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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 PETER J. MCDANIELS,

9 Plaintiff,

10 v.

11 BELINDA STEWART, et al.,

12 Defendants.

CASE NO. C15-5943 BHS

ORDER

13 This matter comes before the Court on the Report and Recommendations
14 (“R&Rs”) of the Honorable David W. Christel, United States Magistrate Judge (Dkts. 13,
15 25), and Plaintiff Peter McDaniels’s (“McDaniels”) objections to the R&Rs (Dkts. 22,
16 27).

17 **I. PROCEDURAL HISTORY**

18 On December 28, 2015, McDaniels filed a motion to proceed *in forma pauperis*.
19 Dkt. 1. McDaniels is currently housed at Stafford Creek Corrections Center (“SCCC”)
20 and is proceeding *pro se*. *Id.* In the motion, McDaniels stated he has \$27,000 from a
21 settlement, \$514.64 in cash on hand, \$20.00 in a checking account, and \$8,000 in a
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1 Pilgrimage Fund. *Id.* at 1–2. McDaniels’s prison trust account statement showed he had
2 an average spendable balance of \$1,046.30. *Id.* at 4.

3 Based on this information, Judge Christel ordered McDaniels to show cause why
4 his motion should not be denied because it appeared McDaniels could afford to pay the
5 filing fee. Dkt. 6. Judge Christel noted that McDaniels could pay the filing fee in lieu of
6 responding to the show cause order. *Id.*

7 On January 25, 2016, McDaniels responded to the show cause order. Dkt. 7.
8 McDaniels informed Judge Christel that he asked his brother to pay the filing fee. *Id.* at
9 1. McDaniels further stated that “although he may have enough money to pay the filing
10 fee . . . he surely does not have the money to afford to prosecute this case through to full
11 execution.” *Id.* at 2.

12 On January 27, 2016, the full filing fee was paid and McDaniels’s civil rights
13 complaint under 42 U.S.C. § 1983 was filed. Dkts. 9, 12. McDaniels alleged violations
14 of his constitutional rights due to the inadequacy of Halal meals provided by SCCC. Dkt.
15 9. Along with his complaint, McDaniels filed a motion for a preliminary injunction.
16 Dkt. 10. McDaniels subsequently filed a motion for declaratory judgment, Dkt. 17,
17 which Judge Christel construed as a second motion for a preliminary injunction, Dkt. 25.

18 On January 29, 2016, Judge Christel issued an R&R recommending the Court
19 deny McDaniels’s motion to proceed *in forma pauperis* as moot because McDaniels paid
20 the filing fee. Dkt. 13. McDaniels filed objections to the R&R on February 9, 2016.
21 Dkt. 22.
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1 On February 8, 2016, Judge Christel screened McDaniels's complaint and found
2 several deficiencies. Dkt. 21. Judge Christel ordered McDaniels to file an amended
3 complaint or show cause by March 8, 2016. *Id.*

4 On February 10, 2016, Judge Christel issued a second R&R recommending the
5 Court deny McDaniels's motions for a preliminary injunction without prejudice. Dkt. 25.
6 Judge Christel concluded that McDaniels failed to show a likelihood of success on the
7 merits or serious questions going to the merits because McDaniels had not filed an
8 amended complaint and thus there was no cognizable claim in the case. *Id.* at 3.

9 On February 17, 2016, McDaniels filed an amended complaint and objections to
10 the second R&R. Dkts. 27, 32.

11 II. DISCUSSION

12 McDaniels objects to Judge Christel's recommendations with respect to his motion
13 to proceed *in forma pauperis* and his motions for a preliminary injunction. Dkts. 22, 27.
14 In the interest of judicial economy, the Court will address McDaniels's objections to both
15 R&Rs in this order.

16 A. Legal Standard

17 Federal Rule of Civil Procedure 72(b) governs objections to a magistrate judge's
18 recommended disposition. Rule 72(b) provides:

19 The district judge must determine de novo any part of the magistrate
20 judge's disposition that has been properly objected to. The district judge
21 may accept, reject, or modify the recommended disposition; receive further
22 evidence; or return the matter to the magistrate judge with instructions.
Fed. R. Civ. P. 72(b)(3).

1 **B. Motion to Proceed *In Forma Pauperis***

2 McDaniels first objects to Judge Christel's recommendation that his motion to
3 proceed *in forma pauperis* be denied as moot. Dkt. 22. McDaniels contends that "just
4 because he has \$400.00 doesn't mean he can afford the filing fee." *Id.* at 2. McDaniels
5 further asserts that he is nearly broke and cannot afford to litigate this case without the
6 benefit of 28 U.S.C. § 1915. Dkt. 22 at 3.

7 After reviewing McDaniels's objections, the Court agrees with Judge Christel that
8 McDaniels's motion to proceed *in forma pauperis* is moot because McDaniels has paid
9 the full filing fee. *See Price v. Bjelland*, 370 Fed. App'x 838, 840 (9th Cir. 2010);
10 *Lipscomb v. Madigan*, 221 F.2d 798 (9th Cir. 1955) (per curiam). The Court therefore
11 adopts the first R&R (Dkt. 13). To the extent McDaniels is unable to pay additional fees
12 during the course of this litigation, nothing in this order precludes McDaniels from asking
13 the Court to waive those fees.

14 **C. Motions for Preliminary Injunction**

15 Next, McDaniels objects to Judge Christel's recommendation that his motions for
16 a preliminary injunction be denied without prejudice. Dkt. 27. McDaniels asserts he has
17 filed an amended complaint. *Id.*

18 When the second R&R was issued, McDaniels had not yet filed an amended
19 complaint. *See* Dkt. 25 at 3. As a result, Judge Christel concluded there was no
20 cognizable claim in the case and injunctive relief should be denied. *Id.* Because
21 McDaniels has now filed an amended complaint, the Court declines to adopt the second
22 R&R (Dkt. 25) and re-refers the matter to Judge Christel for further consideration.

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(1) The R&R on McDaniels's motion to proceed *in forma pauperis* (Dkt. 13) is **ADOPTED**; and

Dated this 22nd day of March, 2016.


BENJAMIN H. SETTLE
United States District Judge