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

DANIEL PORTUGAL,

Plaintiff,

No. CIV S-09-1409 DAD

vs.

M.D. McDONALD,

Defendant.

ORDER AND

FINDINGS AND RECOMMENDATIONS

\_\_\_\_\_ /

By an order filed December 2, 2009, plaintiff was ordered to file a completed application to proceed in forma pauperis or pay the appropriate filing fee within thirty days. In addition, plaintiff's complaint was dismissed and thirty days leave to file an amended complaint was granted. Plaintiff was cautioned that failure to do so would result in a recommendation that this action be dismissed. The thirty day period has now expired, and plaintiff has not filed a completed application to proceed in forma pauperis or paid the appropriate filing fee, has not filed an amended complaint, and has not otherwise responded to the court's order.

IT IS HEREBY ORDERED that the Clerk of the Court is directed to randomly assign a United States District Judge to this action;

IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice. See Local Rule 110 (E.D. Cal. 1997); Fed. R. Civ. P. 41(b).

1           These findings and recommendations are submitted to the United States District  
2 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty  
3 days after being served with these findings and recommendations, plaintiff may file written  
4 objections with the court. Such a document should be captioned "Objections to Magistrate  
5 Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections  
6 within the specified time may waive the right to appeal the District Court's order. Martinez v.  
7 Ylst, 951 F.2d 1153 (9th Cir. 1991).

8 DATED: January 15, 2010.

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12 DALE A. DROZD  
13 UNITED STATES MAGISTRATE JUDGE

12 DAD:lg  
13 port1409.fifp.fta