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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LONNIE WILIAMS,
Plaintiff,
v.
J. MACOMBER, et al.,
Defendants.

No. 2: 15-cv-2268 MCE KJN P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. For the following reasons, the undersigned recommends that plaintiff's application to proceed in forma pauperis be denied.

Title 28 U.S.C. § 1915 generally permits any court of the United States to authorize the commencement and prosecution of any suit without prepayment of fees by a person who submits an affidavit indicating that the person is unable to pay such fees. However,

[i]n no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding 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.

28 U.S.C. § 1915(g).

1 Plaintiff has suffered three strikes for purposes of section 1915(g). See 11-cv-00426 TLN
2 EFB P, ECF No. 40 (finding that plaintiff has three prior strikes).¹ Accordingly, plaintiff cannot
3 proceed in forma pauperis unless she meets the imminent danger exception to section 1915(g).

4 The imminent danger exception applies only if it is clear that the danger existed when the
5 complaint was filed. Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007). The danger
6 must be real and proximate, Ciarpaglini v. Saini, 352 F.3d 328, 330 (7th Cir. 2003), and must be
7 ongoing, Andrews, 493 F.3d at 1056. Allegations of imminent danger that are overly speculative
8 or fanciful may be rejected. Id. at 1057 n.11. For the following reasons, the undersigned finds
9 that plaintiff has not met the imminent injury exception.

10 The complaint, filed November 2, 2015, contains several, unrelated claims. First, plaintiff
11 alleges that in January 2015, defendants Smith, Stake, Prentice and Hayne told inmate Sansone, a
12 Two-Five gang member, to attack plaintiff because plaintiff had snitched on the Two-Five gang
13 and because plaintiff was a sex offender. (ECF No. 1 at 4-7.) Plaintiff's claim that defendants
14 Smith, Stake, Prentice and Hayne set her up to be assaulted back in January 2015 does not
15 demonstrate that plaintiff suffered an imminent injury from these defendants at the time she filed
16 the complaint in November 2015.

17 Plaintiff next alleges that in September 2015, she asked to be moved away from California
18 State Prison-Sacramento ("CSP-Sac"), because defendant Bortolamedi assaulted plaintiff in May
19 2014 and June 2015. (Id. at 7.) Plaintiff alleges that the assault was in retaliation for plaintiff
20 complaining that defendant Bortolamedi and other prison officials were poisoning plaintiff. (Id.)
21 Plaintiff alleges that the poisoning began in August 2010 and continued through the time plaintiff
22 prepared the complaint. (Id. at 8.)

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25 ¹ The court hereby takes judicial notice of the December 21, 2011 findings and
26 recommendations issued by Magistrate Judge Brennan in 11-cv-00426 GEB EFB P, and his
27 finding that plaintiff had three strikes pursuant to 28 U.S.C. § 1915(g). See Fed. R. Evid. 201(b)
28 (...capable of accurate and ready determination by resort to sources whose accuracy cannot
reasonably be questioned."); see 11-cv-00426 GEB EFB P, ECF No. 45 (order by Honorable
Garland E. Burrell adopting the December 21, 2011 findings and recommendations).

1 Plaintiff alleges that in October 2015, defendant Balbasova denied plaintiff's request for
2 medical treatment for the medical problems she suffered as a result of being poisoned. (Id. at 9.)
3 Plaintiff alleges that defendants Andrichuk and Schneider conspired to file false progress notes in
4 plaintiff's health records, stating that plaintiff was not being poisoned. (Id.)

5 Plaintiff alleges that defendant Macomber, the CSP-Sac Warden, ignored the assaults on
6 plaintiff and the poisoning of plaintiff. (Id. at 10-11.)

