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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LOUIS E. BERSHELL, JR,
Plaintiff,
v.
STATE OF CALIFORNIA, et al.,
Defendants,

No. 2:19-cv-01730-TLN-DB

ORDER

Plaintiff Louis Bershell (“Plaintiff”) is proceeding in this action *pro se*. This matter was referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

On October 2, 2020, the magistrate judge filed findings and recommendations herein which were served on Plaintiff and which contained notice to Plaintiff that any objections to the findings and recommendations were to be filed within thirty (30) days after service of the Findings and Recommendations. (ECF No. 4.) The thirty-day period has expired, and Plaintiff has not filed any objections to the findings and recommendations.

Although it appears from the docket that Plaintiff’s copy of the Findings and Recommendations were returned as undeliverable, Plaintiff was properly served. It is Plaintiff’s responsibility to keep the court apprised of his current address at all times. Pursuant to Local Rule 182(f), service of documents at the record address of the party is fully effective.

1 Accordingly, the Court presumes that any findings of fact are correct. *See Orand v.*
2 *United States*, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge’s conclusions of law are
3 reviewed *de novo*. *See Britt v. Simi Valley Unified School Dist.*, 708 F.2d 452, 454 (9th Cir.
4 1983); *see also* 28 U.S.C. § 636(b)(1). Having reviewed the file under the applicable legal
5 standards, the Court finds the Findings and Recommendations to be supported by the record and
6 by the magistrate judge’s analysis.

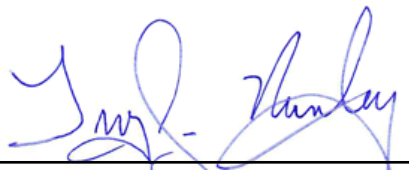
7 The Court notes Plaintiff’s Motion to Proceed *In Forma Pauperis* also appears to be
8 pending. (ECF No. 2.) In the Findings and Recommendations, the magistrate judge determined
9 Plaintiff qualified financially for *in forma pauperis* status but additionally noted that “[i]t is the
10 duty of the District Court to examine any application for leave to proceed in forma pauperis to
11 determine whether the proposed proceedings has merit and if it appears that the proceeding is
12 without merit, the court is bound to deny a motion seeking leave to proceed in forma pauperis.”
13 (*Id.* (citing *Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir. 1965)).) In light of this legal authority
14 and the Findings and Recommendations’ dismissal of Plaintiff’s original Complaint with leave to
15 amend, it appears the magistrate judge deferred issuing a ruling granting Plaintiff’s motion until
16 after the after filing of an amended complaint. (*See id.*) Because Plaintiff has failed to file an
17 amended complaint, however, the Court finds denial of Plaintiff’s motion is now appropriate. For
18 these reasons, Plaintiff’s Motion to Proceed *In Forma Pauperis* is hereby DENIED. (ECF No. 2.)

19 Accordingly, IT IS HEREBY ORDERED that:

- 20 1. The Findings and Recommendations filed October 2, 2020 (ECF No. 4), are adopted in
21 full;
22 2. This action is DISMISSED without prejudice;
23 3. Plaintiff’s Motion to Proceed *In Forma Pauperis* (ECF No. 2) is DENIED; and
24 4. The Clerk of the Court is directed to close this case.

25 IT IS SO ORDERED.

26 DATED: December 17, 2020

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Troy L. Nunley
United States District Judge