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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GUILLERMO TRUJILLO CRUZ,
Plaintiff,
v.
LT. J. OSTRANDER, S. SAVOIE,
Defendants.

Case No. 1:19-cv-0994-AWI-JLT (PC)

**ORDER ADOPTING IN PART AND
REJECTING IN PART FINDINGS AND
RECOMMENDATIONS TO DENY
PLAINTIFF’S APPLICATION TO
PROCEED IN FORMA PAUPERIS**

(Doc. 32)

TWENTY-ONE DAY DEADLINE

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 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 March 3, 2021, the magistrate judge issued findings and recommendations determining that Plaintiff had “three strikes,” prior cases or appeals dismissed because they were frivolous, malicious, or failed to state a claim, and that Plaintiff did not meet the “imminent danger” exception. (Doc. 34.) The magistrate judge recommended the denial of Plaintiff’s motion to proceed *in forma pauperis* (“IFP”) under 28 U.S.C. § 1915. *Id.* The parties filed cross objections to the findings and recommendations and responses to the party’s objections. (Docs. 35, 38, 39, 40.)

1 Defendants do not object to the conclusion reached by the magistrate judge but instead to
2 the cases relied upon in reaching that conclusion. In particular, two of the district court cases
3 were vacated by the Ninth Circuit and no longer qualified as strikes in the denial of IFP.¹ In
4 their place, defendants cite to the following three additional cases filed by the plaintiff that were
5 subsequently dismissed for failure to state a claim and thus serve as strikes pursuant to 28 U.S.C.
6 § 1915:

7 *Trujillo v. Gonzalez-Moran*, Case No. 17-15200 (9th Cir. Aug. 21, 2017): The Ninth
8 Circuit Court of Appeals determined that plaintiff's appeal from the dismissal of his case, 1:18-
9 cv-00571-DAG-EPG, was frivolous.

10 *Trujillo v. Gomez*, Case No. 1:15-cv-0859 EPG (E.D. Cal.): The case was dismissed on
11 February 3, 2017, for failure to state a claim. Plaintiff appealed the decision, which was affirmed
12 by the Ninth Circuit Court of Appeals on October 3, 2017.

13 *Trujillo v. Gomez*, Case No. 1:14-cv-1797 DAD DLB (E.D. Cal.): This case was
14 dismissed on August 5, 2016, for failure to exhaust administrative remedies. The dismissal was
15 affirmed by the Ninth Circuit Court of Appeals on April 19, 2017, who held that the failure of
16 Plaintiff to exhaust administrative remedies was clear from the face of the complaint. See
17 Trujillo v. Gomez, 688 F. App'x 452, 453 (9th Cir. 2017); see also El Shaddai v. Zamora, 833
18 F.3d 1036, 1043-44 (9th Cir. 2016).

19 Upon review of these cases, the court finds that these dismissals count as three strikes for
20 IFP purposes. Plaintiff argues that he was attacked on November 14, 2020, resulting in serious
21 physical injuries, which demonstrates an ongoing pattern of attacks. However, the court is
22 unpersuaded that attacks in August 2016 and November 2020 establish that Plaintiff was in
23 imminent danger of physical harm when he filed this action in July 2019.

24
25 ¹ *See Cruz v. Munoz*, No. 1:14-cv-01215-SAB (PC), 2016 WL 2898405 (E.D. Cal. May
26 17, 2016) (dismissing case for failure to state a claim), *vacated sub nom. Trujillo v. Munoz*, 713
27 F. App'x 712 (9th Cir. 2018) (citing *Williams v. King*, 875 F.3d 500, 503-04 (9th Cir. 2017)
28 (holding that all parties, including unserved defendants, must consent to magistrate jurisdiction);
Cruz v. Munoz, No. 1:14-cv-00976-DLB (PC), 2016 WL 2743206 (E.D. Cal. May 11, 2016)
(dismissing case for failure to state a claim), *vacated sub nom. Trujillo v. Munoz*, 725 F. App'x
526 (9th Cir. 2018) (citing *Williams*).

1 The court has reviewed the file and the parties' objections and finds the findings and
2 recommendations to be supported by the record and by the magistrate judge's analysis.

3 Accordingly, IT IS HEREBY ORDERED that:

- 4 1. The findings and recommendations filed on March 3, 2021, are ADOPTED IN PART and
5 REJECTED IN PART;
- 6 2. Plaintiff's application to proceed in forma pauperis (Doc. No. 32) is DENIED;
- 7 3. Plaintiff shall submit the \$402.00 filing fee within twenty-one days from the date of this
8 order; and
- 9 4. Plaintiff is warned that the failure to timely pay the filing fee will result in the dismissal of
10 this action without further notice.

11 IT IS SO ORDERED.

12 Dated: June 4, 2021



SENIOR DISTRICT JUDGE

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