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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KEDIR ESSA ESMAEL,	)	No. C 09-3943 MMC (PR)
Plaintiff,	)	<b>ORDER OF DISMISSAL; DENYING LEAVE TO PROCEED IN FORMA PAUPERIS</b>
v.	)	
SANTA CLARA COUNTY,	)	
Defendant.	)	

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On August 26, 2009, plaintiff, a California prisoner then incarcerated at the Elmwood Men’s Facility in Milpitas, California, and proceeding pro se, filed the above-titled civil rights action pursuant to 42 U.S.C. § 1983. Together with his complaint, plaintiff filed a completed prisoner’s in forma pauperis (“IFP”) application, indicating therein that he had no funds in his prisoner trust account to pay the filing fee. Thereafter, plaintiff wrote the court that he no longer was incarcerated at the Elmwood Men’s Facility and was residing in San Jose. The Court inferred from plaintiff’s letter that he no longer was imprisoned. Consequently, the Court directed plaintiff to either pay the requisite filing fee in full, or submit a court-approved non-prisoner’s IFP application showing he is unable to pay the fee. (Docket No. 4.) In response, plaintiff wrote the Court explaining that he had not been released from jail and was residing at the San Jose Main Jail. (Docket No. 8.) He also submitted a non-prisoner’s IFP application. (Docket No. 7.)

Plaintiff next wrote the Court and asked that his case be “transferred” to the

United States District Court  
For the Northern District of California

1 “Downtown Superior – Civil Division, 191 North First Street, San Jose, CA 95113,” which  
2 plaintiff also identified as the “Santa Clara County Civil Division.” (Docket No. 10.)  
3 Plaintiff’s stated reason for such request was his desire to have the case transferred to the  
4 county in which he was residing. The San Jose address provided by plaintiff in his letter is  
5 the address of the Santa Clara County Superior Court. Together with his request, plaintiff  
6 submitted another copy of the district court’s non-prisoner’s IFP application. (Docket No.  
7 9.)

8 Most recently, plaintiff wrote the Court that he now is incarcerated at the Eloy  
9 Detention Center, in Eloy, Arizona. (Docket No. 11.)

10 By order dated October 19, 2010, the Court denied plaintiff’s request to transfer his  
11 case to the Santa Clara County Superior Court, and informed plaintiff as follows:

12 If plaintiff wishes to prosecute his claims in state, rather than federal, court, he  
13 must voluntarily dismiss the instant action and file a complaint in Superior  
14 Court. Accordingly, within **twenty** days of the date this order is filed,  
15 plaintiff shall inform the Court whether he intends to proceed with the instant  
16 action in this court. If plaintiff fails to comply with this order, the action will  
17 be dismissed without prejudice.

18 The Court will defer ruling on plaintiff’s request to proceed IFP until plaintiff  
19 informs the Court of his intentions as directed above.

20 (Docket No. 12 at 2:10-17.)


21 More than twenty days have passed from the date the Court’s order was filed and  
22 plaintiff has not responded to the order. Accordingly, the instant action is hereby  
23 DISMISSED without prejudice. Additionally, as plaintiff now is incarcerated in Arizona,  
24 his IFP application with trust account information from the Elmwood Men’s Facility and his  
25 non-prisoner IFP applications no longer are applicable with respect to plaintiff’s request to  
26 proceed IFP. Accordingly, leave to proceed IFP is hereby DENIED, and no fee is due.

27 This order terminates Docket Nos. 2, 7 and 9.

28 The Clerk shall close the file.

IT IS SO ORDERED.

DATED: November 19, 2010

  
MAXINE M. CHESNEY  
United States District Judge