

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

HARVEY EUGENE LARSON,

Plaintiff,

vs.

P. RHODES,

Defendant.

1:09 CV 00342 OWW YNP SMS (PC)

ORDER RE FINDINGS AND  
RECOMMENDATIONS (#6)

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 CSP Corcoran, brings this civil rights action against Defendant Sergeant Rhodes, an employee of the CDCR at CSP Corcoran.

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

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

14           Accordingly, On May 29, 2009, an order to show cause was issued, directing Plaintiff to  
15 show cause why his application to proceed in forma pauperis should not be denied pursuant to 28  
16 U.S.C. § 1915(g). Plaintiff failed to respond to the order to show cause. On July 29, 2009,  
17 [findings and recommendations](#) were entered, recommending that Plaintiff’s application to  
18 proceed in forma pauperis be denied and Plaintiff be directed to pay the filing fee in full.  
19 Plaintiff has not filed objections to the findings and recommendations.

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

24           Accordingly, THE COURT HEREBY ORDERS that:

- 25           1. The Findings and Recommendations issued by the Magistrate Judge on July  
26

1 29, 2009, are adopted in full; and

2                   2. Plaintiff's application to proceed in forma pauperis is denied pursuant to 28  
3 U.S.C. § 1915(g).

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

7  
8 IT IS SO ORDERED.

9 **Dated: September 13, 2009**

**/s/ Oliver W. Wanger**  
**UNITED STATES DISTRICT JUDGE**

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26