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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GUILLERMO TRUJILLO CRUZ,

 Plaintiff,

 v.

B. VALDEZ,

 Defendants.

Case No. 1:18-cv-00571-DAD-EPG (PC)

**ORDER DENYING PLAINTIFF’S MOTION
TO PROCEED IN FORMA PAUPERIS AND
DENYING PLAINTIFF’S MOTION TO
CORRECT AND PROPERLY FILE THE
THREE STRIKE PROVISION**

(ECF Nos. 32, 33)

Plaintiff Guillermo Trujillo Cruz is a state prisoner proceeding *pro se* with this civil rights action brought pursuant to 42 U.S.C. § 1983. On April 27, 2018, Plaintiff commenced this action by filing a complaint (ECF No. 1) and an application to proceed *in forma pauperis* (ECF No. 2.) The Court originally granted Plaintiff’s application to proceed *in forma pauperis*. (ECF No. 16.)

Defendant then filed a motion to revoke Plaintiff’s *in forma pauperis* status, arguing that Plaintiff had more than three dismissals qualifying as “strikes” under 28 U.S.C. § 1915(g) and could not otherwise meet the imminent risk of harm exception to the three strikes rule. (ECF No. 22.) On February 4, 2019, the Court issued Findings and Recommendations agreeing with Defendants and recommending that the Court vacate the Order granting Plaintiff *in forma pauperis* status. (ECF No.

1 24.) The Findings and Recommendations are currently pending before the District Judge.

2 The Court gave the parties twenty-one days to file objections to the Findings and
3 Recommendations. On February 25, 2019—the due date for written objections—Plaintiff filed a
4 motion for an extension of time to file written objections to the Findings and Recommendations. (ECF
5 No. 26.) Plaintiff did not explain why an extension was necessary; nor did the Court otherwise find
6 good cause for the extension. Accordingly, the Court denied Plaintiff’s motion. (ECF No. 27.)
7 Nevertheless, Plaintiff filed a “Motion for Objections,” on March 1, 2019, which appear to be
8 objections to the February 4, 2019, Findings and Recommendations.

9 On April 5, 2019, Plaintiff filed another application to proceed *in forma pauperis*, as well as a
10 “Motion to Correct and Properly File the Three Strikes Provision.” (ECF Nos. 32, 32). These motions
11 are now before the Court.

12 First, the Court will DENY Plaintiff’s April 5, 2019 application to proceed *in forma pauperis*
13 as MOOT. The Court already granted Plaintiff’s *in forma pauperis* application. See (ECF No. 16.)
14 While it is true that undersigned recently issued Findings and Recommendations recommending that
15 Plaintiff’s *in forma pauperis* status be revoked, the District Judge has not ruled on that
16 recommendation. As it currently stands, Plaintiff is proceeding *in forma pauperis*; his application to
17 proceed *in forma pauperis* is unnecessary and is accordingly denied.

18 As to Plaintiff’s “Motion to Correct and Properly File the Three Strikes Provision,” although
19 unclear, it appears that the document is actually a response to Defendant’s reply to Plaintiff’s “Motion
20 for Objections.” Plaintiff, as he did in his belated “Motion for Objections,” argues that the imminent
21 risk of harm exception to the three strikes rule should apply despite undersigned’s finding that the
22 exception is inapplicable here because the harm Plaintiff allegedly faced occurred years before he
23 filed his suit. (ECF No. 24 at p. 3-4.)¹

24 The Court will construe Plaintiff’s “Motion to Correct and Properly File the Three Strikes
25 Provision,” as a motion to file a sur-reply to Defendant’s response to Plaintiff’s tardy and
26 unauthorized objections to the Findings and Recommendations, and the Court will DENY the Motion.

27 ¹ Again, the availability of the exception “turns on the conditions a prisoner faced at the time
28 the complaint was filed, not at some earlier or later time.” *Andrews v. Cervantes*, 493 F.3d 1047, 1053
(9th Cir. 2009).

1 Plaintiff fails to show good cause why he should be enabled to file a sur-reply—especially when
2 Plaintiff did not timely file objections to the Findings and Recommendations to begin with.

3 Accordingly, IT IS HEREBY ORDERED that:

- 4 1. Plaintiff's April 5, 2019 Motion to Proceed *In Forma Pauperis* is DENIED AS MOOT.
- 5 2. Plaintiff's April 5, 2019 Motion to Correct and Properly File the Three Strike Provision is
6 DENIED.

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8 IT IS SO ORDERED.

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9 Dated: May 15, 2019

/s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE

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