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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARVIN HARRIS,

 Plaintiff,

 v.

THERESA C., et al.,

 Defendants.

Case No. 1:21-cv-01684-SKO (PC)

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

(Doc. 3)

14-DAY DEADLINE

Clerk of the Court to Assign a District Judge

Plaintiff Marvin Harris, a state prisoner, has filed a motion to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (Doc. 3.) Because Plaintiff has accrued more than three “strikes” under section 1915 and fails to show that he is under imminent danger of serious physical injury, the Court recommends that his motion be denied.

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

28 U.S.C. § 1915 governs *in forma pauperis* proceedings. 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, 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).

1 **II. DISCUSSION**

2 The Court takes judicial notice of seven of Plaintiff’s prior lawsuits that were dismissed as
3 frivolous, as malicious, or for failure to state a claim¹: (1) *Ripple and Harris v. Gomez, et al.*,
4 Case No. 1:96-cv-05284-REC-SMS (E.D. Cal.) (dismissed on April 29, 1996, as frivolous); (2)
5 *Harris and Ripple v. Hickey, et al.*, Case No. 1:97-cv-05186-REC-HGB (E.D. Cal.) (dismissed on
6 July 28, 1997, as frivolous); (3) *Harris v. Coyle*, Case No. 1:97-cv-05508-AWI-DLB (E.D. Cal.)
7 (dismissed on January 21, 1999, as frivolous and malicious and for failure to state a claim); (4)
8 *Harris v. Glass*, Case No. 2:00-cv-00937-DFL-DAD (E.D. Cal.) (dismissed on August 17, 2000,
9 for failure to state a claim); (5) *Harris v. Edmonds*, Case No. 1:00-cv-05857-OWW-LJO (E.D.
10 Cal.) (dismissed on November 27, 2000, for failure to state a claim); (6) *Harris v. Pliler, et al.*,
11 Case No. 2:01-cv-01125-WBS-DAD (E.D. Cal.) (dismissed on March 15, 2002, for failure to
12 state a claim); and (7) *Harris v. Edmonds*, Case No. 1:00-cv-07160-REC-SMS (E.D. Cal.)
13 (dismissed on May 24, 2002, for failure to state a claim). Each of these actions was dismissed
14 prior to the commencement of the current action on November 23, 2021. Plaintiff is therefore
15 subject to the section 1915(g) bar, and he is precluded from proceeding *in forma pauperis* in this
16 action unless, at the time he filed his complaint, he was under imminent danger of serious
17 physical injury. *See Andrews v. Cervantes*, 493 F.3d 1047, 1052-53 (9th Cir. 2007).

18 The Court has reviewed the complaint in this action and finds that Plaintiff’s allegations
19 do not meet the imminent danger exception. Plaintiff makes a number of unrelated allegations
20 regarding, for example, his removal from a canteen, the fact that he has not received a stimulus
21 check, his vision impairment, and his limited access to the law library (*See* Doc. 1 at 4, 7-8, 16-
22 17.) Plaintiff also appears to raise claims on behalf of other inmates. (*See id.* at 9, 16.) Plaintiff
23 does not allege nor suggest that he is under imminent danger of serious physical injury. Plaintiff
24 is therefore precluded from proceeding *in forma pauperis* in this action.

25 **III. ORDER AND RECOMMENDATIONS**

26 For the reasons set forth above, the Court DIRECTS the Clerk of the Court to assign a
27 district judge to this action and RECOMMENDS that:

28 _____
¹ The Court may take judicial notice of court records. *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980).

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1. Plaintiff’s motion to proceed *in forma pauperis* (Doc. 3) be DENIED; and
2. This action be DISMISSED without prejudice to refile upon prepayment of the filing fee.

These Findings and Recommendations will be submitted to the United States District Judge assigned to this case, pursuant to 28 U.S.C. § 636(b)(1). Within **14 days** of the date of service of 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’s failure to file objections within the specified time may result in waiver of his rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: December 14, 2021

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE