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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GARY PAUL SMITH,  
  
                                Plaintiff,  
  
                                v.  
  
MUNICIPALTY OF FRESNO COUNTY,  
et al.,  
  
                                Defendants.

No. 2:21-cv-01992 DJC AC

FINDINGS AND RECOMMENDATIONS

Plaintiff is a former state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. On January 20, 2023 defendants filed a motion for summary judgment. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On June 7, 2023, August 16, 2023, and finally on March 27, 2024 plaintiff was ordered to submit an in forma pauperis application for a non-prisoner as well as a proper opposition to the pending motion for summary judgment. ECF Nos. 145, 149, 154. Plaintiff was repeatedly warned that his failure to timely comply would result in a recommendation that this action be dismissed without prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). Despite multiple extensions of time, plaintiff has failed to submit the required IFP application or to file an opposition to defendants’ motion for summary judgment that complies with Rule 56 of the Federal Rules of Civil Procedure and Local Rule 260.

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For the foregoing reasons, IT IS HEREBY RECOMMENDED that:

1. This action be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(b).
2. The pending motions for summary judgment (ECF Nos. 135, 144) be denied as moot.
3. The Clerk of Court be directed to close this case.

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 filed and served 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. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: May 20, 2024

  
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ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE