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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LOFOFORA EVA CONTRERAZ,
Plaintiff,
v.
DIRECTOR OF CDCR, et al.,
Defendants.

1:11-cv-01222-LJO-GSA-PC
FINDINGS AND RECOMMENDATIONS TO
REVOKE IN FORMA PAUPERIS STATUS
PURSUANT TO SECTION 1915(g) AND TO
REQUIRE PLAINTIFF TO PAY \$350.00
FILING FEE WITHIN FIFTEEN DAYS
(Doc. 11.)
OBJECTIONS, IF ANY, DUE IN THIRTY
DAYS

I. BACKGROUND

Lofofora Eva Contreras (“Plaintiff”) is a prisoner proceeding pro se and in forma pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the complaint commencing this action on July 25, 2011. (Doc. 1.) On the face of Plaintiff’s complaint, he listed his name as “Lofofora Eva Contreras” with CDC number C-45857. Id. at 1. On September 6, 2011, Plaintiff filed an application to proceed in forma pauperis, which was granted by the Court on September 21, 2011. (Docs. 10, 11.) On October 26, 2012, Plaintiff filed an amended complaint which awaits the Court's requisite screening under 28 U.S.C. § 1915. (Doc. 30.)

On December 14, 2006, Plaintiff also filed case 1:16-cv-01817-LJO-SKO-PC (E.D. Cal.); Michael Contreras v. J. Stockbridge, listing his name as Michael Contreras (alleging, inter alia, excessive force and failure to protect Plaintiff). (See Complaint in case 1:06-cv-01817-LJO-SKO-

1 PC, Doc. 1.) In that case, Plaintiff also lists CDC number C-45857. Id. at 1. In addition, Plaintiff
2 has used at least twelve different aliases to file lawsuits, i.e., “Michael Contreras” aka Al-Mu’min
3 Jihad-Contreras aka Al-Mu’min Jihad Contreras aka Eva Lofofora Contreras aka Jihad Contreras aka
4 Lofofora Contreras aka Lofofora Eva Contreraz aka Lofofora Eva Contreras aka Lopofora Contreras
5 aka Michael Hernandez Contreras aka Michael Contreraz aka Quetzal Contreras aka Quetzal
6 Contreraz.¹

7 **II. THREE STRIKES LEGAL STANDARD**

8 The Prison Litigation Reform Act of 1995 (“PLRA”) was enacted “to curb frivolous prisoner
9 complaints and appeals.” Silva v. Di Vittorio, 658 F.3d 1090, 1099-1100 (9th Cir. 2011); Andrews v.
10 Cervantes, 493 F.3d 1047, 1052 (9th Cir. 2007). Pursuant to the PLRA, the in forma pauperis statute
11 was amended to include § 1915(g), a non-merits related screening device which precludes prisoners
12 with three or more “strikes” from proceeding in forma pauperis unless they are under imminent

