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

TONY BLACKMAN,
Plaintiff,
vs.
DR. KLIEWER, et al.,
Defendants.

1:09 CV 00362 AWI YNP SMS (PC)
FINDINGS AND RECOMMENDATION

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

Plaintiff, an inmate in the custody of the California Department of Corrections and Rehabilitation at Corcoran State Prison, brings this action pursuant to 42 U.S.C. § 1983 against correctional officials employed by the CDCR at Corcoran State Prison. Plaintiff’s complaint sets forth allegations that defendants have confiscated his written inmate appeals.

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. Blackman v. Harwell, et al., 99-5822 REC HGB P (E. Dist. Cal.);
3 Blackman v. Medina, 05-CV-05390-SI (N. Dist. Cal.); Blackman v. Variz , 06-CV 06398 SI (N.
4 Dist. Cal.). Plaintiff is therefore not entitled to proceed in forma pauperis unless he alleges
5 facts indicating that he is in imminent danger of serious physical injury. There are no such facts
6 alleged in this case.

7 Accordingly, On May 1, 2009, Plaintiff was ordered to show cause why his application to
8 proceed in forma pauperis should not be denied pursuant to 28 U.S.C. § 1915(g). On May 8,
9 2009, Plaintiff filed a response to the order to show cause. In his response, Plaintiff refers
10 generally to the allegations of the complaint, but fails to show cause why he should not be denied
11 leave to proceed in forma pauperis.

12 Accordingly, IT IS HEREBY RECOMMENDED that:

13 1. Plaintiff’s application to proceed in forma pauperis be denied pursuant to 28 U.S.C. §
14 1915(g).

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

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

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1 IT IS SO ORDERED.

2 **Dated:** September 11, 2009

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE

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