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

TONY BLACKMAN,

Plaintiff,

vs.

1:07 CV 01873 AWI YNP GSA (PC)

FINDINGS AND RECOMMENDATION

LT. R. PARIN, et al.,

Defendants.

Plaintiff is a state prisoner proceeding pro se in a civil rights action challenging the conditions of his confinement.

Plaintiff, an inmate in the custody of the California Department of Corrections and Rehabilitation at Corcoran State Prison, brings this action pursuant to 42 U.S.C. § 1983 against correctional officials employed by the CDCR at Corcoran State Prison. Plaintiff’s complaint sets forth allegations that defendants have confiscated his written inmate appeals.

The Prison Litigation Reform Act provides that “[i]n no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more occasions, while incarcerated or detained in a facility, brought an action or appeal in a court of the United States that was dismissed on the ground 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 injury.” 28 U.S.C. § 1915(g).

1 This plaintiff has, on 3 prior occasions, brought civil actions challenging the conditions of  
2 his confinement. All three action were dismissed as frivolous, or for failure to state a claim upon  
3 which relief can be granted. Blackman v. Harwell, et al., 99-5822 REC HGB P (E. Dist. Cal.);  
4 Blackman v. Medina, 05-CV-05390-SI (N. Dist. Cal.); Blackman v. Variz , 06-CV 06398 SI (N.  
5 Dist. Cal.). Plaintiff is therefore not entitled to proceed in forma pauperis unless he alleges  
6 facts indicating that he is in imminent danger of serious physical injury. There are no such facts  
7 alleged in complaint filed in this case. Accordingly, on October 16, 2009, an order to show cause  
8 was entered, directing Plaintiff to show cause why he should not be denied leave to proceed in  
9 forma pauperis. Plaintiff has not filed a response to the order to show cause.

10 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff's request to proceed in  
11 forma pauperis denied, and Plaintiff be directed to submit the \$350 filing fee in full.

12 These findings and recommendations are submitted to the United States District Judge  
13 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty days  
14 after being served with these findings and recommendations, any party may file written  
15 objections with the court and serve a copy on all parties. Such a document should be captioned  
16 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections  
17 shall be served and filed within ten days after service of the objections. The parties are advised  
18 that failure to file objections within the specified time waives all objections to the judge's  
19 findings of fact. See Turner v. Duncan, 158 F.3d 449, 455 (9<sup>th</sup> Cir. 1998). Failure to file  
20 objections within the specified time may waive the right to appeal the District Court's order.  
21 Martinez v. Ylst, 951 F.2d 1153 (9<sup>th</sup> Cir. 1991).

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IT IS SO ORDERED.

**Dated: January 15, 2010**

**/s/ Gary S. Austin**  
UNITED STATES MAGISTRATE JUDGE