

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 25 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

THOMAS JOHN HEILMAN,

No. 15-56852

Plaintiff-Appellant,

D.C. No. 2:14-cv-06298-JVS-CW

v.

MEMORANDUM*

A. DILLEN, official capacity; et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
James V. Selna, District Judge, Presiding

Submitted April 11, 2017**

Before: GOULD, CLIFTON, and HURWITZ, Circuit Judges.

Thoman John Heilman, a California state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action for failure to pay the filing fee after revoking Heilman's in forma pauperis status ("IFP") because he has three strikes under the Prison Litigation Reform Act, 28 U.S.C. § 1915(g). We

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Andrews v. King*, 398 F.3d 1113, 1118 & n.6 (9th Cir. 2005). We vacate and remand.

The district court revoked Heilman's IFP status on the basis that Heilman had filed at least three prior actions in federal court which were dismissed for being frivolous or malicious, or for failing to state a claim. However, at the time of its decision, the district court did not have the benefit of *El-Shaddai v. Zamora*, 833 F.3d 1036 (9th Cir. 2016) and *Washington v. Los Angeles County Sheriff's Department*, 833 F.3d 1048 (9th Cir. 2016). We remand for the district court reconsider Heilman's IFP status in light of these two intervening opinions.

VACATED and REMANDED.