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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

CHARLES T. DAVIS,

Plaintiff,

v.

CLARK J. KELSO, et al.,

Defendants.

CASE NO: 1:10-cv-01184-LJO-GBC (PC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS

(Doc. 38)

**I. Procedural History**

Charles T. Davis ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis ("IFP") in this civil rights action pursuant to 42 U.S.C. § 1983. This action was filed on July 1, 2010. (Doc. 1). On April 22, 2011, the Court issued an Order to Show Cause as to why Plaintiff's IFP status should not be revoked pursuant to 28 U.S.C. § 1915(g). (Doc. 15). On May 4, 2011, Plaintiff filed a response. (Doc. 18). On September 8, 2011, the Magistrate Judge filed a Findings and Recommendations herein which was served on Plaintiff which contained notice that any objections to the Findings and Recommendations were to be filed within thirty days. (Doc. 38). After being granted an extension of time, October 18, 2011, Plaintiff filed objections. (Doc. 41).

**II. Review of Plaintiff's Objections**

In Plaintiff's objections, he resubmits many of the same arguments as in his response to the Order to Show Cause and argues at length his interpretation as to what should constitute as

1 “frivolous” under 28 U.S.C. § 1915(g). (Doc. 41). This Court will address all in lengthy detail  
2 Plaintiff’s numerous objections and case law cited, and instead will address in writing new  
3 arguments not previously addressed. Plaintiff argues that the Magistrate Judge erred in determining  
4 the lack of imminent danger based on a prior order determining that Plaintiff failed to state a claim  
5 and denying emergency injunctive relief based on the same facts that Plaintiff alleges that he has a  
6 valid imminent danger claim. Plaintiff urges this Court to review the underlying complaint and  
7 record and find that Plaintiff’s claims regarding Valley Fever constitute imminent danger. (Doc. 41  
8 at 6). This Court finds the Findings and Recommendations to be correct in finding that where the  
9 imminent danger claim fails to state a claim upon which relief could be granted, it cannot qualify  
10 under the imminent danger exception pursuant to 28 U.S.C. § 1915(g).

11 Although, Plaintiff argues that dismissals with leave to amend do not count as strikes under  
12 § 1915(g) (Doc. 41 at 22), it does not appear from the record that the dismissals that were deemed  
13 strikes were dismissed with leave to amend. Although Plaintiff asserts that *Davis v. Alameida, et*  
14 *al.*, No. 05-17055, was merely affirming the trial court decision (Doc. 41 at 36), upon review, the  
15 appellate court denied IFP on appeal and dismissed for failure to prosecute. (Doc. 41 at 57, 59);  
16 *Davis v. Alameida, et al.*, No. 05-17055.

17  
18 **III. Conclusion and Order**

19 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a  
20 de novo review of this case. Having carefully reviewed the entire file, the Court finds the  
21 Findings and Recommendations to be supported by the record and by proper analysis.

22 Accordingly, IT IS HEREBY ORDERED that:

- 23 1. The Findings and Recommendations filed on September 8, is adopted in full  
24 (Doc. 38);
- 25 2. Plaintiff’s in forma pauperis status is REVOKED pursuant to 28 U.S.C. §  
26 1915(g);
- 27 3. The order on July 6, 2010 (Doc. 4), directing the Director of the California  
28 Department of Corrections and Rehabilitation or his designee to deduct the

1 \$350.00 filing fee from Plaintiff's trust account whenever the balance exceeds  
2 \$10.00 is VACATED;

3 4. Plaintiff is ordered to pay the \$350.00 filing fee in full within thirty (30) days or  
4 this action will be dismissed, without prejudice; and

5 5. The Clerk of the Court is directed to serve a copy of this order on (1) the Financial  
6 Department, U.S. District Court, Eastern District of California, Fresno Division  
7 and (2) the Director of the California Department of Corrections and  
8 Rehabilitation via the court's electronic case filing system (CM/ECF).

9 IT IS SO ORDERED.

10 Dated: October 19, 2011

/s/ Lawrence J. O'Neill  
UNITED STATES DISTRICT JUDGE

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