IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF CALIFORNIA

TONY BLACKMAN, Plaintiff, v. DR. KLIEWER, et al., Defendants.	1:09 CV 00362 AWI YNP SMS (PC) ORDER ADOPTING FINDINGS & RECOMMENDATIONS ORDER DENYING APPLICATION TO PROCEED IN FORMA PAUPERIS Documents *#2 & # 8*

Plaintiff is a state prisoner proceeding pro se in this civil rights action. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72-302.

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 his confinement. All three action were dismissed as frivolous, or for failure to state a claim upon which relief can be granted. Blackman v. Harwell, et al., 99-5822 REC HGB P (E. Dist. Cal.); Blackman v. Medina, 05-CV-05390-SI (N. Dist. Cal.); Blackman v. Variz , 06-CV 06398 SI (N. Dist. Cal.). Plaintiff is therefore not entitled to proceed in forma pauperis unless he alleges facts indicating that he is in imminent danger of serious physical injury. There are no such facts alleged in this case.

Accordingly, Plaintiff was ordered to show cause why his request to proceed in forma pauperis should not be denied. Plaintiff failed to do so and on September 11, 2009, findings and recommendations were entered, recommending that Plaintiff's application to proceed in forma pauperis be denied and that Plaintiff be directed to submit the $350 filing fee in full. Plaintiff has not filed objections to the findings and recommendations.

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

Accordingly, THE COURT HEREBY ORDERS that:

1. The Findings and Recommendations issued by the Magistrate Judge on September 11, 2009, are adopted in full; and

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

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

IT IS SO ORDERED.

Dated: October 28, 2009 **/s/ Anthony W. Ishii**
CHIEF UNITED STATES DISTRICT JUDGE