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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ARMANDO HERRERA,  
Plaintiff,  
v.  
CANDIA, et al.,  
Defendants.

No. 2:16-cv-0938 GEB KJN P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

On September 8, 2016, plaintiff filed a letter complaining of incidents that occurred on September 2, 2016, and asks whether he can amend his complaint to include such allegations. However, as plaintiff was advised in the court’s August 17, 2016 order, plaintiff must first sign and file the request to proceed in forma pauperis. Failing that, he must pay the \$400.00 filing fee in order to proceed with this action. Moreover, as plaintiff was first informed on May 25, 2016, plaintiff must exhaust his administrative remedies as to any claim prior to raising such claim in federal court. (ECF No. 6 at 2.) Because plaintiff could not have exhausted his administrative remedies as to an incident which occurred on September 2, 2016, prior to filing the instant action, he may not include such allegations here. Thus, plaintiff’s motion to amend is denied without prejudice.

On August 17, 2016, plaintiff was provided an application to proceed in forma pauperis and warned that no further extensions of time would be granted. Plaintiff was directed to file his

1 application on or before September 30, 2016. (ECF No. 22.) The docket reflects that plaintiff  
2 was sent another application to proceed in forma pauperis on September 12, 2016.

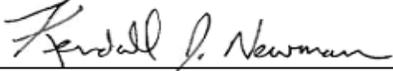
3 Plaintiff has been provided multiple opportunities to submit the application to proceed in  
4 forma pauperis, yet has failed to submit the signed form. Therefore, the undersigned recommends  
5 that this action be dismissed without prejudice.

6 Accordingly, IT IS HERE ORDERED that plaintiff's motion to amend (ECF no. 28) is  
7 denied without prejudice; and

8 IT IS RECOMMENDED that this action be dismissed without prejudice.

9 These findings and recommendations are submitted to the United States District Judge  
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
11 after being served with these findings and recommendations, any party may file written  
12 objections with the court and serve a copy on all parties. Such a document should be captioned  
13 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the  
14 objections shall be filed and served within fourteen days after service of the objections. The  
15 parties are advised that failure to file objections within the specified time may waive the right to  
16 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

17 Dated: October 12, 2016

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20 KENDALL J. NEWMAN  
21 UNITED STATES MAGISTRATE JUDGE

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