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4 UNITED STATES DISTRICT COURT
5 EASTERN DISTRICT OF CALIFORNIA
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7 GUILLERMO TRUJILLO CRUZ,

1:18-cv-00399-LJO-GSA-PC

8 Plaintiff,

9 vs.

10 LEYVA, et al.,

11 Defendants.
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FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT PLAINTIFF BE
PRECLUDED FROM PROCEEDING IN
FORMA PAUPERIS UNDER 28 U.S.C. §
1915(g) AND THAT THIS CASE BE
DISMISSED, WITHOUT PREJUDICE TO
REFILING WITH SUBMISSION OF
\$400.00 FILING FEE IN FULL
(ECF No. 1.)

OBJECTIONS, IF ANY, DUE IN 14 DAYS

15 **I. BACKGROUND**

16 Guillermo Trujillo Cruz (“Plaintiff”) is a state prisoner proceeding *pro se* with this civil
17 rights action pursuant to 42 U.S.C. § 1983. On March 23, 2018, Plaintiff filed the Complaint
18 commencing this action. (ECF Nos. 1.)

19 **II. THREE-STRIKES PROVISION OF 28 U.S.C. § 1915(g)**

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

26 **III. ANALYSIS**

27 A review of the actions filed by Plaintiff reveals that Plaintiff is subject to 28 U.S.C. §
28 1915(g) and should be precluded from proceeding *in forma pauperis* unless Plaintiff was, at the

1 time the Complaint was filed, under imminent danger of serious physical injury. Plaintiff has
2 filed numerous unsuccessful cases in the Eastern District of California under the names
3 “Guillermo Trujillo Cruz,” “Guillermo Cruz Trujillo,” and “Guillermo Trujillo.” Court records
4 reflect that on at least three prior occasions, Plaintiff has brought actions while incarcerated that
5 were dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be
6 granted. The Court takes judicial notice of the following four cases: (1) Cruz v. Munoz, No.
7 1:14-cv-01215-SAB (PC) (E.D. Cal.) (dismissed for failure to state a claim on May 17, 2016);
8 (2) Cruz v. Munoz, No. 1:14-cv-00976-DLB (PC) (E.D. Cal.) (dismissed for failure to state a
9 claim on May 11, 2016); (3) Cruz v. Ruiz, No. 1:14-cv-00975-SAB (PC) (E.D. Cal.) (dismissed
10 for failure to state a claim on January 6, 2016); and (4) Trujillo v. Sherman, No. 1:14-cv-
11 01401-BAM (PC) (E.D. Cal.) (dismissed for failure to state a claim on April 24, 2015).

12 The availability of the imminent danger exception turns on the conditions a prisoner
13 faced at the time the complaint was filed, not at some earlier or later time. See Andrews v.
14 Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007). “[A]ssertions of imminent danger of less
15 obviously injurious practices may be rejected as overly speculative or fanciful.” Id. at 1057
16 n.11. Imminent danger of serious physical injury must be a real, present threat, not merely
17 speculative or hypothetical. To meet his burden under § 1915(g), an inmate must provide
18 “specific fact allegations of ongoing serious physical injury, or a pattern of misconduct
19 evidencing the likelihood of imminent serious physical injury.” Martin v. Shelton, 319 F.3d
20 1048, 1050 (8th Cir. 2003). “Vague and utterly conclusory assertions” of harm are insufficient.
21 White v. Colorado, 157 F.3d 1226, 1231–32 (10th Cir. 1998). That is, the “imminent danger”
22 exception is available “for genuine emergencies,” where “time is pressing” and “a threat . . . is
23 real and proximate.” Lewis v. Sullivan, 279 F.3d 526, 531 (7th Cir. 2002).

24 The Court has reviewed Plaintiff’s Complaint in this action and finds that Plaintiff does
25 not meet the imminent danger exception. See Andrews, 493 F.3d at 1053. In the Complaint,
26 Plaintiff alleges that in April 2016, he was wrongfully found guilty of a rules violation,
27 detained in Ad-Seg, and recommended for transfer to High Desert State Prison. Plaintiff was
28 transferred to High Desert State Prison and arrived there on August 11, 2016, where he was

1 assaulted by other inmates, resulting in hospitalization to treat his injuries. The Complaint is
2 devoid of any showing that Plaintiff was under imminent danger of serious physical injury at
3 the time he filed the Complaint.

4 Therefore, Plaintiff should be precluded from proceeding *in forma pauperis* in this
5 action, and should be required to submit the appropriate filing fee in order to proceed with this
6 case. Accordingly, this action should be dismissed, without prejudice to refiling with the
7 submission of the \$400.00 filing fee in full.

8 **IV. CONCLUSION AND RECOMMENDATIONS**

9 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 10 1. Plaintiff be precluded from proceeding *in forma pauperis* in this action, pursuant
11 to 28 U.S.C. § 1915(g);
12 2. This action be DISMISSED, without prejudice to refiling with the submission of
13 the \$400.00 filing fee in full; and
14 3. The Clerk be directed to CLOSE this case.

15 These findings and recommendations are submitted to the United States District Judge
16 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
17 **(14) days** after the date of service of these findings and recommendations, Plaintiff may file
18 written objections with the court. Such a document should be captioned "Objections to
19 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
20 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.
21 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394
22 (9th Cir. 1991)).

23
24 IT IS SO ORDERED.

25 Dated: March 30, 2018

/s/ Gary S. Austin
26 UNITED STATES MAGISTRATE JUDGE