not paid the required filing fee or submitted an application to
12 proceed in forma pauperis. Accordingly, the undersigned recommends that this action be
13 dismissed without prejudice for failure to comply with this court’s June 18, 2015 order. See Fed.
14 R. Civ. P. 41(b).

15 In accordance with the above, IT IS HEREBY RECOMMENDED that:

- 16 1. Plaintiff’s complaint (ECF No. 1) be dismissed without prejudice; and
- 17 2. Plaintiff’s motion for preliminary injunctive relief (ECF No. 1 at 11) be denied as
18 moot.

19 These findings and recommendations are submitted to the United States District Judge
20 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
21 after being served with these findings and recommendations, plaintiff may file written objections
22 with the court. Such document should be captioned “Objections to Magistrate Judge’s Findings

23 ///

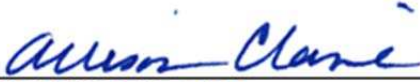
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25 _____
26 ² In his objections, plaintiff asserted that he did not file a § 1983 civil rights action and instead
27 purported to bring his claim for declaratory and injunctive relief under the Declaratory Judgment
28 Act, 28 U.S.C. §§ 2201-2202. ECF No. 6.

³ The prison mailbox rule was used in determining the filing date. See Houston v. Lack, 487
U.S. 266 (1988).

1 and Recommendations.” Plaintiff is advised that failure to file objections within the specified
2 time may waive the right to appeal the District Court’s order. *Martinez v. Ylst*, 951 F.2d 1153
3 (9th Cir. 1991).

4 DATED: August 20, 2015

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6 ALLISON CLAIRE
7 UNITED STATES MAGISTRATE JUDGE
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