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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JESSE T. MOTEN,
Plaintiff,
vs.
K. ALLISON,
Defendants.

Case No. 1:12-cv-00600 AWI JLT (PC)
**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO DENY
PLAINTIFF'S APPLICATION TO
PROCEED IN FORMA PAUPERIS**

(Docs. 6, 15).

Plaintiff is proceeding pro se and in forma pauperis with a civil action pursuant to 42 U.S.C. § 1983. The matter was transferred to this Court from the Northern District of California on April 5, 2012 and later referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rules 302 and 303. (Doc. 9). Before the matter was transferred, Plaintiff filed a motion for leave to proceed in forma pauperis and requested a hearing on imminent endangerment of life. (Docs. 6 and 7).

On April 20, 2012, Magistrate Judge Thurston issued findings and recommendations to deny Plaintiff's application to proceed in forma pauperis, pursuant to 28 U.S.C. § 1915(g), as Plaintiff had previously filed at least three actions that were dismissed as either frivolous,

1 malicious, or failed to state a claim upon which relief may be granted. (Doc. 15). The Magistrate
2 also found that Plaintiff failed to state any facts to show he is under imminent danger of serious
3 physical injury. (Doc. 15). The Magistrate’s Findings and Recommendations noted that
4 Plaintiff’s motion for a hearing on imminent danger was identical to the motion he filed in
5 District Judge Ishii’s court in February of this year. (Compare Doc. 7 with 1:12-cv-00034 AWI-
6 GSA, Doc. 5, and Moten, 2012 U.S. Dist. LEXIS 19429).

7 Plaintiff was to file any objections to the Magistrate’s recommendations by May 14, 2012.
8 (Doc. 15). On May 10, 2012, Plaintiff requested a 30-day extension of time to file his Objections.
9 (Doc. 17). The Magistrate granted Plaintiff’s request on May 10, 2012 and served the order the
10 same day. (Doc. 18). On June 13, 2012, Plaintiff filed Objections. (Doc. 21).

11 Therefore, in accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Britt v. Simi
12 Valley United School Dist., 708 F.2d 452, 454 (9th Cir. 1983), the Court has conducted a de novo
13 review of the case. Having carefully, reviewed the entire file, the Court finds that the findings
14 and recommendations are supported by the record and by proper analysis. The court agrees with
15 the Magistrate Judge that Plaintiff is subject to 42 U.S.C. Section 1915(g), which provides that
16 “[i]n no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or
17 more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in
18 a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or
19 fails to state a claim upon which relief may be granted, unless the prisoner is under imminent
20 danger of serious physical injury.” 28 U.S.C. § 1915(g). The determination of whether Plaintiff
21 is under imminent danger of serious physical injury is made based on the conditions at the time
22 the complaint is filed, Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007), and the
23 allegation of imminent danger must be plausible, id. at 1054. In light of the fact the complaint’s
24 allegations concern alleged violations at administrative hearings, the court agrees Petitioner has
25 not made an adequate showing under Section 1915(g).
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Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed April 20, 2012 are **ADOPTED IN FULL**;
2. Plaintiff's motion to proceed in forma pauperis is **DENIED**;
3. Plaintiff is required to pay the filing fee in full within 14 days of service of the Court's order adopting the Magistrate's Findings and Recommendations; and
4. Failure to timing pay the filing fee in full in accordance with this Order will result in a dismissal of the entire matter.

IT IS SO ORDERED.

Dated: July 5, 2012



CHIEF UNITED STATES DISTRICT JUDGE