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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GUILLERMO TRUJILLO CRUZ,
Plaintiff,
v.
B. VALDEZ,
Defendant.

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

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS

(Doc. No. 24)

Plaintiff Guillermo Trujillo Cruz is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action brought 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.

The undersigned previously declined to adopt the assigned magistrate judge’s August 13, 2018 findings and recommendations recommending that plaintiff’s application to proceed *in forma pauperis* be denied. (*See* Doc. No. 14.) The undersigned concluded that the dismissals in two of the four cases relied upon in the August 13, 2018 findings and recommendations as strike dismissals did not properly qualify as strikes under 28 U.S.C. § 1915(g). (*See id.* at 2–3.) The court therefore granted plaintiff’s motion to proceed *in forma pauperis*. (*Id.* at 3.) Thereafter, the magistrate judge screened plaintiff’s complaint and found cognizable claims for conspiracy, retaliation, and cruel and unusual punishment. (*See* Doc. No. 17.)

1 On February 4, 2019, after defendant pointed the court to additional actions and appeals
2 filed by plaintiff that were eventually dismissed for failure to state a claim or as frivolous, the
3 magistrate judge issued the pending findings and recommendations, recommending that
4 defendant’s motion for an order revoking plaintiff’s *in forma pauperis* status (Doc. No. 22) be
5 granted, finding that plaintiff is subject to the three-strikes bar under 28 U.S.C. § 1915(g) and has
6 not met the imminent danger exception to that provision. (Doc. No. 24 at 3–5.) The findings and
7 recommendations were served on plaintiff and contained notice that any objections thereto were
8 to be filed within twenty-one (21) days after service. (*Id.*) On March 1 and April 5, 2019,
9 plaintiff filed untimely objections. (Doc. Nos. 28, 30, 33.)

10 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Rule
11 304, the undersigned has conducted a *de novo* review of this case. Having carefully reviewed the
12 entire file, including plaintiff’s objections, the court finds the findings and recommendations to be
13 supported by the record and proper analysis.

14 Plaintiff’s objections fail to address the magistrate judge’s conclusion that he is subject to
15 the three strikes bar under 28 U.S.C. § 1915(g) since he has filed at least four prior actions that
16 have been dismissed for failure to state a claim or as frivolous.¹ The court finds no legal basis
17 upon which to question the magistrate judge’s findings and recommendations in that regard.
18 Furthermore, as the magistrate judge properly concluded, the allegations set forth in plaintiff’s
19 complaint are insufficient to trigger the “imminent danger of serious physical injury” exception to
20 dismissal under § 1915(g). To the extent plaintiff has attempted in his objections to raise new
21 issues and claims based upon events that occurred either before or after this action was initiated,
22 those claims are not relevant to the court’s finding that he has failed to establish he was in
23 imminent danger at the time the complaint in this action was filed.

24 //////

25 ¹ See *Trujillo v. Sherman*, No. 1:14-cv-01401 (E.D. Cal. Apr. 24, 2015) (dismissing plaintiff’s
26 complaint for failure to state a claim); *Trujillo v. Ruiz*, No. 1:14-cv-00975-SAB (E.D. Cal. Jan. 6,
27 2016) (dismissing plaintiff’s complaint for failure to state a claim); *Trujillo v. Gomez*, No. 1:15-
28 cv-00859-EPG (E.D. Cal. Feb. 3, 2017) (dismissing plaintiff’s complaint with prejudice for
failure to state a claim); *Trujillo v. Gonzalez-Moran*, No. 17-15200 (9th Cir. July 28, 2017
(dismissing plaintiff’s appeal as frivolous and denying his motions to proceed IFP).


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Accordingly,

1. The February 4, 2019 findings and recommendations (Doc. No. 24) are adopted in full;
2. Defendant's motion for an order revoking plaintiff's *in forma pauperis* status (Doc. No. 22) is granted;
3. The November 7, 2019 order granting plaintiff's application to proceed *in forma pauperis* (Doc. No. 16) is vacated;
4. Plaintiff's *in forma pauperis* status is revoked;
5. Within forty-five (45) days following service of this order, plaintiff shall pay the \$400.00 filing fee in full to proceed with this action. If plaintiff fails to pay the filing fee within the specified time, this action will be dismissed; and
6. This case is referred back to the assigned magistrate judge for further proceedings.

IT IS SO ORDERED.

Dated: September 3, 2019



UNITED STATES DISTRICT JUDGE