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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

EDWIN O. GARCIA,)	Case No.: 1:16-cv-00470-DAD-SAB-PC
)	
Plaintiff,)	FINDINGS AND RECOMMENDATION THAT
)	PLAINTIFF'S IN FORMA PAUPERIS STATUS BE
v.)	REVOKED, AND THAT THIS ACTION BE
)	DISMISSED WITHOUT PREJUDICE TO
G. MUNOZ, et al.,)	REFILING WITH SUBMISSION OF \$400.00
)	FILING FEE
Defendants.)	(ECF NO. 2)
)	
)	OBJECTIONS DUE IN THIRTY DAYS

Plaintiff Edwin Garcia, a state prisoner proceeding pro se, filed this action pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. This action proceeds on the complaint filed on April 5, 2016. On April 6, 2016, Plaintiff filed a motion for leave to proceed in forma pauperis. (ECF No. 2.) On April 11, 2016, the Court granted Plaintiff's motion for leave to proceed in forma pauperis (ECF No. 5.)

Plaintiff is subject to 28 U.S.C. § 1915(g), which 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

1 was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief
2 may be granted, unless the prisoner is under imminent danger of serious physical injury.”¹

3 The Court has reviewed Plaintiff’s complaint and his allegations do not satisfy the imminent
4 danger exception to section 1915(g). Andrews v. Cervantes, 493 F.3d 1047, 1055-56 (9th Cir. 2007).
5 DESCRIBE CLAIMS. (ECF No. 1, pp. 2-5.). Plaintiff, an inmate currently in the custody of the
6 California Department of Corrections and Rehabilitation (CDCR) at CSP Corcoran, brings this action
7 against Defendant correctional officials employed by the CDCR at Wasco State Prison, where the
8 events at issue occurred. Plaintiff alleges that on February 15, 2012, he was subjected to excessive
9 force and sexual assault (Defendants grabbed Plaintiff’s genital area) by Defendants because he
10 refused to turn down the volume on his television. Plaintiff alleges that he was falsely charged with
11 assaulting staff. Plaintiff was told that because he complained that Defendants sexually assaulted him,
12 they had to falsify charges of assault. Plaintiff makes no allegations concerning any imminent danger
13 of serious physical injury. The conduct at issue occurred in 2012 at Wasco State Prison. Therefore,
14 Plaintiff has not satisfied the exception from the three strikes bar under 28 U.S.C. § 1915(g), and must
15 pay the \$400.00 filing fee if he wishes to litigate this claim.

16 Accordingly, IT IS HEREBY RECOMMENDED that:

- 17 1. Plaintiff’s in forma pauperis status be revoked; and,
- 18 2. This action be DISMISSED without prejudice to re-filing accompanied by the \$400.00
19 filing fee.

20 These findings and recommendations will be submitted to the United States District Judge
21 assigned to the case, pursuant to the provision of 28 U.S.C. §636 (b)(1)(B). Within **thirty (30)** days
22 after being served with these Finding and Recommendations, the parties may file written objections
23 with the Court. The document should be captioned “Objections to Findings and Recommendations.”

24
25 ¹ The Court takes judicial notice of the following United States District Court cases: Edwin Garcia v. Mark
26 Romero, et al., 2:15-cv-08810-DOC-DFM, (C. D. Cal. November 12, 2016 (dismissed on January 13, 2016 for
27 frivolousness, failure to state a claim, and as malicious); Edwin Garcia v. Judge Henry Hall, 2:15-CV-08642-
28 DOC DFM (C.D. Cal. November 5, 2015) (dismissed on November 17, 2015 for frivolousness, failure to state a
claim, and as malicious); and Edwin Garcia v. L. A. County Sheriff’s Office, et al., 2:15-CV-08645-DOC-DFM
(C. D. Cal. November 5, 2015)(dismissed on November 17, 2015, for frivolousness, failure to state a claim, and
as malicious).

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The parties are advised that failure to file objections within the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.2d F.3d 834, 838-39 (9th Cir. 2014)(citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: August 24, 2016


UNITED STATES MAGISTRATE JUDGE