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6 **UNITED STATES DISTRICT COURT**  
7 **EASTERN DISTRICT OF CALIFORNIA**  
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9 ERIC C.R. K'NAPP,

10 Plaintiff,

11 v.

12 JEFFERY BEARD, et al.,

13 Defendants.  
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Case No. 1:13-cv-00996-AWI-DLB PC

**FINDINGS AND RECOMMENDATION  
REVOKING PLAINTIFF'S IN FORMA  
PAUPERIS STATUS AND REQUIRING  
PAYMENT OF FILING FEE IN FULL**

RESPONSE DUE WITHIN FOURTEEN  
DAYS

16 Plaintiff Eric C.R. K'napp ("Plaintiff") is a prisoner in the custody of the California  
17 Department of Corrections and Rehabilitation ("CDCR"). Plaintiff is proceeding pro se in this civil  
18 action pursuant to 42 U.S.C. § 1983. Plaintiff filed his original complaint on June 28, 2013. (ECF  
19 No. 1.)

20 On August 2, 2013, the Court denied Plaintiff's applications to proceed in forma pauperis  
21 after determining Plaintiff was subject to 28 U.S.C. § 1915(g) and was precluded from proceeding in  
22 forma pauperis. The Court had taken judicial notice of the following cases as strikes: 2:03-cv-  
23 00394-DFL-PAN (E.D. Cal. 2004), Knapp v. Knowles, et al. (dismissed on August 13, 2004, for  
24 failure to state a claim); 2:06-cv-00453-GEB-GGH (E.D. Cal. 2007), Knapp v. Knowles, et al.,  
25 (dismissed on June 13, 2007, for frivolity and failure to state a claim); and No. 04-16701 (9th Cir.  
26 2005), Knapp v. Knowles, et al., (dismissed on March 7, 2005, as frivolous).

27 On August 15, 2013, Plaintiff filed a motion for relief from order of dismissal and final  
28 judgment. Plaintiff argued that the Court, in 1:08-cv-01779 AWI BAM, Knapp v. Cate, held that

two of the three cases which the Court cited in the August 2, 2013, order were not strikes under § 1915(g). In Knapp v. Cate, the Court found that the cases of Knapp v. Knowles, et al., No. 2:03-cv-00394-DLF-PAN (E.D.Cal. 2004), Knapp v. Knowles, et al. No. 2:06-cv-00453-GEB-GGH (E.D.Cal. 2007), and Knapp v. Harrison, No. 2:06-cv-07702-JVS-RC (C.D.Cal. 2008), were dismissed as sanctions for failure to comply with the Federal Rules of Civil Procedure. The Court stated that none of these cases stated that they were dismissed as frivolous, malicious or for failure to state a claim, and therefore, they could not be considered strikes under § 1915(g). On September 3, 2013, the Court agreed with Plaintiff and granted his motion for reconsideration in this case.

Thereafter, in Knapp v. Hogan, 738 F.3d 1106 (9th Cir. 2013), *cert. denied*, 135 S. Ct. 57, 190 L. Ed. 2d 32 (2014), the Ninth Circuit addressed this very issue. The Ninth Circuit determined that the cases cited above which the Court initially cited as strikes were indeed strikes under § 1915(g). Id. at 1110. In addition, the Ninth Circuit concluded that Plaintiff had accrued the following five strikes and was therefore subject to § 1915(g): Knapp v. Knowles, No. 04–16701 (9th Cir. 2005); Knapp v. Harrison, No. 08–56629 (9th Cir. 2009); Knapp v. Knowles, No. 2:03–cv–00394 (E.D.Cal. 2004); Knapp v. Knowles, No. 2:06–cv–00453 (E.D.Cal. 2007); Knapp v. Harrison, No. 06–cv–07702, 2008 WL 4334683 (C.D.Cal. 2008). Knapp v. Hogan, 738 F.3d at 1108, 1110. In light of the fact that the Ninth Circuit has determined that Plaintiff is subject to § 1915(g) after having accrued the above five strikes, the Court finds that Plaintiff’s in forma pauperis status should be REVOKED and Plaintiff should be REQUIRED to pay the full filing fee for this action.

## RECOMMENDATION

Accordingly, the Court HEREBY RECOMMENDS that Plaintiff's in forma pauperis status be REVOKED and Plaintiff be REQUIRED to pay the full filing fee for this action, or suffer dismissal.

These Findings and Recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen (14) days after date of service of these Findings and Recommendations, Plaintiff may file written objections with the Court. Such a document should be captioned “Objections to Magistrate Judge's Findings and Recommendations.” Plaintiff is advised that failure to file objections within the

1 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d  
2 1153 (9th Cir. 1991).

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4 IT IS SO ORDERED.

5 Dated: May 28, 2015

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE