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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

STEVEN WAYNE BONILLA,
Plaintiff,
v.
CARA L. BEATTY, et al.,
Defendants.

No. 2:18-cv-2357-MCE-EFB P

FINDINGS AND RECOMMENDATIONS


Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On September 5, 2018, the court found that plaintiff had failed to pay the \$400 filing fee required by 28 U.S.C. § 1914(a) or request leave to proceed in forma pauperis and submit the affidavit and trust account statement required by 28 U.S.C. § 1915(a). Accordingly, the court ordered plaintiff to submit either the filing fee or the application required by § 1915(a) within thirty days and warned him that failure to do so may result in this action being dismissed. ECF No. 3. The 30-day period has expired and plaintiff has neither paid the filing fee nor filed a completed in forma pauperis application. Instead, he has filed a notice of “filing fees per 28 U.S.C. section 1915(a)(3),” arguing that “no filing fee is required when the court is under a duty to vacate the judgment and to immediately release the innocent petitioner” ECF No. 7 at 11. Plaintiff’s position lacks merit. Before the court examines the substance of any claim, plaintiff must either pay the filing fee or seek leave to proceed in forma pauperis. See 28 USC section 1914, 1915(a). Because plaintiff has done neither, this action must be dismissed.

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Accordingly, it is RECOMMENDED that this action be dismissed without prejudice.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the objections shall be served and filed within fourteen days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

Dated: October 15, 2018.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE