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

ERNEST MILLER,

Plaintiff,
vs.

No. 2:09-cv-0917 JAM KJN P

ROCHE,

Defendant.

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On March 17, 2010, the magistrate judge filed findings and recommendations herein which were served on plaintiff and which contained notice to plaintiff that any objections to the findings and recommendations were to be filed within twenty-one days. On April 9, 2010,¹ plaintiff filed objections to the findings and recommendations.

“A judge of the court shall make a de novo determination of those portions of the

¹ Although the court docket indicates a filing date of April 16, 2010 (Dkt. No. 20), April 9, 2010 is the date on which petitioner, proceeding pro se, signed and delivered the instant petition to prison officials for mailing (*id.* at 2). Pursuant to the mailbox rule, that date is considered the filing date of the petition. See *Stillman v. Lamarque*, 319 F.3d 1199, 1201 (9th Cir. 2003).

1 [magistrate judge's] report or specified proposed findings or recommendations to which
2 objection is made." 28 U.S.C. § 636(b)(1)(C); see also United States v. Reyna-Tapia, 328 F.3d
3 1114, 1121 (9th Cir. 2003) (en banc). Having carefully reviewed the entire file, the court finds
4 the findings and recommendations to be supported by the record and by proper analysis. The
5 court presumes that any findings of fact not objected to are correct. See Orand v. United States,
6 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's conclusions of law are reviewed de
7 novo. See Britt v. Simi Valley Unified School Dist., 708 F.2d 452, 454 (9th Cir. 1983).

8 The court has reviewed the applicable legal standards and, good cause appearing,
9 concludes that it is appropriate to adopt the proposed findings and recommendations in full.

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. The findings and recommendations filed March 17, 2010 (Dkt. No. 19), are
12 adopted in full;
- 13 2. The order granting plaintiff in forma pauperis status (Dkt. No. 11), is vacated;
- 14 3. Plaintiff's motion to proceed in forma pauperis (Dkt. No. 6), is denied;
- 15 4. Plaintiff is directed to pay in full the \$350 filing fee within 21 days of the filing
16 date of this order (failure timely to pay the full filing fee will result in dismissal of this action);
17 and
- 18 5. Plaintiffs' motion for preliminary injunction (Dkt. No. 16), is denied.

19 DATED: May 13, 2010

20 /s/ John A. Mendez
21 UNITED STATES DISTRICT JUDGE
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