

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**

9 EASTERN DISTRICT OF CALIFORNIA

10
11 MARVIN HARRIS,

12 Plaintiff,

13 v.

14 C., *et al.*,

15 Defendants.

Case No. 1:21-cv-01685-BAM (PC)

ORDER DIRECTING CLERK OF COURT TO
RANDOMLY ASSIGN DISTRICT JUDGE TO
ACTION

FINDINGS AND RECOMMENDATIONS
RECOMMENDING PLAINTIFF'S MOTION
FOR LEAVE TO PROCEED *IN FORMA*
PAUPERIS BE DENIED

(ECF No. 2)

FOURTEEN (14) DAY DEADLINE

16
17
18
19
20 Plaintiff Marvin Harris ("Plaintiff") is a state prisoner proceeding *pro se* in this civil rights
21 action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action on November 23, 2021,
22 together with a motion to proceed *in forma pauperis*. (ECF Nos. 1, 2.) Plaintiff filed a certified
23 copy of his prison trust account statement on December 2, 2021. (ECF No. 6.)

24 Plaintiff is subject to 28 U.S.C. § 1915(g), which provides that "[i]n no event shall a
25 prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more prior
26 occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of
27 the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state
28 a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious

1 physical injury.”¹

2 The Court has reviewed Plaintiff’s complaint and finds that his allegations do not satisfy
3 the imminent danger exception to section 1915(g).² *Andrews v. Cervantes*, 493 F.3d 1047,
4 1053–55 (9th Cir. 2007). Although the complaint is difficult to understand, Plaintiff appears to
5 allege that the law librarian at his institution denied him access to courts by refusing to make
6 copies of a petition for a writ or a civil rights complaint, and this also constituted discrimination
7 under the Americans with Disabilities Act.

8 Accordingly, Plaintiff has failed to allege that he was in any imminent danger of serious
9 physical injury at the time the complaint was filed. Plaintiff has not satisfied the exception from
10 the three strikes bar under 28 U.S.C. § 1915(g), and Plaintiff must pay the \$402.00 filing fee if he
11 wishes to litigate this action.

12 Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a
13 District Judge to this action.

14 Further, it is HEREBY RECOMMENDED that:

- 15 1. The motion to proceed *in forma pauperis*, (ECF No. 2), be DENIED, pursuant to 28
16 U.S.C. § 1915(g); and
- 17 2. Plaintiff be ORDERED to pay the \$402.00 initial filing fee in full to proceed with this
18 action.

19
20 ¹ The Court takes judicial notice of the following United States District Court cases: (1) *Ripple v. Gomez*, Case No.
21 1:96-cv-05284-REC-SMS (E.D. Cal.) (dismissed on April 29, 1996 as frivolous); (2) *Harris v. Rehnquist*, Case No.
22 1:96-cv-01304-UNA (D.D.C.) (dismissed on June 11, 1996 for failure to state a claim); (3) *Harris v. Higgins*, Case
23 No. 1:96-cv-01420-UNA (D.D.C.) (dismissed on June 19, 1996 for failure to state a claim); (4) *Harris v. Hickey*,
24 Case No. 1:96-cv-05770-GEB-HGB (E.D. Cal.) (dismissed on April 7, 1997 as frivolous); (5) *Harris v. Hickey*, Case
25 No. 1:97-cv-05186-REC-HBG (E.D. Cal.) (dismissed on July 28, 1997 as frivolous); (6) *Harris v. Coyle*, Case No.
26 1:97-cv-05508-AWI-DLB (E.D. Cal.) (dismissed on January 21, 1999 as frivolous, as malicious, and for failure to
27 state a claim); (7) *Harris v. Glass*, Case No. 2:00-cv-00937-DFL-DAD (E.D. Cal.) (dismissed on August 17, 2000
28 for failure to state a claim); (8) *Harris v. Edmonds*, Case No. 1:00-cv-05857-OWW-LJO (E.D. Cal.) (dismissed on
November 27, 2000 for failure to state a claim); (9) *Harris v. Pliler*, Case No. 2:01-cv-01125-WBS-DAD (E.D. Cal.)
(dismissed on March 15, 2002 for failure to state a claim); (10) *Harris v. Edmonds*, Case No. 1:00-cv-07160-REC-
SMS (E.D. Cal.) (dismissed on May 24, 2002 for failure to state a claim); (11) *Harris v. Virga*, Case No. 2:13-cv-
00932-GEB-AC (E.D. Cal.) (dismissed on July 8, 2013 as frivolous); (12) *Harris v. Harris*, Case No. 2:14-cv-00977-
KJM-KJN (E.D. Cal.) (dismissed on July 31, 2014 as frivolous and for failure to state a claim); and (13) *Harris v.*
Campell, Case No. 1:18-cv-01659-DAD-JLT (E.D. Cal.) (dismissed on April 30, 2020 for failure to state a claim and
failure to obey a court order).

² The Court expresses no opinion on the merits of Plaintiff’s claims.

1 These Findings and Recommendations will be submitted to the United States District
2 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
3 **fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may
4 file written objections with the court. The document should be captioned “Objections to
5 Magistrate Judge’s Findings and Recommendation.” Plaintiff is advised that the failure to file
6 objections within the specified time may result in the waiver of the “right to challenge the
7 magistrate’s factual findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014)
8 (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

9
10 IT IS SO ORDERED.

11 Dated: **December 6, 2021**

/s/ *Barbara A. McAuliffe*
UNITED STATES MAGISTRATE JUDGE