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3 **UNITED STATES DISTRICT COURT**

4 EASTERN DISTRICT OF CALIFORNIA

5
6 MYRON A. PAYNE,

7 Plaintiff,

8 vs.

9 FUJIOKA, et al.,

10 Defendants.
11

) 1:13cv02079 AWI DLB PC

) ORDER ADOPTING FINDINGS AND
) RECOMMENDATIONS AND GRANTING
) DEFENDANTS' MOTION TO REVOKE
) PLAINTIFF'S IN FORMA PAUPERIS
) STATUS

) (Document 36)
)

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13 Plaintiff Myron A. Payne ("Plaintiff") is a state prisoner proceeding pro se and in forma
14 pauperis in this civil rights action. Plaintiff filed this action on December 23, 2013, and the
15 Court granted his application to proceed in forma pauperis on January 17, 2014. Defendants
16 filed a motion to revoke Plaintiff's in forma pauperis status on February 20, 2015. The matter
17 was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local
18 Rule 302.

19 On July 1, 2015, the Magistrate Judge issued Findings and Recommendations that
20 Defendants' motion be granted, and that the order granting in forma pauperis status be vacated.
21 The Findings and Recommendations were served on the parties and contained notice that any
22 objections must be filed within thirty days. Plaintiff filed objections on August 3, 2015.
23 Defendants did not file a reply.

24 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted
25 a de novo review of this case. Having carefully reviewed the entire file, including Plaintiff's
26 objections, the Court finds the Findings and Recommendations to be supported by the record and
27 by proper analysis.
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1 Plaintiff argues, without specificity, that three of the four cases cited by the Magistrate
2 Judge are not strikes. He simply states that cases dismissed for reasons other than frivolousness,
3 maliciousness, or failure to state a claim are not strikes. Plaintiff is correct in a general sense,
4 though he fails to recognize that the Ninth Circuit, in explaining what constitutes a strike under
5 1915(g), has instructed the Courts to analyze the reasons underlying the dismissal. Therefore,
6 what counts as a strike is not as narrow as Plaintiff suggests.

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8 Plaintiff also faults the Magistrate Judge for not addressing his argument that the PLRA
9 is unconstitutional. However, the Magistrate Judge cited Andrews v. King, 398 F.3d 1113, 1123
10 (9th Cir. 2005), where the Ninth Circuit recognized that it had rejected an argument that the
11 PLRA is facially unconstitutional. While Andrews noted that the PLRA may be unconstitutional
12 as applied where a court improperly counted strikes, this is not an issue here.

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. The Findings and Recommendations, filed July 1, 2015, are adopted in full;
- 15 2. Defendants' motion to revoke Plaintiff's in forma pauperis status (Document 26)
16 is GRANTED;
- 17 3. The order granting Plaintiff's application to proceed in forma pauperis (Document
18 8) is VACATED; and
- 19 4. Plaintiff must pay the \$400.00 filing fee within thirty (30) days of the date of
20 service of this order to continue with this action. If Plaintiff fails to do so, the Court will dismiss
21 this action without prejudice.

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23 IT IS SO ORDERED.

24 Dated: August 25, 2015

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26 _____
27 SENIOR DISTRICT JUDGE
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