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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MS. LONNIE WILLIAMS,
Plaintiff,
v.
T. LOPEZ, et al.,
Defendants.

No. 2:16-cv-0131 KJM KJN P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding without counsel. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983, and filed a request for leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 on February 16, 2016. 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.

1 28 U.S.C. § 1915(g).

2 Review of court records reveals that on at least three occasions lawsuits filed by the
3 plaintiff have been dismissed on the grounds that they were frivolous or malicious or failed to
4 state a claim upon which relief may be granted:

5 (1) Williams v. Gonzales, 1:03-cv-6770 REC WMW P (E.D. Cal.
6 Sept. 10, 2004) (order designating plaintiff as a three strikes litigant
7 under 28 U.S.C. § 1915(g)); (2) Williams v. Andrews, 1:01-cv-6222
8 REC HGB P (E.D. Cal. Feb. 22, 2002) (order dismissing action for
9 failure to state a claim); (3) Williams v. Wood, 1:01-cv-6151 REC
LJO P (E.D. Cal. Feb. 28, 2002) (order dismissing action with
prejudice for failure to state a claim); and (4) Williams v. Rendon,
1:01-cv-5891 AWI SMS P (E.D. Cal. Mar. 18, 2002) (order
dismissing action for failure to state a claim)).

10 Williams v. Gomez, No. CIV S-11-0426 GEB EFB P (E.D. Cal. December 21, 2011) (ECF No.
11 40 at 2-3). Accordingly, plaintiff is precluded from proceeding in forma pauperis unless she is
12 “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

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

19 In the instant complaint, plaintiff alleges that 13 different defendants conspired and aided
20 and abetted each other in an alleged attempt to murder plaintiff by adding Nitrite poisons, and
21 biological agents, such as saliva and chewing tobacco, to plaintiff’s food, allegedly in retaliation
22 for plaintiff’s lawsuits against several prison officials. Plaintiff claims that after eating the
23 breakfast and dinner provided, she would suffer breathing problems, severe chest pains, dry
24 itching, flaking skin, scalp and body, severe dehydration, urinary tract infections, severe
25 constipation, severe abdominal pains, and damage to her kidneys, liver and heart. (ECF No. 1 at
26 5.) Plaintiff claims that defendant T. Lopez admitted to poisoning plaintiff, and allegedly
27 identified various other correctional officers who put poison, saliva or chewing tobacco in her
28 food: Mackenzie, Verwoest, Thomison, Herr, Johnson, and Collingsworth. (ECF No. 1 at 5-6.)

1 Plaintiff alleges that her food has been poisoned since April 10, 2015, until the present, and
2 contends that such continuous poisoning poses an imminent danger of ongoing irreparable harm
3 to her health. (ECF No. 1 at 4, 8.) In support of her claim, plaintiff provided copies of urinalysis
4 reports reflecting a positive test for Nitrite on November 23, 2015, May 4, 2015, April 10, 2015,
5 July 15, 2014, July 31, 2014, and August 24, 2012. (ECF No. 1 at 9-16.)

6 For the following reasons, the undersigned finds that plaintiff's claims alleging poisoning
7 do not meet the imminent danger exception.

8 In the complaint filed on August 17, 2012, in Williams v. Bauer, Case No. 2: 12-cv-2158
9 MCE EFB P (E.D. Cal.), plaintiff also alleged that she was in imminent danger because the
10 defendants named in that action were poisoning her food. On December 6, 2012, Magistrate
11 Judge Brennan found that imminent danger exception provided in § 1915(g) did not apply
12 because plaintiff's allegations were not plausible. See id., ECF No. No. 12 at 2; See also
13 Andrews v. Cervantes, 493 F.3d 1047, 1055 (9th Cir. 2007) (§ 1915(g) imminent danger
14 exception applies where complaint makes a "plausible" allegation that prisoner faced imminent
15 danger of serious physical injury at the time of filing). Magistrate Judge Brennan recommended
16 that plaintiff's application to proceed in forma pauperis be denied. See Case No. 2: 12-cv-2158
17 MCE EFB P (ECF No. 12). On January 30, 2013, the Honorable Morrison C. England adopted
18 these findings and recommendations. Id. (ECF No. 14).