13
14 ¹ A review of Plaintiff’s filing history using CDC number C-45857 reveals that Plaintiff has filed numerous cases
15 under numerous aliases. See, e.g., Lofofora Contreras v. Sherman Block, Sheriff of Los Angeles County,
16 2:91-cv-03044-JMI-CT (C.D. Cal.) (case terminated June 4, 1992); Lofofora Eva Contreras v. Health and Human Services,
17 Secretary, 3:92-cv-03901-JPV, 1992 U.S. Dist. LEXIS 19138, at *2-*3 (N.D. Cal. Dec. 9, 1992) (The Court found that 28
18 U.S.C. § 1915(d) authorizes federal courts to dismiss a claim filed in forma pauperis sua sponte upon determining that the
19 claim is premised on a meritless legal theory. The Court dismissed Plaintiff’s claim for court approval of a paralegal course
20 by mail to count as a rehabilitation program to qualify for social security benefits pursuant to 42 U.S.C. § 402. A federal
21 district court is not the proper court to grant or deny program approval pursuant to § 402. Plaintiff must first seek relief in
22 the state court under 42 U.S.C. § 405(g), and 20 C.F.R. 404.900-982 before the case can be brought in federal court; Eva
23 Lofofora Contreras v. James Gomez, Director Dept. of Corrections, 3:93-cv-01976-EFL, 1994 WL 478793 (N.D. Cal. Aug.
24 29, 1994) (dismissed for failure to state a claim and affirmed on appeal) (“The district court provided Contreras two
25 opportunities to amend his complaint . . . but Contreras failed to cure the defects of his complaint. Accordingly, the district
26 court did not abuse its discretion by dismissing this action without additional leave to amend.” Contreras v. Gomez, 54 F.3d
27 785 (9th Cir. 1995)); Lopofora Contreras v. U.S. Department of Interior, 2:93-cv-00949-JGD-CT (C.D. Cal.) (granting
28 defendant’s motion to dismiss on October 7, 1994) (district court found appeal not taken in good faith) (dismissed on appeal
for failure to prosecute, No. 94-56601, 9th Cir. Mar. 7, 1995); Al-Mu’Min Jihad-Contreras v. James Gomez,
2:94-cv-00089-WBS-JFM (E.D. Cal.) (Rule 41 voluntary dismissal following report and recommendations to dismiss action
with prejudice); Michael Contreras v. Richard NMI Dixon, 2:94-cv-03757-KN-JG (C.D. Cal.) (denying motion to proceed
in forma pauperis and dismissing case on June 23, 1994); Jihad Contreras v. Virgil Townsend, Superintendent, Bureau of
Indian Affairs, 3:94-cv-00732-R-POR (S.D. Cal.) (Indian Tribal rights case) (dismissed for failure to prosecute); Al-Mu’min
Jihad Contreras v. S. Vonbiela, 3:94-cv-01840-DLJ (N.D. Cal. Nov. 8, 1994) (denying motion to proceed in forma pauperis
for Plaintiff’s allegations of labeling his mail as “legal mail” and dismissing case for failure to state a claim) (in forma
pauperis denied on appeal, No. 94-17219, 9th Cir. Feb. 28, 1995) (see Contreras v. Ibarra, No. 1:11-cv-01523-LJO-GBC;
see also Contreras v. Sharon, 1:11-cv-01607-LJO-GBC (E.D. Cal.) (dismissal order from case No. 3:94-cv-01840-DLJ
attached to F&R to revoke IFP; Quetzal Contreraz v. D. Adams, 1:04-cv-06039-LJO-GSA (E.D. Cal.) (case pending for
claims that Plaintiff is required to shave his facial hair, violating his First Amendment right to practice the Native American
Olin Pyramid Religion); Michael Contreraz aka Lofofora Eva Contreraz v. Stockbridge, 1:06-cv-01817-LJO-SKO (E.D. Cal.)
(case pending for excessive force); Lofofora Eva Contreraz aka Mike Contreraz aka Michael Hernandez Contreras v. Ken
Salazar, Secretary, U.S. Department of Interior, 3:11-cv-00265-GPC-PCL (S.D. Cal.) (case pending and Court noted that
Plaintiff has filed cases under several names, See Order Granting In Forma Pauperis at 1 n.1, Doc. 8.).

1 danger of serious physical injury. Andrews, 493 F.3d at 1050. The statute provides that “[i]n no
2 event shall a prisoner bring a civil action . . . under this section if the prisoner has, on three or more
3 prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court
4 of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state
5 a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious
6 physical injury.” 28 U.S. C. § 1915(g). See also Thomas v. Yates, 2012 WL 2520924, at * 4 (E.D.
7 Cal. June 27, 2012) (finding that appeals count as strikes pursuant to O’Neal v. Price, 531 F.3d 1146,
8 1153 (9th Cir. 2008)). Determining whether prior dismissals count as strikes under § 1915(g)
9 requires the Court to conduct a “careful examination of the order dismissing an action, and other
10 relevant information,” to determine if, in fact, “the action was dismissed because it was frivolous,
11 malicious or failed to state a claim.” Andrews, 398 F.3d at 1121. In making the determination
12 whether a dismissal counts as a strike, it is the substance of the dismissal which is determinative, not
13 the styling of the dismissal. O’Neal, 531 F.3d at 1153.