7 Plaintiff's claims that he was assaulted in May 2014 and June 2015 for complaining about
8 being poisoned do not demonstrate that she suffered a threat of imminent injury when she filed
9 the complaint in November 2015. With respect to plaintiff's claim that the poisoning was
10 ongoing, the undersigned observes that plaintiff has made this claim in other lawsuits filed in this
11 court. Magistrate Judge Brennan addressed this claim in 11-00426. In recommending denial of
12 plaintiff's request to proceed in forma pauperis, Magistrate Judge Brennan found that,

13 [P]laintiff's declaration stating that she had been poisoned with
14 arsenic was "of little probative value as it appear[ed] to be based
15 solely on conjecture and suspicion. Dckt. No. 26 at 6. The
16 undersigned also determined that plaintiff had "submitted no
17 evidence, other than her own declaration to support her contentions
18 that defendants have poisoned her or denied her HIV medication."
19 Id. at 5; see also id. at 6 ("Because plaintiff has not made a
20 convincing showing that she is being poisoned or denied HIV
21 medication, the court is not convinced that irreparable harm will
22 result if her motion is denied or that the balance of equities tips in
23 her favor."); Dckt. No. 39 (district judge's December 16, 2011
24 order adopting recommendation and denying plaintiff's requests for
25 injunctive relief).

26 In light of this record, the undersigned finds that plaintiff's
27 allegations of imminent danger of serious physical injury are not
28 plausible and that the imminent danger exception does not apply.
See Andrews, 493 F.3d at 1055 (section 1915(g) imminent danger
exception applies where complaint makes a "plausible" allegation
that prisoner faced imminent danger of serious physical injury at
the time of filing.); id. at 1057 n. 11 ("[A]ssertions of imminent
danger of less obviously injurious practices may be rejected as
overly speculative or fanciful[] when they are supported by
implausible or untrue allegations that the ongoing practice has
produced past harm").

(2: 11-cv-00426 TLN EFB P at ECF No. 40 at 3-4.)

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1 The allegations plaintiff makes regarding being poisoned in the instant complaint are also
2 not supported by any documentation. For the reasons stated by Magistrate Judge Brennan, the
3 undersigned also finds that plaintiff's allegations regarding being poisoned are not plausible and
4 that the imminent injury exception does not apply based on these claims.

5 Because plaintiff's claims regarding being poisoned are not plausible, plaintiff's claims
6 that defendant Balbasova denied plaintiff's request for medical treatment for the medical
7 problems she suffered as a result of being poisoned do not meet the imminent injury exception.
8 Similarly, plaintiff's claims that defendants Andrichuk and Schneider falsely wrote in her medical
9 records that she was not being poisoned do not meet the imminent injury exception.

10 Plaintiff alleges that defendant Terrel, Vela and Porter took plaintiff's personal and legal
11 property. (ECF No. 1 at 12.) Plaintiff alleges that defendants Macomber and Alcazar have
12 denied plaintiff the right to marry her fiancé. (Id. at 14.) Neither of these claims involve
13 allegations of physical injury. Accordingly, they do not meet the imminent physical injury
14 exception.

15 Plaintiff's complaint includes allegations against prison officials who are not identified as
16 defendants. For example, plaintiff alleges that Psychiatrist Hague ordered psychiatric medication
17 for plaintiff that made her mental illness worse. (Id. at 10.) Plaintiff alleges that several other
18 non-defendants were involved in her alleged poisoning and also assaulted her. (Id. at 11-12.)
19 The undersigned will not consider claims involving non-defendants in considering whether the
20 imminent injury exception is applicable.

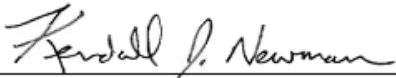
21 For the reasons discussed above, the undersigned finds that plaintiff does not meet the
22 imminent injury exception to 28 U.S.C. § 1915(g). Accordingly, the undersigned recommends
23 that plaintiff's application to proceed in forma pauperis be denied and that plaintiff be ordered to
24 pay the filing fee.

25 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff's application to proceed in
26 forma pauperis be denied; plaintiff be ordered to pay the filing fee.

27 These findings and recommendations are submitted to the United States District Judge
28 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days

1 after being served with these findings and recommendations, plaintiff may file written objections
2 with the court and serve a copy on all parties. Such a document should be captioned
3 “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that
4 failure to file objections within the specified time may waive the right to appeal the District
5 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

6 Dated: February 4, 2016

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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