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4 **UNITED STATES DISTRICT COURT**

5 EASTERN DISTRICT OF CALIFORNIA

6  
7 GUILLERMO TRUJILLO CRUZ,

8 Plaintiff,

9 v.

10 PADILLA, et al.,

11 Defendants.

Case No. 1:18-cv-1015-AWI-BAM (PC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS REGARDING  
DENIAL OF PLAINTIFF’S MOTIONS TO  
PROCEED *IN FORMA PAUPERIS*

(ECF Nos. 2, 9, 14)

**TWENTY-ONE (21) DAY DEADLINE**

12  
13 Plaintiff Guillermo Trujillo Cruz (“Plaintiff”) is a state prisoner proceeding *pro se* in this  
14 civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action on July 27, 2018.  
15 (ECF No. 1.)

16 On August 7, 2018, the assigned Magistrate Judge issued Findings and Recommendations  
17 that Plaintiff’s application to proceed *in forma pauperis* be denied and that Plaintiff be required to  
18 pay the \$400.00 filing fee in full to proceed with this action. (ECF No. 6.) Those Findings and  
19 Recommendations were served on Plaintiff and contained notice that any objections thereto were  
20 to be filed within fourteen (14) days after service. (*Id.* at 3.) Plaintiff filed additional applications  
21 to proceed *in forma pauperis* on August 13, 2018, and September 4, 2018. (ECF Nos. 9, 14.)  
22 Following an extension of time, Plaintiff filed objections to the findings and recommendations on  
23 September 4, 2018, (ECF No. 12), and on September 10, 2018, (ECF No. 13).

24 In his September 4, 2018, objections, Plaintiff acknowledges that he is subject to 28  
25 U.S.C. § 1915(g), but argues that the allegations satisfy the imminent danger exception. Plaintiff  
26 argues that although the allegations in the complaint occurred at Kern Valley State Prison  
27 (“KVSP”) and he was confined at Pelican Bay State Prison (“PBSP”) when he filed this  
28 Complaint, he remains in imminent danger at PBSP due to ongoing verbal threats and orders of

1 physical harm to his health and safety from prison officials. In support, Plaintiff cites to several  
2 grievances, one of which was submitted on July 27, 2018, the same date the complaint in this  
3 action was filed. In that grievance, Plaintiff alleges that Correctional Officer B. Baker assaulted  
4 Plaintiff with the door of a transportation van. Plaintiff further alleges in the grievance that this is  
5 not the first incident where Officer Baker used excessive force on Plaintiff because Officer Baker  
6 doesn't like Plaintiff (discrimination) and in retaliation for Plaintiff reporting serious employee  
7 misconduct against Officer Baker and his coworkers. (ECF No. 12, p. 12.)

8 A three strikes plaintiff must plausibly allege that he was faced with imminent danger of  
9 serious physical injury at the time his complaint was filed. See Andrews v. Cervantes, 493 F.3d  
10 1047, 1053 (9th Cir. 2007). In evaluating whether the imminent danger exception applies, the  
11 "nexus" test outlined in Pettus v. Morgenthau, 554 F.3d 293, 297–98 (2d Cir. 2009), controls.  
12 See Pinson v. Federal Bureau of Prisons, 2015 U.S. Dist. LEXIS 163135, \*3 (E.D. Cal. Dec. 3,  
13 2015); Stine v. Federal Bureau of Prisons, 2015 U.S. Dist. LEXIS 120153, \*12 (E.D. Cal. Sept. 8,  
14 2015). This test allows three strikers to proceed *in forma pauperis* only if: (1) the alleged  
15 imminent danger was "fairly traceable" to unlawful conduct asserted in the complaint; and (2) a  
16 favorable judicial outcome would redress that danger. Id.

17 Plaintiff's complaint names eleven defendants: Padilla, L. Cervantes, Sullivan, Owens,  
18 Mendoza, Rocha, Nurse Gonzalez, Nurse Beach, Lopez, Camacho, and Martinez. (ECF No. 1,  
19 pp. 1–2.) Plaintiff does not name Officer Baker. Nor does Plaintiff name any of the defendants  
20 from the complaint in the July 27, 2018 grievance regarding Officer Baker. Plaintiff draws no  
21 connection between the incidents, in either his complaint or his objections, and upon review of  
22 the record, the Court finds no suggestion that the alleged imminent danger from Officer Baker  
23 was "fairly traceable" to the allegations against the named defendants. Moreover, as Officer  
24 Baker is not named as a defendant to this action, a favorable judicial outcome in this action could  
25 not redress the danger identified by Plaintiff. The Court lacks personal jurisdiction over Officer  
26 Baker or any other correctional officer at PBSP, which is located in the Northern District of  
27 California.

28 In Plaintiff's September 10, 2018, objections, he argues that prison officials were on

1 notice that he was under imminent danger of serious physical injury because of the circumstances  
2 surrounding his July 16, 2017 grievance, which allegedly led to the assault at issue in this action.  
3 Plaintiff argues that Defendants conspired to have Plaintiff assaulted in retaliation for filing  
4 grievances, satisfying the imminent danger standard. (ECF No. 13.)

5 These objections are similarly unpersuasive. The events discussed occurred in July 2017,  
6 one year before the filing of this action. Plaintiff again draws no connection between the July  
7 2017 incident and any imminent danger he may have faced at the time he filed his complaint.

8 In sum, Plaintiff has not shown that he was in imminent danger at the time he filed this  
9 complaint. See Pettus, 554 F.3d 293, 297–98; Andrews, 493 F.3d at 1053. Plaintiff’s objections  
10 are overruled.

11 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), this Court has conducted a  
12 *de novo* review of the case. Having carefully reviewed the entire file, including all of Plaintiff’s  
13 objections, the Court concludes that the Magistrate Judge’s Findings and Recommendations are  
14 supported by the record and proper analysis.

15 Accordingly, IT IS HEREBY ORDERED that:

- 16 1. The Findings and Recommendations, (ECF No. 6), issued on August 7, 2018, are  
17 adopted in full;
- 18 2. In accordance with 28 U.S.C. § 1915(g), Plaintiff’s applications to proceed *in*  
19 *forma pauperis* (ECF Nos. 2, 9, 14) are denied; and
- 20 3. Within **twenty-one (21) days** following the date of service of this order, Plaintiff  
21 shall pay the \$400.00 filing fee in full to proceed with this action. If Plaintiff fails  
22 to pay the filing fee within the specified time, this action will be dismissed without  
23 further notice.

24 IT IS SO ORDERED.

25 Dated: October 17, 2018

26   
27 SENIOR DISTRICT JUDGE  
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