14 **III. THREE STRIKES ANALYSIS**

15 On September 21, 2011, the Court granted Plaintiff’s application to proceed in forma
16 pauperis. (Doc. 11.) A review of the record of actions filed by Plaintiff in the United States District
17 Court reveals that Plaintiff has filed at least three actions that were dismissed as frivolous, malicious,
18 or for failing to state a claim upon which relief may be granted. The Court takes judicial notice of the
19 following cases which count as strikes:

- 20 (1) Lofofora Eva Contreras v. Health and Human Services Secretary, 3:92-cv-03901-JPV, 1992
21 U.S. Dist. LEXIS 19138, at *2-*3 (dismissed on December 9, 1992 at the Northern District
22 of California for failure to state a claim). The Court found that 28 U.S.C. § 1915(d)
23 authorizes federal courts to dismiss a claim filed in forma pauperis sua sponte upon
24 determining that the claim is premised on a meritless legal theory. The Court dismissed
25 Plaintiff’s claim for court approval of a paralegal course by mail to count as a rehabilitation
26 program to qualify for social security benefits pursuant to 42 U.S.C. § 402, because a federal
27 district court is not the proper court to grant or deny program approval pursuant to § 402.

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1 Plaintiff must first seek relief in the state court under 42 U.S.C. § 405(g), and 20 C.F.R.
2 404.900-982 before the case can be brought in federal court;

3 (2) Eva Lofofora Contreras v. James Gomez, Director Dept. of Corrections, 3:93-cv-01976-EFL,
4 1994 WL 478793 (Dismissed on August 29, 1994, at the Northern District of California, for
5 failure to state a claim, and affirmed on appeal) . (“The district court provided Contreras two
6 opportunities to amend his complaint . . . but Contreras failed to cure the defects of his
7 complaint. Accordingly, the district court did not abuse its discretion by dismissing this
8 action without additional leave to amend.” Contreras v. Gomez, 54 F.3d 785 (9th Cir. 1995));
9 and

10 (3) Al-Mu’min Jihad Contreras v. S. Vonbiela, 3:94-cv-01840-DLJ (Dismissed on November 8,
11 1994, at the Northern District of California) (denying motion to proceed in forma pauperis
12 for Plaintiff’s allegations of labeling his mail as “legal mail” and dismissing case for failure
13 to state a claim) (in forma pauperis denied on appeal, No. 94-17219, 9th. Cir. Feb. 28, 1995)
14 (see Contreras v. Ibarra, No. 1:11-cv-01523-LJO-GBC; see also Contreras v. Sharon,
15 1:11-cv-01607-LJO-GBC (E.D. Cal.) (dismissal order from case No. 3:94-cv-01840-DLJ
16 attached to F&R to revoke IFP).

17 Thus, Plaintiff has three or more strikes which occurred before Plaintiff filed this action on July 25,
18 2011. Moreover, Plaintiff does not demonstrate that he faced imminent danger of serious physical
19 injury at the time he filed his complaint.² Therefore, the Court finds that Plaintiff should be
20 precluded from proceeding in forma pauperis and revocation of Plaintiff’s in forma pauperis status is
21 appropriate. 28 U.S.C. § 1915(g). The filing fee for this action is \$350.00. Court records show that
22 to date, Plaintiff has not made any payments of the filing fee.

23 **IV. CONCLUSION AND RECOMMENDATIONS**

24 Based on the foregoing, it is HEREBY RECOMMENDED that:

25 1. Plaintiff’s in forma pauperis status be REVOKED, pursuant to 28 U.S.C. § 1915(g);

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27 _____
28 ²Plaintiff’s claims in this action arise from allegations that he is not receiving adequate treatment for Gender Identity Disorder. The Court expresses no opinion on the merits of Plaintiff’s claims.

