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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

PABLO P. PINA,  
Plaintiff,  
v.  
SCOTT KERNAN, et al.,  
Defendants.

No. 1:17-cv-01681-DAD-SAB (PC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS AND DENYING  
MOTION TO REVOKE IN FORMA  
PAUPERIS STATUS

(Doc. Nos. 33, 35, 37)

Plaintiff Pablo P. Pina is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On May 9, 2019, defendants Davey, J.C. Garcia, Hoggard, Susan Hobbard, Scott Kernan, Leshniak, Peterson, and Urban filed a motion to revoke plaintiff's *in forma pauperis* status under 28 U.S.C. § 1915(g). (Doc. No. 33.) On June 17, 2019, plaintiff filed a motion in opposition to defendants' motion to revoke his *in forma pauperis* status and a request to conduct limited discovery. (Doc. No. 35.) On July 10, 2019, the assigned magistrate judge issued findings and recommendations recommending that defendants' motion to revoke plaintiff's *in forma pauperis* be denied. (Doc. No. 37.) On July 29, 2019, defendants filed objections to those findings and recommendations. (Doc. No. 38.)

1 In their objections to the findings and recommendations, defendants argue that the  
2 magistrate judge mistakenly determined that the prior dismissal of one of plaintiff's previous  
3 lawsuits, *Pina v. Dougherty, et al.*, Case No. 3:99-cv-397 (N.D. Cal. 1999), did not count as a  
4 strike, even though the underlying basis for that order of dismissal was plaintiff's failure to state a  
5 claim. (Doc. No. 38 at 3.)

6 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this  
7 court has conducted a *de novo* review of this case. Having carefully reviewed the entire file,  
8 including defendants' objections, the court finds the findings and recommendations to be  
9 supported by the record and proper analysis. The magistrate judge properly concluded that the  
10 dismissal without prejudice in *Pina v. Dougherty, et al.* was based upon the district court's  
11 determination that plaintiff could not proceed with his action for damages unless and until his  
12 criminal conviction was set aside under the holding in *Heck v. Humphrey*, 512 U.S. 477 (1994),  
13 but also raised several other claims including one for injunctive relief. (Doc. No. 37 at 6–7.)  
14 Accordingly, *Pina v. Dougherty* was not dismissed in its entirety for a qualifying reason under §  
15 1915(g). *Harris v. Harris*, 935 F.3d 670, 674 (9th Cir. 2019) (“We must also evaluate whether all  
16 the claims in a given suit satisfy the enumerated grounds for strikes, and partial dismissals of even  
17 one claim for a non-qualifying reason will save an entire case from constituting a strike.”);  
18 *Washington v. Los Angeles Cty. Sheriff's Dep't*, 833 F.3d 1048, 1057 (9th Cir. 2016) (“When we  
19 are presented with multiple claims within a single action, we assess a PLRA strike only when the  
20 ‘case as a whole’ is dismissed for a qualifying reason under the Act.”); *Andrews v. Cervantes*, 493  
21 F.3d 1047, 1054 (9th Cir. 2007), *as amended* (July 5, 2007)).

22 Accordingly,

- 23 1. The findings and recommendations issued on July 10, 2019 (Doc. No. 37) are adopted  
24 in full; and

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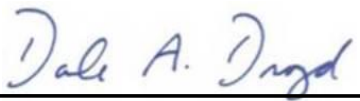
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2. Defendants' motion to revoke plaintiff's *in forma pauperis* status (Doc. No. 33) is denied.

IT IS SO ORDERED.

Dated: October 22, 2019

  
UNITED STATES DISTRICT JUDGE