UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

MARTIN LEE FOSTER, Plaintiff, v. QURRINA OROZCO, Defendant.	No. 2:25-cv-2426 TLN CKD P ORDER AND FINDINGS AND RECOMMENDATIONS

Plaintiff is proceeding pro se with a civil action. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

On October 14, 2025, the court recommended that this action be dismissed for plaintiff's failure to either request leave to proceed in forma pauperis or pay the $405 filing fee for this action. As plaintiff filed a request for leave to proceed in forma pauperis on October 22 and 24, 2025, the court's October 14, 2025 findings and recommendations will be vacated.

Plaintiff has requested leave to proceed in forma pauperis. When plaintiff initiated this action he was a Sacramento County Jail prisoner. Title 28 U.S.C. § 1915(g) reads as follows:

> In no event shall a prisoner bring a civil action . . . [in forma pauperis] if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

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A review of court records reveals that plaintiff has had at least three cases dismissed for failure to state a claim upon which relief can be granted which were brought by plaintiff while he was incarcerated and where judgement was entered before this action was filed: Foster v. Newsom, 2:21-cv-0316 TLN DMC P; Foster v. White, 2:21-cv-0388 KJM JDP P; and Foster v. Walker, 2:21-cv-0874 WBS CKD P. There is no allegation by plaintiff that he was under imminent danger of serious physical injury when this action was filed.

In light of the foregoing, the court will recommend that plaintiff's request for leave to proceed in forma pauperis be denied and that plaintiff be granted fourteen days within which to pay the filing fee for this action.

Accordingly, IT IS HEREBY ORDERED that the court's October 14, 2025, findings and recommendations are vacated.

IT IS HEREBY RECOMMENDED that:

1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 7 & 8) be denied.

2. Plaintiff be granted fourteen days within which to pay the $405 filing fee for this action.

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)(l). Within fourteen days after being served with these findings and recommendations, plaintiff may file written objections with the court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within the specified time waives the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: November 3, 2025

CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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