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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

EDWARD N. THOMAS,  
Plaintiff,  
v.  
C. PFEIFFER, *et al.*,  
Defendants.

Case No. 1:19-cv-01501-JDP  
FINDINGS AND RECOMMENDATIONS TO  
DENY MOTION TO PROCEED IN FORMA  
PAUPERIS AND REQUIRE PAYMENT OF  
FILING FEE IN FULL WITHIN TWENTY-  
ONE DAYS  
ECF No. 2  
OBJECTIONS DUE WITHIN 14 DAYS  
ORDER TO ASSIGN CASE TO DISTRICT  
JUDGE

Plaintiff Edward N. Thomas is a state prisoner proceeding without counsel in this civil rights action brought under 42 U.S.C. § 1983. On October 28, 2019, plaintiff filed an application to proceed *in forma pauperis* under 28 U.S.C. § 1915. ECF No. 2.

The Prison Litigation Reform Act provides that “[i]n no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). Plaintiff has had three or more actions dismissed as frivolous, as malicious, or

1 for failing to state a claim upon which relief maybe granted.<sup>1</sup> Plaintiff has been informed in at  
2 least one other case 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 seeks to challenge his transfer from  
5 Salinas Valley State Prison to Kern Valley State Prison, alleging that the transfer was illegal. *See*  
6 ECF No. 1 at 3-4, 7. Plaintiff then proceeds to list many unpleasant experiences that he has had  
7 at Kern Valley, from not being able to wear his personal Nike Basketball shoes, *id.* at 8, to an  
8 account of one time that he was not able to get copies of legal documents made because he did  
9 not have the documents with him, *id.* at 12-14. Because plaintiff challenges past misconduct, it  
10 does not appear that plaintiff faces an imminent danger.

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

#### 14 **Order**

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

#### 17 **Findings and Recommendations**

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

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

25 These findings and recommendations are submitted to a district judge under 28 U.S.C.

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26 <sup>1</sup> The cases include *Thomas v. Terhune*, No. 1:03-cv-5467 (E.D. Cal. 2006); *Thomas v. Terhune*,  
27 No. 06-15901 (9th Cir. 2006); and *Thomas v. Lamarque*, No. 07-16437 (9th Cir. 2009).

28 <sup>2</sup> *See Thomas v. Felker*, No. 2:09-cv-2486, 2012 U.S. Dist. LEXIS 80880 (E.D. Cal. June 8,  
2012) (finding plaintiff to be a three-striker under the PLRA).

1 § 636(b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court,  
2 Eastern District of California. Within fourteen days of the service of the findings and  
3 recommendations, the parties may file written objections to the findings and recommendations  
4 with 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: April 4, 2020

  
UNITED STATES MAGISTRATE JUDGE

No. 204.