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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

GUILLERMO TRUJILLO CRUZ,  
  
Plaintiff,  
  
v.  
  
M. GONZALEZ,  
  
Defendant.

Case No. 1:17-cv-01548-DAD-JDP  
  
FINDINGS AND RECOMMENDATIONS  
THAT PLAINTIFF’S IN FORMA PAUPERIS  
STATUS BE REVOKED AND THAT  
PLAINTIFF BE REQUIRED TO PAY FILING  
FEE IN FULL

Plaintiff is a state prisoner proceeding without counsel in this civil rights action brought under 42 U.S.C. § 1983. On March 14, 2019, we granted plaintiff’s motion to proceed *in forma pauperis*. ECF No. 36. Upon further review, it appears that plaintiff is not entitled to proceed *in forma pauperis* under 28 U.S.C. § 1915.

The Prison Litigation Reform Act provides that “[i]n no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more 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 physical injury.” 28 U.S.C. § 1915(g). Plaintiff has had three or more actions dismissed as frivolous, as malicious, or

1 for failing to state a claim upon which relief maybe granted.<sup>1</sup>

2 Plaintiff has not satisfied the imminent danger exception to § 1915(g). *See Andrews v.*  
3 *Cervantes*, 493 F.3d 1047, 1053-55 (9th Cir. 2007). In his complaint, plaintiff alleges that a  
4 correctional officer sexually harassed him and, when he declined her advances, threatened him.  
5 ECF No. 1 at 3-5. Plaintiff does not, however, allege that he is currently at risk of physical harm.

6 Accordingly, plaintiff's *in forma pauperis* status should be revoked and he should pay the  
7 filing fee in full because he has accrued three or more strikes and was not under imminent danger  
8 of serious physical harm at the time this action was initiated. *See* 28 U.S.C. § 1915(g).

### 9 **Findings and Recommendation**

10 Based on the foregoing, it is hereby recommended that:

- 11 1. plaintiff's *in forma pauperis* status be revoked;
- 12 2. plaintiff be required to pay the \$400 filing fee in full within twenty-one days of adoption  
13 of these findings and recommendations; and
- 14 3. if plaintiff fails to pay the \$400 filing fee in full within twenty-one days of adoption of  
15 these findings and recommendations, all pending motions be terminated and this action  
16 be dismissed without prejudice.

17 The undersigned submits the findings and recommendations to a district judge under 28  
18 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District  
19 Court, Eastern District of California. Within fourteen days of the service of the findings and  
20 recommendations, plaintiff may file written objections to the findings and recommendations with  
21 the court. That document should be captioned "Objections to Magistrate Judge's Findings and  
22 Recommendations." The district judge will review the findings and recommendations under 28  
23 U.S.C. § 636(b)(1)(C). Plaintiff's failure to file objections within the specified time may result in  
24 the waiver of rights on appeal. *See Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014).

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26 <sup>1</sup> The cases include *Trujillo v. Gonzalez-Moran*, Case No. 17-15200 (9th Cir. Aug. 21, 2017);  
27 *Cruz v. Gomez*, No. 1:15-cv-00859-EPG (E.D. Cal.), *aff'd*, No. 17-15358 (9th Cir. Oct. 25, 2017);  
28 *Trujillo v. Sherman*, No. 1:14-cv-01401-BAM (E.D. Cal.), *aff'd*, No. 15-15952 (9th Cir. May 6,  
2016); *Trujillo v. Ruiz*, No. 1:14-cv-00975-SAB (E.D. Cal.), *aff'd*, No. 16-15101 (9th Cir. Dec.  
15, 2017).

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IT IS SO ORDERED.

Dated: July 16, 2019

  
UNITED STATES MAGISTRATE JUDGE

No. 203