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

ERNEST MILLER,

Plaintiff,

No. 2:10-cv-0796-JFM (PC)

vs.

K. TERRY, et al.,

Defendants.

ORDER AND

FINDINGS & RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. By an order filed July 21, 2010, this court found that on at least three occasions lawsuits filed by plaintiff have been dismissed on the grounds that they were frivolous or malicious or failed to state a claim upon which relief may be granted and, therefore, that plaintiff was precluded from proceeding with this action in forma pauperis unless he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). The court further found that plaintiff has not alleged any facts which suggest that he faces such danger. Accordingly, the court ordered plaintiff to pay the appropriate filing fee for this action within twenty days.

On August 4, 2010, plaintiff filed objections to the July 21, 2010 order, and on August 5, 2010, plaintiff filed a document styled as a motion for injunctive relief precluding

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1 enforcement of the order. Neither has merit. The twenty day period has now expired, and
2 plaintiff has not paid the filing fee as required by the court's July 21, 2010 order.

3 Accordingly, good cause appearing, IT IS HEREBY ORDERED that the Clerk of
4 the Court is directed to assign this action to a United States District Judge; and

5 IT IS HEREBY RECOMMENDED that this action be dismissed without
6 prejudice.

7 These findings and recommendations are submitted to the United States District
8 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
9 days after being served with these findings and recommendations, plaintiff may file written
10 objections with the court. The document should be captioned "Objections to Magistrate Judge's
11 Findings and Recommendations." Any response to the objections shall be filed and served
12 within fourteen days after service of the objections. Plaintiff is advised that failure to file
13 objections within the specified time may waive the right to appeal the District Court's order.
14 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

15 DATED: August 9, 2010.

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18 UNITED STATES MAGISTRATE JUDGE

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