

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GUILLERMO TRUJILLO CRUZ,) Case No. 1:19-cv-01270-DAD-SAB (PC)
Plaintiff,)
v.)
L. GONZALEZ,) FINDINGS AND RECOMMENDATION
Defendant.) RECOMMENDING PLAINTIFF'S APPLICATION
) TO PROCEED IN FORMA PAUPERIS BE
) DENIED
) [ECF No. 7]
)

Plaintiff Guillermo Trujillo Cruz is appearing pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the instant action on September 9, 2019. On October 9, 2019, Plaintiff filed an application to proceed in forma pauperis. (ECF No. 7.)

DISCUSSION

The Prison Litigation Reform Act of 1995 (PLRA) was enacted “to curb frivolous prisoner complaints and appeals.” Silva v. Di Vittorio, 658 F.3d 1090, 1099-1100 (9th Cir. 2011). Pursuant to the PLRA, the in forma pauperis statue was amended to include section 1915(g), a non-merits related screening device which precludes prisoners with three or more “strikes” from proceeding in forma pauperis unless they are under imminent danger of serious physical injury. 28 U.S.C. § 1915(g); Andrews v. Cervantes, 493 F.3d 1047, 1050 (9th Cir. 2007). The statute provides that “[i]n no event shall a prisoner bring a civil action ... under this section if the prisoner has, on 3 or more prior occasions,

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

5 The Court finds that Plaintiff has incurred three or more strikes under section 1915(g) prior to
6 filing this lawsuit. The Court takes judicial notice of the following cases: (1) Trujillo v. Sherman, Case
7 No. 1:14-cv-01401-BAM (E.D. Cal.) (dismissed on April 24, 2015 for failure to state a claim); aff’d
8 Case No. 15-15952 (9th Cir. May 6, 2016); (2) Trujillo v. Ruiz, No. 1:14-cv-00975-SAB (E.D. Cal.)
9 (dismissed on January 6, 2016 for failure to state a claim), aff’d, Case No. 16-15101 (9th Cir. December
10 15, 2017); (3) Cruz v. Gomez, Case No. 1:15-cv-00859-EPG (E.D. Cal.) (dismissed on February 3, 2017
11 for failure to state a claim), aff’d, Case No. 17-15358 (9th Cir. October 25, 2017); and (4) Trujillo v.
12 Gonzalez-Moran, Case No. 17-15200 (9th Cir.) (dismissed on August 21, 2017 as frivolous).

13 The issue now becomes whether Plaintiff has met the imminent danger exception, which requires
14 Plaintiff to show that he is under (1) imminent danger of (2) serious physical injury and which turns on
15 the conditions he faced at the time he filed his complaint on September 9, 2019. Andrews, 493 F.3d at
16 1053-1056. Conditions which posed imminent danger to Plaintiff at some earlier time are immaterial,
17 as are any subsequent conditions. Id. at 1053. While the injury is merely procedural rather than a merits-
18 based review of the claims, the allegations of imminent danger must still be plausible. Id. at 1055.

19 The Court further finds that Plaintiff’s complaint allegations do not meet the imminent danger
20 exception. Andrews, 493 F.3d at 1053. Plaintiff has not shown that he is at risk of any serious physical
21 injury. Rather, Plaintiff contends that on June 27, 2019, while housed at North Kern State Prison he
22 was subjected to excessive force by officer L. Gonzalez who ordered the assault in retaliation for
23 denying her sexual advances and filing grievances. Plaintiff presents absolutely no allegations that he
24 faced a present threat of serious physical injury at the time he filed the complaint, as his allegations
25 relate solely to the alleged excessive force that took place over two months prior to filing the complaint.
26 See, e.g., Andrews, 493 F.3d at 1055-56 (plaintiff must allege to face a real, proximate and/or ongoing
27 danger at the time of filing). Accordingly, Plaintiff is ineligible to proceed in forma pauperis in this
28 action, and he should be required to pre-pay the \$400 filing fee to proceed in this case.

II.

RECOMMENDATIONS

Accordingly, it is HEREBY RECOMMENDED that:

1. Plaintiff's application to proceed in forma pauperis (ECF No. 7) be denied; and
 2. Plaintiff be required to pay the \$400.00 filing fee within thirty (30) days of service of the
s order adopting these Findings and Recommendations.

These Findings and Recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may file written objections with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: October 11, 2019

Emily A. Baze
UNITED STATES MAGISTRATE JUDGE