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

HARVEY EUGENE LARSON,

Plaintiff,

vs.

1:08 CV 0685 OWW WMW PC

ORDER RE FINDINGS AND
RECOMMENDATIONS (#12)
AND MOTION TO PROCEED
IN FORM PAUPERIS (#9)

WARDEN GONZALES, et al.,

Defendants.

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1). Plaintiff has submitted request to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a).

Plaintiff, an inmate in the custody of the California Department of Corrections and Rehabilitation at CCI Tehachapi, brings this civil rights action against defendant correctional

1 officials employed by the CDCR at Tehachapi. Plaintiff claims that he is illegally housed in
2 Administrative Segregation.

3 The Prison Litigation Reform Act provides that “[i]n no event shall a prisoner bring a
4 civil action . . . under this section if the prisoner has, on 3 or more occasions, while incarcerated
5 or detained in a facility, brought an action or appeal in a court of the United States that was
6 dismissed on the ground that it is frivolous, malicious, or fails to state a claim upon which relief
7 may be granted, unless the prisoner is under imminent danger of serious injury.” 28 U.S.C. §
8 1915(g).

9 This plaintiff has, on 3 prior occasions, brought civil actions challenging the conditions of
10 his confinement. All three action were dismissed as frivolous, or for failure to state a claim upon
11 which relief can be granted. Larson v. Runnels, et al., 2:06 cv 00940 GEB GGH PC; Larson v.
12 Patton, et al. 2:07 CV 01043 FCD JFM PC; Larson v. Runnels, et al., 2:07 CV 00806 FCD DAD
13 PC. Plaintiff is therefore not entitled to proceed in forma pauperis unless he alleges facts
14 indicating that he is in imminent danger of serious physical injury. Plaintiff alleges no such facts
15 in this case.

16 Accordingly, On July 30, 2008, an order to show cause was issued, directing Plaintiff to
17 show cause why his application to proceed in forma pauperis should not be denied pursuant to 28
18 U.S.C. § 1915(g). Plaintiff failed to respond to the order to show cause. On September 9, 2008,
19 [findings and recommendations](#) were entered, recommending that Plaintiff’s application to
20 proceed in forma pauperis be denied and Plaintiff be directed to pay the filing fee in full.

21 On September 22, 2008, Plaintiff filed [objections to the findings and recommendations](#).
22 In his objections, Plaintiff appears to challenge the validity of section 1915(g). Plaintiff offers no
23 allegations that a named defendant in this action has engaged in conduct that satisfied the
24 standard set for in 28 U.S.C. § 1915(g).

25 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Rule 73-305,
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1 this court has conducted a de novo review of this case. Having carefully reviewed the entire file,
2 the court finds the findings and recommendations to be supported by the record and proper
3 analysis.

4 Accordingly, THE COURT HEREBY ORDERS that:

- 5 1. The Findings and Recommendations issued by the Magistrate Judge on
6 September 2, 2008, are adopted in full; and
- 7 2. Plaintiff's leave to proceed in forma pauperis is revoked pursuant to 28 U.S.C.
8 § 1915(g).
- 9 3. Plaintiff is directed to submit, within thirty days of the date of service of this
10 order, the \$350 filing fee for this action in full. Plaintiff's failure to do so will result in dismissal
11 of this action pursuant to Local Rule 11-110 for failure to obey a court order.

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14 IT IS SO ORDERED.

15 **Dated: February 9, 2009**

16 /s/ Oliver W. Wanger
17 UNITED STATES DISTRICT JUDGE
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