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8 **UNITED STATES DISTRICT COURT**

9 EASTERN DISTRICT OF CALIFORNIA

10
11 GUILLERMO TRUJILLO CRUZ,

12 Plaintiff,

13 v.

14 PADILLA, et al.,

15 Defendants.
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Case No. 1:18-cv-01015-BAM (PC)

ORDER DIRECTING CLERK OF COURT TO
RANDOMLY ASSIGN DISTRICT JUDGE TO
ACTION

FINDINGS AND RECOMMENDATIONS
RECOMMENDING PLAINTIFF'S MOTION
FOR LEAVE TO PROCEED *IN FORMA*
PAUPERIS BE DENIED

(ECF No. 2)

FOURTEEN (14) DAY DEADLINE

19
20 Plaintiff Guillermo Trujillo Cruz ("Plaintiff") is a state prisoner proceeding *pro se* in this
21 civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action on July 27, 2018.
22 (ECF No. 1.) Currently before the Court is Plaintiff's motion for leave to proceed *in forma*
23 *pauperis*. (ECF No. 2.)

24 Plaintiff is subject to 28 U.S.C. § 1915(g), which provides that "[i]n no event shall a
25 prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more prior
26 occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of
27 the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state
28 a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious

1 physical injury.”¹

2 The Court has reviewed Plaintiff’s complaint and finds that his allegations do not satisfy
3 the imminent danger exception to section 1915(g).² Andrews v. Cervantes, 493 F.3d 1047,
4 1053–55 (9th Cir. 2007). Plaintiff alleges that his constitutional rights were violated by
5 defendants in incidents beginning with his arrival at Kern Valley State Prison on July 13, 2017.
6 (ECF No. 1.) At the time of the filing of the complaint, Plaintiff was housed at Pelican Bay State
7 Prison. Although Plaintiff alleges in a conclusory fashion in the complaint that he is in imminent
8 danger of serious physical injury, he includes no allegations that he is in such imminent danger at
9 his current institution. Therefore, Plaintiff has not alleged any imminent danger of serious
10 physical injury at the time of filing and has not satisfied the exception from the three strikes bar
11 under 28 U.S.C. § 1915(g). Plaintiff must pay the \$400.00 filing fee if he wishes to litigate this
12 action.

13 Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a
14 District Judge to this action.

15 Further, it is HEREBY RECOMMENDED that:

- 16 1. The motion to proceed in forma pauperis (ECF No. 2) be DENIED, pursuant to 28
17 U.S.C. § 1915(g); and
- 18 2. Plaintiff be ORDERED to pay the \$400 initial filing fee in full to proceed with this
19 action.

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21 These Findings and Recommendations will be submitted to the United States District
22 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
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24 ¹ The Court takes judicial notice of the following United States District Court cases: (1) Trujillo v. Sherman,
25 Case No. 1:14-cv-01401-BAM (E.D. Cal.) (dismissed on April 24, 2015 for failure to state a claim), aff’d, Case No.
26 15-15952 (9th Cir. May 6, 2016); (2) Trujillo v. Ruiz, Case No. 1:14-cv-00975-SAB (E.D. Cal.) (dismissed on
27 January 6, 2016 for failure to state a claim), aff’d, Case No. 16-15101 (9th Cir. December 15, 2017); (3) Cruz v.
Gomez, Case No. 1:15-cv-00859-EPG (E.D. Cal.) (dismissed on February 3, 2017 for failure to state a claim), aff’d,
Case No. 17-15358 (9th Cir. October 25, 2017).

28 The Court also takes judicial notice of the following United States Court of Appeals case: Trujillo v.
Gonzalez-Moran, Case No. 17-15200 (9th Cir.) (dismissed on August 21, 2017 as frivolous).

² The Court expresses no opinion on the merits of Plaintiff’s claims.

1 **fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may
2 file written objections with the court. The document should be captioned “Objections to
3 Magistrate Judge’s Findings and Recommendation.” Plaintiff is advised that the failure to file
4 objections within the specified time may result in the waiver of the “right to challenge the
5 magistrate’s factual findings” on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir.
6 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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8 IT IS SO ORDERED.

9 Dated: August 6, 2018

/s/ Barbara A. McAuliffe
10 UNITED STATES MAGISTRATE JUDGE
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