

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

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TONY BLACKMAN,  
Plaintiff,

1:10 CV 00380 AWI MJS (PC)

vs.

FINDINGS AND RECOMMENDATION RE  
MOTION TO PROCEED IN FORMA  
PAUPERIS

KELLY HARRINGTON, et al.,  
Defendants.

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

Plaintiff brings this action pursuant to 42 U.S.C. § 1983 against correctional officials employed by the California Department of Corrections and Rehabilitation (CDCR) at Kern Valley State Prison where he is an inmate. Plaintiff’s complaint sets forth vague allegations regarding his apparently unsuccessful attempts to participate in the inmate appeals process and relating generally to his medical and psychiatric treatment.

The Prison Litigation Reform Act provides that “[i]n no event shall a prisoner bring a

1 civil action . . . under this section [re proceedings in forma pauperis]if the prisoner has, on 3 or  
2 more occasions, while incarcerated or detained in a facility, brought an action or appeal in a court  
3 of the United States that was dismissed on the ground that it is frivolous, malicious, or fails to  
4 state a claim upon which relief may be granted, unless the prisoner is under imminent danger of  
5 serious injury.” 28 U.S.C. § 1915(g).

6 This plaintiff has, on three prior occasions, brought civil actions challenging the  
7 conditions of his confinement: Blackman v. Harwell, et al., 99-5822 REC HGB P (E. Dist. Cal.);  
8 Blackman v. Medina, 05-CV-05390-SI (N. Dist. Cal.); and, Blackman v. Variz , 06-CV 06398 SI  
9 (N. Dist. Cal.). All three case were dismissed for failure to state a claim. Plaintiff is therefore  
10 not entitled to proceed in forma pauperis unless he alleges facts indicating that he is in imminent  
11 danger of serious physical injury. No such facts have been alleged in complain. Accordingly,  
12 on March 11, 2010, an order to show cause was entered directing Plaintiff to show cause why he  
13 should not be denied leave to proceed in forma pauperis. Plaintiff has not filed a response to  
14 the order to show cause.

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

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

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8 IT IS SO ORDERED.

9 **Dated:** May 6, 2010

/s/ Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE

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