1

2

3

4

5

6

7

8

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

9   JESSE MOTEN,   CASE NO. 1:07-cv-924-AWI-MJS (PC)

10   Plaintiff,   ORDER TO DEFENDANT GONZALES TO
                                                           PRODUCE DOCUMENT IN CONNECTION
11   v.   WITH HIS MOTION TO REVOKE
                                                           PLAINTIFF'S IN FORMA PAUPERIS
12   DARRELL G. ADAMS, et al.   STATUS

13   Defendants.

14   _____/

15

16   Plaintiff Jesse Moten ("Plaintiff") is a state prisoner proceeding pro se and in forma

17   pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

18   Plaintiff initiated this action on June 27, 2007. (ECF No. 1.) Plaintiff filed a Second

19   Amended Complaint on March 11, 2011. (ECF No. 55.) The Court screened Plaintiff's

20   Second Amended Complaint pursuant to 28 U.S.C. § 1915A and allowed the action to

21   continue only on his excessive force claim against Defendant Gonzales. (ECF Nos. 56 &

22   57.). These Findings and Recommendation were adopted, and the Court ordered service

23   on Defendant Gonzales. (ECF Nos. 59 & 70.)

24   On December 12, 2011, Defendant Gonzales filed a motion to revoke Plaintiff's in

25   forma pauperis status and dismiss this action. (ECF No. 77.) Defendant claims that

26   Plaintiff already has had three in forma pauperis actions dismissed and so, under 28

27   U.S.C. § 1915, should not be permitted to proceed in that fashion here. One of the cases

28   Defendant Gonzales argues should be counted as a strike under 28 U.S.C. § 1915(g), is

-1-

1 Moten v. Garcia, N.D. Cal. 03-cv-1581. Defendant provided the docket for that matter but

2 not the order dismissing the action.   Without the dismissal order, the Court cannot

3 determine whether the dismissal should be counted as a strike.

4   Accordingly, Defendant Gonzales is ORDERED to produce, within thirty days of

5 entry of this Order, the order dismissing Moten v. Garcia, N.D. Cal. 03-cv-1581. Plainitff

6 will have ten days after Defendant responds to this order to file an opposition to

7 Defendant's motion.

8

9

10   IT IS SO ORDERED.

11 Dated: February 10, 2012   /s/ *Michael J. Seng*
                                      UNITED STATES MAGISTRATE JUDGE