



1 for failing to state a claim upon which relief maybe granted.<sup>1</sup> Plaintiff has been informed in at  
2 least two other cases that he is subject to § 1915(g).<sup>2</sup>

3 Plaintiff has not satisfied the imminent danger exception to § 1915(g). *See Andrews v.*  
4 *Cervantes*, 493 F.3d 1047, 1053-55 (9th Cir. 2007). Plaintiff resides at Salinas Valley State  
5 Prison, but his allegations concern events said to have taken place at North Kern State Prison.  
6 ECF No. 1 at 1. Because plaintiff challenges past misconduct, it does not appear that plaintiff  
7 faces an imminent danger.

8 Accordingly, plaintiff's *in forma pauperis* application should be denied, and he should  
9 pay the filing fee in full, since he has accrued three or more strikes and was not under imminent  
10 danger of serious physical harm at the time this action was initiated. *See* 28 U.S.C. § 1915(g).

### 11 **Order**

12 The clerk of court is directed to assign this case to a district judge who will review these  
13 findings and recommendations.

### 14 **Findings and Recommendations**

15 Based on the foregoing, it is hereby recommended that:

- 16 1. plaintiff's *in forma pauperis* application, ECF No. 2, be DENIED;
- 17 2. plaintiff be required to pay the \$400 filing fee in full within twenty-one days of adoption  
18 of these findings and recommendations; and
- 19 3. if plaintiff fails to pay the \$400 filing fee in full within twenty-one days of adoption of  
20 these findings and recommendations, all pending motions be terminated, and this action  
21 be dismissed without prejudice.

22 The undersigned submits the findings and recommendations to a district judge under 28  
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24 <sup>1</sup> The cases include *Scott v. Hill*, No. C 92-4861 MHP (N.D. Cal. 1992); *Scott v. Clerks of SF*  
25 *County*, 1993 U.S. Dist. LEXIS 1480, No. C 92-4802 MHP (N.D. Cal. 1993); *Scott v. Santa Rita*  
26 *Medical Service*, No. C 91-3947 MHP (N.D. Cal. 1991); and *Scott v. Bell*, No. C 91-3925 MHP  
(N.D. Cal. 1991).

27 <sup>2</sup> *See Scott v. Smith*, 1999 U.S. Dist. LEXIS 1209, No. C 99-394 MHP (N.D. Cal. 1999)  
(recognizing that plaintiff had been found to be a three-striker under the PLRA); *Scott v. Smith*,  
28 1999 U.S. Dist. LEXIS 49, No. C 98-4920 MHP (N.D. Cal. 1999) (finding plaintiff to be a three-  
striker under the PLRA).

1 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District  
2 Court, Eastern District of California. Within fourteen days of the service of the findings and  
3 recommendations, plaintiff may file written objections to the findings and recommendations with  
4 the court and serve a copy on all parties. That document should be captioned “Objections to  
5 Magistrate Judge’s Findings and Recommendations.” The district judge will review the findings  
6 and recommendations under 28 U.S.C. § 636(b)(1)(C).

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IT IS SO ORDERED.

Dated: August 11, 2019

  
UNITED STATES MAGISTRATE JUDGE

No. 204