

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CION PERALTA,  
Plaintiff,  
v.  
J. SWETALLA, et al.,  
Defendants.

Case No. 1:18-cv-01023-DAD-EPG  
FINDINGS AND RECOMMENDATIONS  
RECOMMENDING THAT DEFENDANT’S  
MOTION FOR AN ORDER REVOKING  
PLAINTIFF’S IN FORMA PAUPERIS STATUS  
BE DENIED  
(ECF NO. 15)

On July 30, 2018, Plaintiff commenced this action by filing a Complaint against J. Swetalla, L. Machado, V. Powers, J. Sebok, and Xavier Cano (collectively, “Defendants”). (ECF No. 1.) Plaintiff brings claims under the First, Eighth, and Fourteenth Amendments of the U.S. Constitution, as well as the Prison Rape Elimination Act and various portions of state law. Plaintiff paid the filing fee at the time he filed suit.

The Court screened the Complaint and ultimately recommended that this action proceed on Plaintiff’s claims against Defendant Swetalla for sexual assault and excessive force in violation of the Eighth Amendment, retaliation in violation of the First Amendment, and negligence; and against Defendants Powers and Cano for denial of due process in violation of the

1 Fourteenth Amendment. The Court further recommended dismissal of all other claims and  
2 defendants, including Defendant Sobak. The district judge adopted the findings and  
3 recommendations on April 8, 2019. (ECF No. 10.)

4 On June 21, 2019, Defendants filed a “Motion to Revoke Plaintiff’s in *Forma Pauperis*  
5 *Status* and Require the Prepayment of Filing Fees.” (ECF No. 15.) Defendants contend that  
6 “Plaintiff is a ‘three-striker’ under 28 U.S.C. § 1915(g).” (*Id.*)

7 But, as even a cursory glance at the docket sheet reveals, Plaintiff is not proceeding *in*  
8 *forma pauperis* in this matter. Whether he has “three strikes” under 28 U.S.C. § 1915(g) is  
9 irrelevant because Plaintiff paid the filing fee.

10 Accordingly, for the reasons set forth herein, IT IS HEREBY RECOMMENDED, that  
11 Defendants’ “Motion to Revoke Plaintiff’s *in Forma Pauperis Status* and Require the Prepayment  
12 of Filing Fees” be denied.

13 These findings and recommendations are submitted to the district judge assigned to the  
14 case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within twenty-one (21) days after  
15 being served with these findings and recommendations, Defendant may file written objections  
16 with the Court. Defendants are advised that failure to file objections within the specified time  
17 may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.  
18 2014) (quoting *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

19 IT IS SO ORDERED.

20 Dated: August 23, 2019

21 /s/ Eric P. Gray  
22 UNITED STATES MAGISTRATE JUDGE  
23  
24  
25  
26  
27  
28