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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

HECTOR CLARENCE ANDERSON,  
  
  Plaintiff,  
  
  v.  
  
KERNAN, et al.,  
  
  Defendants.

Case No. 1:19-cv-01048-LJO-SKO (PC)

**FINDINGS AND RECOMMENDATIONS TO DENY PLAINTIFF’S APPLICATIONS TO PROCEED *IN FORMA PAUPERIS***

(Docs. 2, 3, 10)

TWENTY-ONE (21) DAY DEADLINE

**I. INTRODUCTION**

Plaintiff, Hector Clarence Anderson, is a state prisoner proceeding *pro se* in this civil action under 42 U.S.C. § 1983. Plaintiff has filed two applications to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (Docs. 2, 10.)<sup>1</sup> Plaintiff’s applications should be **DENIED** since Plaintiff has three strikes under § 1915 and his allegations fail to show that he is in imminent danger of serious physical injury.

**II. THREE-STRIKES PROVISION OF 28 U.S.C. § 1915**

28 U.S.C. § 1915 governs proceedings *in forma pauperis*. “In no event shall a prisoner

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<sup>1</sup> Plaintiff also filed a motion to order prison officials to provide a certified copy of his inmate trust account statement. (Doc. 3.) Prison staff filed a copy of Plaintiff’s trust fund account statement on August 20, 2019. (Doc. 12.) Plaintiff’s motion is disregarded since it is rendered moot.

1 bring a civil action . . . under this section if the prisoner has, on 3 or more prior occasions, while  
2 incarcerated or detained in any facility, brought an action or appeal in a court of the United States  
3 that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon  
4 which relief may be granted, unless the prisoner is under imminent danger of serious physical  
5 injury.” 28 U.S.C. § 1915(g).

### 6 **III. DISCUSSION**

7 The Court may take judicial notice of court records. *United States v. Howard*, 381 F.3d  
8 873, 876 n.1 (9th Cir. 2004). Here, the Court takes judicial notice of Plaintiff’s prior lawsuits:  
9 (1) *Anderson v. Kernan, et al.*, CAED No. 1:18-cv-00021-LJO-BAM (PC), dismissed for failure  
10 to state a claim on August 10, 2018; (2) *Anderson v. Silva*, CAED No. 8:18-cv-01612-LJO-BAM  
11 (PC), dismissed for failure to state a claim on February 20, 2019; and (3) *Anderson v. Keefe*  
12 *Commissary Network, LLC, et al.*, CACD No. 2:19-cv-04892-VAP-FFM, dismissed for failure to  
13 state a claim on June 12, 2019. All of these actions were dismissed before Plaintiff filed the  
14 present action on July 31, 2019. Plaintiff is therefore subject to 28 U.S.C. § 1915(g), and is  
15 precluded from proceeding *in forma pauperis* in this action unless, at the time the Complaint was  
16 filed, he was under imminent danger of serious physical injury.

17 The Court has reviewed Plaintiff’s Complaint in this action and finds that he does not  
18 meet the imminent danger exception. *See Andrews v. Cervantes*, 493 F.3d 1047, 1053 (9th Cir.  
19 2007). Plaintiff’s allegations are all based on actions by Defendant Brown, whom Plaintiff  
20 alleges was fired in May of 2017, which was more than two years before he filed this action.  
21 (Doc. 1, p. 12.) Further, in Claims I and II, Plaintiff seeks to pursue claims based on violation of  
22 15 CCR § 3023(a) and in Claim III, Plaintiff seeks to pursue a claim based on violation of 15  
23 CCR § 3040(c)(4). The existence of regulations governing the conduct of prison employees does  
24 not necessarily entitle Plaintiff to sue civilly for their enforcement, or to sue for damages based on  
25 their violation. The Court has not found any authority to support a finding that there is an implied  
26 private right of action under Title 15 of the California Penal Code. Given that the statutory  
27 language does not support an inference that there is a private right of action, the Court finds that  
28 Plaintiff cannot state any cognizable claims upon which relief may be granted based on the

1 violation of Title 15 regulations.

2 Although the circumstances of which Plaintiff complains are not desirable, his allegations  
3 do not show that he was in imminent danger of serious physical injury when he filed this action  
4 on July 31, 2019. See *Williams v. Paramo*, 775 F.3d 1182, 1190 (9th Cir. 2015); *Andrews v.*  
5 *Cervantes*, 493 F.3d 1047, 1056-57 (9th Cir. 2007). Thus, Plaintiff is precluded from proceeding  
6 *in forma pauperis* in this action. *Andrews*, 493 F.3d at 1056-57. This case should be dismissed  
7 without prejudice to refile<sup>2</sup> upon prepayment of the filing fee.

8 **IV. CONCLUSION and RECOMMENDATION**

9 Based on the foregoing, it is HEREBY RECOMMENDED that Plaintiff’s applications to  
10 proceed *in forma pauperis*, filed on July 31, 2019, (Doc. 2), and August 14, 2019, (Doc. 10), be  
11 DENIED and this action be DISMISSED without prejudice to refile upon prepayment of the  
12 filing fee.

13 These Findings and Recommendations will be submitted to the United States District  
14 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
15 **twenty-one (21) days** of the date of service of these Findings and Recommendations, Plaintiff  
16 may file written objections with the Court. The document should be captioned “Objections to  
17 Magistrate Judge’s Findings and Recommendations.” Plaintiff’s failure to file objections within  
18 the specified time may result in the waiver of his rights on appeal. *Wilkerson v. Wheeler*, 772  
19 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

20  
21 IT IS SO ORDERED.

22 Dated: **September 5, 2019**

/s/ Sheila K. Olerto  
UNITED STATES MAGISTRATE JUDGE

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27 <sup>2</sup> Plaintiff is cautioned that, if he refiles in this or any other court based on any claimed violation of California law, he  
28 will be required to show compliance with the California Government Claims Act, set forth in California Government  
Code sections 810 et seq.