

1 Cent. Dist. of Cal., 877 F.2d 777 (9th Cir. 1989). In determining whether to consolidate actions,
2 the Court weighs the interest of judicial convenience against the potential for delay, confusion,
3 and prejudice caused by consolidation. Sw. Marine, Inc. v. Triple A. Mach. Shop, Inc., 720 F.
4 Supp. 805, 807 (N.D. Cal. 1989).

5 The Court has reviewed the first amended complaint in this case, as well as the complaint
6 in Trujillo v. Savoie (“Trujillo”), Case No. 1:18-00990-EPG, filed July 19, 2018. Both
7 complaints appear to be based on the same factual allegations, including Defendant Savoie’s
8 filing of a false Rule Violation Report against Plaintiff on April 27, 2016, in retaliation for
9 Plaintiff filing a 602 grievance against Defendant Savoie for sexual misconduct on April 22,
10 2016. As Defendant Savoie has already been served in Trujillo, and the instant case has already
11 been screened, it appears in the interest of judicial economy to consolidate these actions pursuant
12 to Federal Rule of Civil Procedure 42(a)(2).

13 **II. Plaintiff’s *In Forma Pauperis* Status**

14 On November 21, 2017, Plaintiff’s motion to proceed *in forma pauperis* was granted.
15 (ECF No. 7.) Upon further review, it appears that Plaintiff is not entitled to proceed *in forma*
16 *pauperis* pursuant to 28 U.S.C. § 1915.

17 Plaintiff is subject to 28 U.S.C. § 1915(g), which provides that “[i]n no event shall a
18 prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more prior
19 occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of
20 the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state
21 a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious
22 physical injury.”²

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24 ² The Court takes judicial notice of the following United States District Court cases: (1) Trujillo v.
25 Sherman, Case No. 1:14-cv-01401-BAM (E.D. Cal.) (dismissed on April 24, 2015 for failure to state a
26 claim), aff’d, Case No. 15-15952 (9th Cir. May 6, 2016) and (2) Cruz v. Gomez, Case No. 1:15-cv-00859-
27 EPG (E.D. Cal.) (dismissed on February 3, 2017 for failure to state a claim), aff’d, Case No. 17-15358 (9th
28 Cir. October 25, 2017).

The Court also takes judicial notice of the following United States Court of Appeals case: Trujillo
v. Gonzalez-Moran, Case No. 17-15200 (9th Cir.) (dismissed on August 21, 2017 as frivolous).

1 The Court has reviewed Plaintiff's first amended complaint and his allegations do not
2 satisfy the imminent danger exception to section 1915(g). Andrews v. Cervantes, 493 F.3d 1047,
3 1055-56 (9th Cir. 2007). As noted above, Plaintiff alleges that after he filed a 602 grievance
4 against Defendant Savoie for sexual misconduct on April 22, 2016, Defendant Savoie retaliated
5 by filing a false Rule Violation Report against Plaintiff on April 27, 2016. (ECF No. 11.) This
6 events are alleged to have occurred while Plaintiff was housed to Kern Valley State Prison, more
7 than a year prior to the filing of the complaint. Plaintiff is currently housed at Pelican Bay State
8 Prison.

9 **III. Conclusion and Order**

10 Accordingly, IT IS HEREBY ORDERED as follows:

11 1. Within **twenty-one (21) days** from the date of service of this order, Plaintiff shall file a
12 written response showing cause why:

13 a. This action should not be consolidated with Trujillo v. Savoie, Case No. 1:18-cv-
14 00990-EPG (PC); and

15 b. Plaintiff's *in forma pauperis* status should not be revoked pursuant to 28 U.S.C.
16 § 1915(g);

17 2. **Plaintiff's failure to comply with this order may result in sanctions, including**
18 **dismissal of this action.**

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20 IT IS SO ORDERED.

21 Dated: August 6, 2018

22 /s/ Barbara A. McAuliffe
23 UNITED STATES MAGISTRATE JUDGE
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