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

SONNY RAY HARDAWAY,

Plaintiff,

CV F 07 1664 LJO SMS PC

vs.

FINDING AND RECOMMENDATION

A. PEAR, et al.,

Defendants.

Plaintiff is a state prisoner proceeding pro se in a civil rights action challenging the conditions of his confinement.

On December 7, 2007, an order was entered, directing Plaintiff to show cause, within thirty days, why his application to proceed in forma pauperis should not be denied pursuant to 28 U.S.C. § 1915(g). Plaintiff has not filed a response to the court’s order.

The Prison Litigation Reform Act provides that “[i]n no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more occasions, while incarcerated or detained in a facility, brought an action or appeal in a court of the United States that was dismissed on the ground that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious injury.” 28 U.S.C. § 1915(g).

This plaintiff has, on 3 prior occasions, brought civil actions challenging the conditions of

1 his confinement. All three action were dismissed as frivolous, or for failure to state a claim upon
2 which relief can be granted. Hardaway v. Money, CV S 01 0458 FCD DAD P; Hardaway v.
3 Wright, CV S 01 0958 GEB DAD P; Hardaway v. State of California, CV S 06 0695 MCE PAN
4 P. Plaintiff is therefore not entitled to proceed in forma pauperis unless he alleges facts
5 indicating that he is in imminent danger of serious physical injury. There are no such facts
6 alleged in this case.

7 Accordingly, IT IS HEREBY RECOMMENDED that:

8 1. Plaintiff's application to proceed in forma pauperis be denied pursuant to 28 U.S.C. §
9 1915(g).

10 2. Plaintiff be directed to submit, within thirty days of the date of service of this order,
11 the \$350 filing fee in full. Plaintiff's failure to do so will result in dismissal of this action
12 pursuant to Local Rule 11-110 for failure to obey a court order.

13 These findings and recommendations are submitted to the United States District
14 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636 (b)(1)(B). Within
15 thirty days after being served with these findings and recommendations, Plaintiff may file written
16 objections with the court. Such a document should be captioned "Objections to Magistrate
17 Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections
18 within the specified time may waive the right to appeal the District Court's order. Martinez v.
19 Ylst, 951 F.2d 1153 (9th Cir. 1991).

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25 IT IS SO ORDERED.
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1 **Dated: February 6, 2008**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE

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