

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

MICHAEL WHITFIELD,

Plaintiff,

V.

COUNTY OF FRESNO, et al.,

Defendants.

Case No. 1:17-cv-01155-BAM (PC)

ORDER DIRECTING CLERK OF COURT TO RANDOMLY ASSIGN DISTRICT JUDGE TO ACTION

FINDINGS AND RECOMMENDATIONS
RECOMMENDING PLAINTIFF'S MOTION
FOR LEAVE TO PROCEED IN FORMA
PAUPERIS BE DENIED

(ECF No. 2)

FOURTEEN (14) DAY DEADLINE

Plaintiff Michael Whitfield (“Plaintiff”) is a pretrial detainee proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action on August 28, 2017. (ECF No. 1.) Currently before the Court is Plaintiff’s motion for leave to proceed in forma pauperis. (ECF No. 2.)

Plaintiff is subject to 28 U.S.C. § 1915(g), which provides that “[i]n no event shall a prisoner bring a civil action . . . 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

1 physical injury.”¹ Plaintiff has been informed in a prior case that he is subject to § 1915(g).²

2 The Court has reviewed Plaintiff’s complaint and finds that his allegations do not satisfy
3 the imminent danger exception to section 1915(g).³ Andrews v. Cervantes, 493 F.3d 1047,
4 1053–55 (9th Cir. 2007). Plaintiff alleges that from April 20, 2017, through May 23, 2017, while
5 detained at the Fresno County Jail, he was deprived of prescription medication to treat his high
6 blood pressure. (ECF No. 1.) Thus, Plaintiff has not alleged any imminent danger of serious
7 physical injury at the time of filing and has not satisfied the exception from the three strikes bar
8 under 28 U.S.C. § 1915(g). Plaintiff must pay the \$400.00 filing fee if he wishes to litigate this
9 action.

10 Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a
11 District Judge to this action.

12 Further, it is HEREBY RECOMMENDED that:

13 1. The motion to proceed in forma pauperis (ECF No. 2) be DENIED, pursuant to 28
14 U.S.C. § 1915(g); and
15 2. Plaintiff be ORDERED to pay the \$400 initial filing fee in full to proceed with this
16 action.

17 These Findings and Recommendations will be submitted to the United States District
18 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
19 **fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may
20 file written objections with the court. The document should be captioned “Objections to
21 Magistrate Judge’s Findings and Recommendation.” Plaintiff is advised that the failure to file
22 objections within the specified time may result in the waiver of the “right to challenge the

23 ¹ The Court takes judicial notice of the following United States District Court Cases: (1) Whitfield v. Armendez,
24 Case No. 1:02-cv-05613-OWW-SMS (E.D. Cal.) (dismissed on December 10, 2002, for failure to state a claim);
25 (2) Whitfield v. Greenman, Case No. 1:11-cv-01130-SKO (E.D. Cal.) (dismissed on August 13, 2012, for failure to
26 state a claim); (3) Whitfield v. Tulp, Case No. 1:11-cv-01375-SKO (E.D. Cal.) (dismissed on August 4, 2012, for
27 failure to state a claim); and (4) Whitfield v. Downs, 1:11-cv-01243-DLB (E.D. Cal.) (dismissed on December 13,
28 2012, for failure to state a claim).

² The Court takes judicial notice of Document 4 in Whitfield v. Spain, Case No. 1:13-cv-01753-LJO-GSA (E.D. Cal.).

³ The Court expresses no opinion on the merits of Plaintiff’s claims.

1 magistrate's factual findings" on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir.
2 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

3 IT IS SO ORDERED.
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5 Dated: August 31, 2017

6 /s/ *Barbara A. McAuliffe*
7 UNITED STATES MAGISTRATE JUDGE
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