19 In his December 6, 2012 findings and recommendations, Magistrate Judge Brennan also
20 observed that plaintiff had been informed on several prior occasions that her allegations regarding
21 poisoning were not plausible:

22 Moreover, the "court has the inherent ability to restrict a litigant's
23 ability to commence abusive litigation in forma pauperis." Visser
24 v. Supreme Court of California, 919 F.2d 113, 114 (9th Cir. 1990)
25 (citing In re McDonald, 489 U.S. 180 (1989)). The court has
26 informed plaintiff, on numerous prior occasions, that her allegations
27 about being poisoned are not plausible. See Williams v. Norton, 2:
28 12-cv-2998 CKD (E.D. Cal. Dec. 4, 2012) (finding plaintiff's
allegations of being poisoned implausible and denying application
to proceed in forma pauperis); Williams v. CDCR, 2: 12-cv-1616
JAM EFB P (E.D. Cal. Aug. 1, 2012) (finding implausible
plaintiff's allegations of being poisoned, and recommending that
plaintiff's in forma pauperis status be denied), adopted (E.D. Cal.
Oct. 29, 2012); Williams v. Willie, 2: 11-cv-1532 MCE DAD P

1 (E.D. Cal. March 16, 2012) (finding implausible plaintiff's
2 allegations of being poisoned, noting that she had been making such
3 claims since 2006, and determining that the imminent danger
4 exception of section 1915(g) did not apply), adopted (E.D. Cal.
5 Apr. 23, 2012); Williams v. Gomez, 2: 11-cv-426 GEB EFB P
6 (E.D. Cal. Dec. 21, 2011) (finding implausible plaintiff's
7 allegations of being poisoned and denied HIV medication, and
8 recommending that plaintiff's in forma pauperis status be revoked),
9 adopted (E.D. Cal. Feb. 6, 2012). Nevertheless, plaintiff continues
10 to initiate lawsuits in forma pauperis, on the grounds that the
11 imminent danger exception applies based on her allegations of
12 being poisoned on a daily basis and/or being denied her HIV
13 medication. See e.g., Williams v. Bal, 2: 12-cv-1005 LKK EFB P
14 (E.D. Cal. April 17, 2012 complaint alleging imminent danger of
15 injury or death because she was denied HIV medication and prison
16 officials were poisoning her food); Williams v. Wedell, 2: 12-cv-
17 1438 GEB GGH P (E.D. Cal.) (May 29, 2012 complaint alleging
18 denial of HIV medication and imminent danger of poisoning);
19 Williams v. Nappi, 2: 12-cv-1604 GEB CMK P (E.D. Cal.) (June
20 14, 2012 complaint alleging imminent danger because of daily
21 poisoning); Williams v. CDCR, 2: 12-cv-1616 JAM EFB P (E.D.
22 Cal.) (June 15, 2012 complaint alleging the same). Given these
23 filings, the court finds that plaintiff's application for leave to
24 proceed in forma pauperis should be denied because plaintiff has
25 "engaged in a pattern of litigation which is manifestly abusive."
26 Visser, 919 F.2d at 114.

15 Williams v. Bauer, Case No. 2:12-cv-2158 MCE EFB P (ECF No. 12 at 2-3). In Williams v.
16 Wedell, Case No. 2:12-cv-1438 GEB GGH P, Magistrate Judge Hollows observed,

17 As for the alleged poisoning, U.S. Magistrate Judge John F. Moulds
18 recognized in one of plaintiff's many cases filed with this court,
19 that [she] has been alleging arsenic poisoning since 2006 and the
20 plausibility of [her] claims in this regard are belied by the fact that
21 plaintiff remains alive today despite alleged arsenic poisoning for
22 more than five years by dozens of prison officials. See Williams v.
23 Murray, 11-cv-0069 MCE JFM P (E.D. Cal.), Order filed June 10,
24 2011 (Doc. No. 9 at 3) (denying plaintiff's motion for
25 reconsideration of an order finding that § 1915(g) barred plaintiff
26 from proceeding in forma pauperis and citing several other of
27 plaintiff's actions that allege poisoning).

23 Case No. 2: 12-cv-1438 GEB GGH P (ECF No. 12 at 3). Finally, on February 4, 2016, the
24 undersigned also found that plaintiff's claims regarding being poisoned are not plausible and do
25 not meet the imminent injury exception, recommending that plaintiff's application to proceed in
26 forma pauperis be denied, and that plaintiff be ordered to pay the filing fee. Williams v.
27 Macomber, Case No. 2:15-cv-2268 MCE KJN P (E.D. Cal.) (ECF No. 10).

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1 For the reasons discussed above, the undersigned finds that plaintiff has not met the
2 imminent danger exception to 28 U.S.C. § 1915(g). Therefore, the undersigned recommends that
3 plaintiff's application to proceed in forma pauperis be denied and that plaintiff be ordered to pay
4 the filing fee.

5 Accordingly, IT IS HEREBY RECOMMENDED that:

- 6 1. Plaintiff's application to proceed in forma pauperis (ECF No. 7) be denied, and
- 7 2. Plaintiff be ordered to pay the filing fee within fourteen days from any district court
8 order adopting these findings and recommendations.

9 These findings and recommendations are submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
11 after being served with these findings and recommendations, plaintiff may file written objections
12 with the court and serve a copy on all parties. Such a document should be captioned
13 "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that
14 failure to file objections within the specified time may waive the right to appeal the District
15 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

16 Dated: March 11, 2016

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19 KENDALL J. NEWMAN
20 UNITED STATES MAGISTRATE JUDGE

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