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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MITCHELL DIXON, Jr.,
Plaintiff,
v.
ELK GROVE COUNTY, et al.,
Defendants.

No. 2:16-cv-2980 DB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a former prisoner proceeding pro se with a civil rights action under 42 U.S.C. § 1983. Plaintiff filed his original complaint in December 2016. (ECF No. 1.) At that time, plaintiff was incarcerated at the Sacramento County Main Jail. Plaintiff also filed an incomplete motion to proceed in forma pauperis.

On January 4, 2017, the court ordered plaintiff to submit a complete affidavit in support of his motion to proceed in forma pauperis and a certified copy of his trust account statement from the jail. (ECF No. 4.) Plaintiff was warned that his failure to comply with the court’s order would result in a recommendation that this action be dismissed. On January 18, 2017, plaintiff’s copy of this order was returned to the court as undeliverable because plaintiff was no longer in custody at the Sacramento County Main Jail.

On March 7, 2017, plaintiff filed a document which the court construed as a first amended complaint. Plaintiff’s address on that filing showed that he was at that time incarcerated at the Fresno County Jail. (ECF No. 5.)

1 The January 4 order was re-served on plaintiff at this new address. However, shortly
2 thereafter, court staff noted that plaintiff had filed a change of address in another case in this
3 court. The new address indicated that plaintiff might no longer be in custody. On April 3, 2017,
4 the January 4 order was re-served, again, on plaintiff at this new address in Elk Grove.

5 In April, June, and July, the court received several filings from plaintiff. Some of these
6 appear to be argument in support of his claims and, in one letter, plaintiff requested unspecified
7 forms. Information gleaned from the June 22 filing indicated that, at that time, plaintiff remained
8 incarcerated at the Fresno County Jail. (ECF No. 8.)

9 In an order filed July 24, the court gave plaintiff one final opportunity to seek to proceed
10 in forma pauperis in this action or pay the filing fee. (ECF No. 13.) Plaintiff was warned that his
11 failure to do so would result in a recommendation that this case be dismissed. Plaintiff was also
12 warned that if he wishes to proceed with a suit in this court, he must keep the court apprised of his
13 current address. The court served plaintiff copies of this July 24 order at both the Fresno County
14 Jail and at the Elk Grove address.

15 On August 11, the copy of the July 24 order served on plaintiff at the Fresno County Jail
16 was returned as undeliverable, indicating that plaintiff is no longer in custody at that jail. The
17 copy of the order mailed to the Elk Grove address has not been returned.

18 Plaintiff has been provided numerous opportunities to pay the filing fee or a motion to
19 proceed in forma pauperis in this action and has failed to do so.

20 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court assign a district
21 judge to this case; and

22 IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice. See
23 E.D. Cal. R. 110; Fed. R. Civ. P. 41(b).

24 These findings and recommendations are submitted to the United States District Judge
25 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
26 after being served with these findings and recommendations, plaintiff may file written objections
27 with the court. The document should be captioned "Objections to Magistrate Judge's Findings
28 and Recommendations." Any response to the objections shall be filed and served within fourteen

1 days after service of the objections. Plaintiff is advised that failure to file objections within the
2 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
3 F.2d 1153 (9th Cir. 1991).

4 Dated: September 7, 2017

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7 DEBORAH BARNES
8 UNITED STATES MAGISTRATE JUDGE

9 DLB:9
10 DLB1/prisoner-civil rights/dixo2980.fr

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