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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

HARVEY EUGENE LARSON,
Plaintiff,
v.
CARRASCO, *et al.*,
Defendants.

Case No. 1:19-cv-01619-JDP
FINDINGS AND RECOMMENDATIONS TO
DENY MOTION TO PROCEED IN FORMA
PAUPERIS AND REQUIRE PAYMENT OF
FILING FEE IN FULL WITHIN TWENTY-
ONE DAYS
ECF No. 2
OBJECTIONS DUE WITHIN 14 DAYS
ORDER TO ASSIGN CASE TO DISTRICT
JUDGE

Plaintiff Harvey Eugene Larson is a state prisoner proceeding without counsel in this civil rights action brought under 42 U.S.C. § 1983. On November 8, 2019, plaintiff filed an application to proceed *in forma pauperis* under 28 U.S.C. § 1915. ECF No. 2.

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 any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds 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 physical injury.” 28 U.S.C. § 1915(g). Plaintiff has had three or more actions dismissed as frivolous, as malicious, or

1 for failing to state a claim upon which relief may be granted.¹ Plaintiff has been informed in at
2 least one other case that he is subject to § 1915(g).²

3 Plaintiff has not satisfied the imminent danger exception to § 1915(g). *See Andrews v.*
4 *Cervantes*, 493 F.3d 1047, 1053-55 (9th Cir. 2007). Plaintiff seeks to challenge a denial of access
5 to the yard and law library. *See* ECF No. 1 at 3. Because plaintiff challenges past misconduct, it
6 does not appear that plaintiff faces an imminent danger. Further, plaintiff does not allege serious
7 physical injury.

8 Accordingly, plaintiff's *in forma pauperis* application should be denied, and he should
9 pay the filing fee in full, since he has accrued three or more strikes and was not under imminent
10 danger of serious physical harm at the time this action was initiated. *See* 28 U.S.C. § 1915(g).

11 **Order**

12 The clerk of court is directed to assign this case to a district judge who will review these
13 findings and recommendations.

14 **Findings and Recommendations**

15 Based on the foregoing, it is hereby recommended that:

- 16 1. plaintiff's *in forma pauperis* application, ECF No. 2, be DENIED;
- 17 2. plaintiff be required to pay the \$400 filing fee in full within twenty-one days of adoption
18 of these findings and recommendations; and
- 19 3. if plaintiff fails to pay the \$400 filing fee in full within twenty-one days of adoption of
20 these findings and recommendations, all pending motions be terminated, and this action
21 be dismissed without prejudice.

22 These findings and recommendations are submitted to a district judge under 28 U.S.C.
23 § 636(b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court,

24
25 ¹ The cases include *Larson v. Schwarzenegger, et al.*, Civil Case No. 2:06-cv-0940-GEB-GGH-P,
26 2007 U.S. Dist. LEXIS 1343 (E.D. Cal. Jan. 9, 2007); *Larson v. Patton, et al.*, Civil Case No. S-
27 01-1043 FCD JFM P, 2007 U.S. Dist. LEXIS 76325 (E.D. Cal. Oct. 15, 2007); and *Larson v.*
28 *Runnels, et al.*, Civil Case No. S-07-0806 FCD DAD P, 2008 U.S. Dist. LEXIS 8045 (E.D. Cal.
Feb. 4, 2008).

² *See Larson v. Hanoian*, No. 13cv1654 GPC (NLS), 2013 U.S. Dist. LEXIS 200236 (S.D. Cal.
Oct. 4, 2013) (finding plaintiff to be a three-striker under the PLRA).

1 Eastern District of California. Within fourteen days of the service of the findings and
2 recommendations, the parties may file written objections to the findings and recommendations
3 with the court and serve a copy on all parties. That document should be captioned “Objections to
4 Magistrate Judge’s Findings and Recommendations.” The district judge will review the findings
5 and recommendations under 28 U.S.C. § 636(b)(1)(C).

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7 IT IS SO ORDERED.

8 Dated: April 4, 2020


UNITED STATES MAGISTRATE JUDGE

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11 No. 204.

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