

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 21 2017

FOR THE NINTH CIRCUIT

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

LEON EUGENE MORRIS,

Plaintiff-Appellant,

v.

PETERSEN, Sergeant; et al.,

Defendants-Appellees.

No. 16-15088

D.C. No. 3:15-cv-02169-WHO

MEMORANDUM*

LEON EUGENE MORRIS,

Plaintiff-Appellant,

v.

IPPOLITO, Sergeant; et al.,

Defendants-Appellees.

No. 16-15091

D.C. No. 3:15-cv-01858-WHO

Appeals from the United States District Court
for the Northern District of California
William H. Orrick, District Judge, Presiding

Submitted December 18, 2017**

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

** The panel unanimously concludes these cases are suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: WALLACE, SILVERMAN, and BYBEE, Circuit Judges.

California state prisoner Leon Eugene Morris appeals pro se from the district court's judgments dismissing his 42 U.S.C. § 1983 actions under the Prison Litigation Reform Act, 28 U.S.C. § 1915(g), and Federal Rule of Civil Procedure 41(b). We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under § 1915(g). *Andrews v. King*, 398 F.3d 1113, 1118 & n.6 (9th Cir. 2005). We vacate and remand.

The district court denied Morris's motions to proceed in forma pauperis ("IFP") on the basis that Morris had brought at least three prior actions in federal court that were dismissed as frivolous, malicious, or for failure to state a claim, and Morris failed to show that he was "under imminent danger of serious physical injury" at the time that he lodged his complaints. 28 U.S.C. § 1915(g). However, at the time of its decisions, the district court did not have the benefit of *El-Shaddai v. Zamora*, 833 F.3d 1036 (9th Cir. 2016), in which this court concluded that an appeal dismissed for failure to pay the filing fee after the revocation of IFP status on appeal does not constitute a strike under § 1915(g) if this court makes no finding that the appeal falls within one of the grounds enumerated in § 1915(g). *See id.* at 1043. We vacate the judgments and remand for the district court to reconsider Morris's IFP motions in light of this intervening opinion.

VACATED and REMANDED.