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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

ANTWOINE BEALER,	)	Case No.: 1:18-cv-01170-DAD-SAB (PC)
	)	
Plaintiff,	)	
	)	ORDER VACATING FINDINGS AND
v.	)	RECOMMENDATIONS ISSUED ON
	)	DECEMBER 12, 2018, AND GRANTING
KERN VALLEY STATE PRISON,	)	PLAINTIFF’S APPLICATION TO PROCEED IN
	)	FORMA PAUPERIS
Defendant.	)	
	)	[ECF Nos. 11, 12]
	)	
	)	
	)	

Plaintiff Antwoine Bealer is proceeding pro se in this civil rights action 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.

On December 12, 2018, the undersigned issued Findings and Recommendations recommending that Plaintiff’s application to proceed in forma pauperis be denied because Plaintiff had incurred three strikes under 28 U.S.C. § 1915(g) and failed to allege that he was in imminent danger of physical harm. (ECF No. 12.) In the Findings and Recommendations, the Court took judicial notice of the following cases: (1) Antwoine Bealer v. Wilson., No. 1:16-cv-00672-DAD-SAB (E.D. Cal. May 12, 2016) (dismissed for failure to state a claim); (2) Antwoine Bealer v. Kern Valley State Prison., No. 1:16-cv-00367-LJO-SKO (E.D. Cal. March 17, 2016) (dismissed for failure to state a claim); (3) Antwoine Bealer v. Kern Valley State Prison, No. 1:17-cv-01277-LJO-SAB (E.D. Cal.

1 March 7, 2017) (dismissed for failure to state a claim). The Findings and Recommendations were  
2 served on Plaintiff and contained notice that objections were to be filed within thirty days. (Id.)

3 Section 1915(g) provides that a prisoner cannot “bring” new action in forma pauperis if he  
4 “has, on 3 or more prior occasions ... brought an action ... that was dismissed on the ground that it is  
5 frivolous, malicious, or fails to state a claim....” 28 U.S.C. § 1915(g) (emphasis added). The Ninth  
6 Circuit has noted that “[strikes’ are prior cases or appeals, brought while the plaintiff was a prisoner,  
7 which were dismissed ‘on the ground that [they were] frivolous, malicious or fail [] to state a  
8 claim[.]’” Andrew v. King, 398 F.3d 1113, 1116 n.1 (9th Cir. 2005).

9 Plaintiff filed objections on January 31, 2019. In his objections, Plaintiff correctly submits that  
10 cases Antwoine Bealer v. Kern Valley State Prison, No. 1:16-cv-00367-LJO-SKO (E.D. Cal. March  
11 17, 2016) (dismissed for failure to state a claim on June 12, 2018) and Antwoine Bealer v. Kern  
12 Valley State Prison, No. 1:17-cv-01277-LJO-SAB (E.D. Cal. March 7, 2017) (dismissed for failure to  
13 state a claim on October 25, 2018), were not dismissed until after he filed the instant action on May  
14 14, 2018. The Court will vacate the December 12, 2018, Findings and Recommendations, and based  
15 on a showing required by section 1915(a)(1), Plaintiff’s motion to proceed in forma pauperis will be  
16 granted.

17 Based on the foregoing, it is HEREBY ORDERED that:

- 18 1. The Findings and Recommendations issued December 11, 2018, are VACATED; and
- 19 2. Plaintiff’s motion to proceed in forma pauperis is GRANTED, and the Clerk of Court  
20 shall issue the order directing payment of the filing fee by the California Department  
21 of Corrections and Rehabilitation.

22  
23 IT IS SO ORDERED.

24 Dated: February 19, 2019



25 UNITED STATES MAGISTRATE JUDGE

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