

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 CULLEN M. HANKERSON,

11 Plaintiff,

12 v.

13 BERNIE WARNER, et al.,

14 Defendants.
15

CASE NO. C14-5237 RJB-JRC

ORDER ON REPORT AND
RECOMMENDATION AND
VARIOUS OTHER MOTIONS

16 This matter comes before the Court on the Report and Recommendation of U.S.
17 Magistrate Judge J. Richard Creatura (Dkt. 4), Plaintiff's "Motion to Present a Statement of
18 Finances and Request an Order" (Dkt. 5), Plaintiff's "Motion to Present Evidence for In Forma
19 Pauperis" (Dkt. 6), and Plaintiff's "Motion to Object to Report and Recommendation and
20 Request to Now Reque [sic] Magistrate Judge" (Dkt. 7). The Court has reviewed all pleadings
21 filed regarding the motions and the remaining file.

22 On March 20, 2014, Plaintiff filed this case, pro se, and included an application to
23 proceed in forma pauperis. Dkt. 1. Plaintiff, in part, challenges Defendants' handling of his
24 personal property, legal mail, access to his legal materials, custody level, and housing. Dkt. 1.

1 Plaintiff asserts claims under 28 U.S.C. § 1983 for violations of his 14th and 1st Amendment
2 rights. Dkt. 1. He makes a “failure to train” claim, claims based on violations of various
3 Department of Corrections policies, claims under R.I.C.O., for criminal profiteering, for mail
4 fraud, and for violation of 18 U.S.C. § 1341. *Id.* He also asserts a claim for retaliation. *Id.*

5 On March 24, 2014, the pending Report and Recommendation was filed recommending
6 that Plaintiff’s application to proceed in forma pauperis be denied because he has, on three or
7 more occasions, filed either actions or appeals that the courts have deemed frivolous or have
8 failed to state a claim. Dkt. 4. Denial of the in forma pauperis application was also
9 recommended because Plaintiff was less than truthful regarding the number of prior cases he has
10 filed. *Id.* The Report and Recommendation further recommends giving Plaintiff thirty days to
11 pay the full filing fee of \$400 or have the action dismissed. *Id.*

12 In his Motion to Present a Statement of Finances (Dkt. 5) and Motion to Present Evidence
13 for In Forma Pauperis (Dkt. 6), Plaintiff files copies of his prison trust account statements and
14 asks that the Court consider his inability to pay the filing fee.

15 Plaintiff also files objections to the Report and Recommendation, arguing that he “just
16 forgot” about some of the prior filings, he has not received a “third strike in his filing of in forma
17 pauperis,” the magistrate judge is biased, and some of the cases were brought to the federal court
18 by an action of a notice of removal by defendants and not Plaintiff. Dkt. 7.

19 The Report and Recommendation should be adopted. Dkt. 4. As stated in the Report and
20 Recommendation, Plaintiff has had at least three actions dismissed as frivolous or for failure to
21 state a claim. *Id.* Further, he has not made any allegations in his proposed complaint that he was
22 “under imminent danger of serious physical injury.” 28 U.S.C. § 1915. Plaintiff’s objections are
23 without merit and do not provide a basis to reject the Report and Recommendation. Plaintiff
24

1 should be given 30 days to pay the full filing fee of \$400. If Plaintiff fails to pay the \$400 filing
2 fee within the required time, the case should be dismissed.

3 Plaintiff's pending motions (Dkts. 5 and 6) should be denied. His motions fail to address
4 the proper issues to be considered in his particular application to proceed in forma pauperis.
5 Further, he has failed to allege a legitimate basis for the magistrate judge's recusal.

6 **ORDER**

7 It is **ORDERED** that:

8 1) The Report and Recommendation (Dkt. 4) **IS ADOPTED**;

- 9 • Plaintiff has 30 days to pay the full filing fee of \$400;
10 • If Plaintiff fails to pay the filing fee within the required time, the case will be
11 dismissed;

12 2) Plaintiff's "Motion to Present a Statement of Finances and Request an Order" (Dkt. 5)
13 **IS DENIED**; and

14 3) Plaintiff's "Motion to Present Evidence for In Forma Pauperis" (Dkt. 6) **IS DENIED**.

15 The Clerk is directed to send uncertified copies of this Order to U.S. Magistrate Judge J.
16 Richard Creatura, all counsel of record, and to any party appearing *pro se* at said party's last
17 known address.

18 Dated this 21st day of April, 2014.

19 

20
21 ROBERT J. BRYAN
22 United States District Judge
23
24