

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

LONZELL GREEN,

1:07-CV-01821-AWI-SMS-PC

Plaintiff,

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING PLAINTIFF’S IN FORMA  
PAUPERIS STATUS BE REVOKED AND  
PLAINTIFF BE ORDERED TO PAY THE  
\$350.00 FILING FEE WITHIN FIFTEEN DAYS

v.

A. HEDGPETH, et al.,

Defendants.

OBJECTIONS, IF ANY, DUE IN 30 DAYS

Plaintiff Lonzell Green (“plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on June 12, 2007, at the United States District Court for the Northern District of California. On November 28, 2007, the case was transferred to the Eastern District of California and received by this court on December 14, 2007. (Doc. 1.) On December 26, 2007, this court issued an order granting plaintiff leave to proceed in forma pauperis in this action. (Doc. 5.)

Section 1915 of Title 28 of the United States Code governs proceedings in forma pauperis. Section 1915(g) provides that “[i]n no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more prior 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.” A review of the record of actions filed by plaintiff reveals that plaintiff filed three or more actions that were dismissed as frivolous, as malicious, or for failing to state a claim upon which relief may be granted.<sup>1</sup> Thus, plaintiff is subject

<sup>1</sup> Among the dismissals suffered by plaintiff that count as strikes under 1915(g) are: Lonzell Green v. Judge Larry Goodman, 3:07-cv-02022-TEH (dismissed for failure to state a claim on 4/18/2007); Lonzell Green v. H. Hammond et al, 3:02-cv-04817(dismisssed for failure to state a claim on 12/17/2002); and Lonzell Green v. City of Oakland et al, 3:02-cv-05232 (dismissed for failure to state a claim on 12/18/2002).

1 to 28 U.S.C. § 1915(g) and is precluded from proceeding in forma pauperis unless plaintiff was, at  
2 the time the complaint is filed, under imminent danger of serious physical injury. The court has  
3 reviewed plaintiff's complaint and finds that plaintiff has alleged no facts that support a finding that  
4 he was, at the time the complaint was filed, under imminent danger of serious physical injury. Thus,  
5 plaintiff may not proceed in forma pauperis, and must submit the appropriate filing fee in order to  
6 proceed with this action. Because the court previously granted plaintiff leave to proceed in forma  
7 pauperis in this action, the court recommends that plaintiff's in forma pauperis status be revoked and  
8 plaintiff be ordered to submit the filing fee in full within fifteen days.

9 Accordingly, based on the foregoing, the court HEREBY RECOMMENDS that:

- 10 1. Pursuant to 28 U.S.C. § 1915(g), plaintiff's in forma pauperis status in this action be  
11 revoked;
- 12 2. Plaintiff be ordered to submit the \$350.00 filing fee in full within fifteen (15) days;  
13 and
- 14 3. If plaintiff fails to pay the \$350.00 filing fee in full within fifteen (15) days, this  
15 action be dismissed, without prejudice.

16 These Findings and Recommendations will be submitted to the United States District Judge  
17 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fifteen (15)  
18 days after being served with these Findings and Recommendations, plaintiff may file written  
19 objections with the court. The document should be captioned "Objections to Magistrate Judge's  
20 Findings and Recommendations." Plaintiff is advised that failure to file objections within the  
21 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d  
22 1153 (9th Cir. 1991).

23 IT IS SO ORDERED.

24 **Dated: June 26, 2008**

25 /s/ Sandra M. Snyder  
26 UNITED STATES MAGISTRATE JUDGE  
27  
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