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

TERRENCE BROWNLEE,

Plaintiff,

No. 2:09-cv-3305 JFM

vs.

T. SWINGLE, et al.,

Defendants.

FINDINGS & RECOMMENDATIONS

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By an order filed January 7, 2010, plaintiff was ordered to pay the appropriate filing fees within twenty-one days and was cautioned that failure to do so would result in a recommendation that this action be dismissed. On January 13, 2010, plaintiff filed a second motion to proceed in forma pauperis.

On January 22, 2010, plaintiff filed a response in which he contests this court’s finding that he does not meet the “imminent danger” exception of the Prison Litigation Reform Act (“PLRA”), 28 U.S.C. § 1915(g). As discussed further in this court’s January 7, 2010 order, plaintiff alleges he is being denied treatment for his chronic back pain. Plaintiff seeks money damages only. Although plaintiff’s allegations concern a medical condition, plaintiff does not demonstrate that at the time of filing of his complaint, he was “under imminent danger of serious

1 physical injury,” because he believes he should be transferred to a medical facility despite prison
2 officials determination that he does not qualify for said transfer, he believes he should receive an
3 MRI, and he suffers more pain on the occasions when he must get down during alarms. The fact
4 that plaintiff seeks money damages only as a form of relief belies any representation that he
5 might be under imminent danger. Indeed, the second level response indicates that plaintiff is
6 prescribed Vicodin, ibuprofen and Lyrica for pain control. (Compl., Ex. C.) The Director’s
7 Level Decision states that plaintiff recently had an epidural lumbar injection. (Compl., Ex. D.)
8 Based thereon, the court reaffirms its finding that plaintiff does not meet the “imminent danger”
9 requirement of section 1915(g) of the PLRA.

10 Moreover, the twenty-one day period has now expired and plaintiff has not paid
11 the appropriate filing fee. Accordingly, IT IS HEREBY RECOMMENDED that this action be
12 dismissed without prejudice.

13 These findings and recommendations are submitted to the United States District
14 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
15 days after being served with these findings and recommendations, plaintiff may file written
16 objections with the court. The document should be captioned “Objections to Magistrate Judge’s
17 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the
18 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951
19 F.2d 1153 (9th Cir. 1991).

20 DATED: February 1, 2010.

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23 UNITED STATES MAGISTRATE JUDGE

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