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

MARVIN HARRIS,
Plaintiff,
vs.
M. DELONEY, et al.,
Defendants.

No. CIV S-11-2175-KJM-CMK-P

ORDER

_____/

Plaintiff, a prisoner proceeding pro se, brings this civil rights action under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to Eastern District of California local rules.

On September 14, 2011, the magistrate judge filed amended findings and recommendations, which were served on the parties and which contained notice that the parties may file objections within a specified time. Plaintiff has filed timely objections to the amended findings and recommendations.

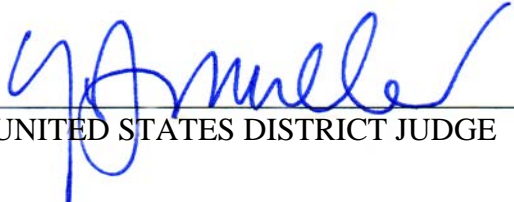
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1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule
2 304, this court has conducted a *de novo* review of this case. Having carefully reviewed the file,
3 the court finds the findings and recommendations overall to be supported by the record and by
4 the proper analysis. Plaintiff's conclusory objection, that he is facing imminent danger, does not
5 change this conclusion. However, the court notes that there is a split within this district
6 regarding whether 28 U.S.C. § 1915(g) mandates dismissal. *See Rasheed v. Castro*, 2010 U.S.
7 Dist. LEXIS 53982 (E.D. Cal. Apr. 30, 2010) (granting plaintiff thirty days to submit filing fee);
8 *Harper v. Cal. Dept. Corr.*, 2010 U.S. Dist. LEXIS 56513 (E.D. Cal. Jun. 7, 2010) (granting
9 plaintiff thirty days to file amended complaint and submit filing fee), adopted by 2010 U.S. Dist.
10 LEXIS 96415 (E.D. Cal. Sep. 15, 2010). *But see Prophet v. Clark*, 2009 U.S. Dist. LEXIS
11 57940 (E.D. Cal. Jun. 22, 2009) (dismissing and directing plaintiff to file complaint in new civil
12 case and pay filing fee); *Campbell v. Vance*, 2005 U.S. Dist. LEXIS 30203 (E.D. Cal. Nov. 30,
13 2005) (dismissing case), *adopted by* 2006 U.S. Dist. LEXIS 543 (E.D. Cal. Jan. 9, 2006). Given
14 the current state of the law, the undersigned has determined that dismissal is not mandated and
15 therefore declines to adopt the amended recommendations insofar as the magistrate judge
16 recommends dismissal without prejudice.

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. The amended findings and recommendations filed September 14, 2011,
19 are adopted in part;
- 20 2. Plaintiff's motion for leave to proceed in forma pauperis (ECF No. 7) is
21 denied; and
- 22 3. Plaintiff has thirty (30) days from the entry of this order in which to
23 submit the filing fee of \$350.00. Failure to pay the filing fee will result in dismissal of this action
24 without prejudice.

25 DATED: December 14, 2011.

26 
UNITED STATES DISTRICT JUDGE