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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID W. WILSON,
Plaintiff,
v.
CHRISTINA STRONACH,
Defendant.

No. 1:24-cv-00548-SAB (PC)
ORDER DIRECTING CLERK OF COURT TO
RANDOMLY ASSIGN A DISTRICT JUDGE
TO THIS ACTION
FINDINGS AND RECOMMENDATION
RECOMMENDING PLAINTIFF’S MOTION
TO PROCEED IN FORMA PAUPERIS BE
DENIED
(ECF No. 2)

Plaintiff is proceeding pro se in this action filed pursuant to 42 U.S.C. § 1983.

Plaintiff filed the instant action on May 9, 2024, along with a motion to proceed in forma pauperis. (ECF Nos. 1, 2.)

I.
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 statute 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

1 physical injury. 28 U.S.C. § 1915(g); Andrews v. Cervantes, 493 F.3d 1047, 1050 (9th Cir.
2 2007). The statute provides that “[i]n no event shall a prisoner bring a civil action ... under this
3 section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any
4 facility, brought an action or appeal in a court of the United States that was dismissed on the
5 grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted,
6 unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

7 A review of the actions filed by Plaintiff reveals that he is subject to 28 U.S.C. § 1915(g)
8 and is precluded from proceeding in forma pauperis unless Plaintiff, was, at the time the
9 complaint was filed, under imminent danger of serious physical injury. The Court takes judicial
10 notice¹ of the following United States District Court cases: (1) Wilson v. Tilton, No. 2:06-cv-
11 01031-LKK-PAN (E.D. Cal.) (dismissed for failure to state a cognizable claim on September 12,
12 2006); (2) Wilson v. Schwartz, No. 2:05-cv-01649-GEB-CMK (E.D. Cal.) (dismissed for failure
13 to state a cognizable claim on October 31, 2006); (3) Wilson v. Dovey, No. 2:06-cv-01032-FCD-
14 EFB (E.D. Cal.) (dismissed for failure to state a cognizable claim on March 8, 2007); (4) Wilson
15 v. Veal, No. 2:06-cv-00067-FCD-KJM (E.D. Cal.) (dismissed for failure to state a cognizable
16 claim for relief on June 4, 2007).²

17 The issue now becomes whether Plaintiff has met the imminent danger exception, which
18 requires Plaintiff to show that he is under (1) imminent danger of (2) serious physical injury and
19 which turns on the conditions he faced at the time he filed his complaint on May 8, 2024.³
20 Andrews, 493 F.3d at 1053-1056. Conditions which posed imminent danger to Plaintiff at some
21 earlier time are immaterial, as are any subsequent conditions. Id. at 1053. While the injury is
22 merely procedural rather than a merits-based review of the claims, the allegations of imminent

23 _____
24 ¹ Judicial notice may be taken of court records. Valerio v. Boise Cascade Corp., 80 F.R.D. 626, 634 n.1 (N.D. Cal. 1978).

25 ² See also Wilson v. California State Prison Corcoran, No. 1:18-cv-00424-DAD-JDP (PC) (E.D. Cal.) (finding
26 plaintiff suffered three or more strikes and denying in forma pauperis).

27 ³ The “mailbox rule” announced by the Supreme Court in Houston v. Lack, 487 U.S. 266 (1988), applies to section
28 1983 cases. See Douglas v. Noelle, 567 F.3d 1103, 1107 (9th Cir. 2009). Pursuant to the mailbox rule, pro se
prisoner legal filings are deemed filed on the date the prisoner delivers the document to prison officials for
forwarding to the court clerk. Id. The proof of service attached to the Complaint is dated May 8, 2024, which the
Court adopts as this action's constructive filing date.

1 danger must still be plausible. Id. at 1055.

2 Here, the Court finds that Plaintiff's allegations fail to demonstrate imminent danger of
3 serious physical injury at the time of filing. In the instant complaint, although the allegations are
4 somewhat difficult to decipher, Plaintiff contends that registered nurse Stronach has previously
5 applied the blood pressure cuff on too tightly, he has been denied a pair of glaucoma glasses,
6 removal from his GED class, and eye drops. These allegations are insufficient to demonstrate
7 that the dispute about the proper treatment placed Plaintiff in imminent danger of serious physical
8 injury. See Andrews, 493 F.3d at 1053. Plaintiff cannot demonstrate imminent danger by
9 objecting to treatment by nurse Stronach (or any other medical professional) because she
10 previously placed the blood pressure cuffs on too tightly. Plaintiff's conclusory allegation as to
11 nurse Stronach is insufficient to support an exception to the three strikes rule. See id. at 1057 n.
12 11; see also Martin v. Shelton, 319 F.3d 1048, 1050 (8th Cir. 2003) (conclusory assertions are
13 insufficient to satisfy exception to § 1915(g)); White v. Colorado, 157 F.3d 1226, 1231-32 (10th
14 Cir. 1998) (same). Indeed, Plaintiff's allegations demonstrate that he was offered evaluation by
15 registered nurses to which he objected which cannot support a finding of imminent danger.
16 Accordingly, Plaintiff has not established he "faced 'imminent danger of serious physical injury'
17 at the time of filing." Andrews, 493 F.3d at 1055 (quoting 28 U.S.C. § 1915(g)). Therefore,
18 Plaintiff does not establish an exception to the three-strikes rule of § 1915(g), and he is precluded
19 from proceeding in forma pauperis in this action.

20 II.

21 CONCLUSION AND RECOMMENDATIONS

22 Accordingly, the Clerk of the Court is HEREBY DIRECTED to randomly assign a
23 District Judge to this action.

24 Further, it is HEREBY RECOMMENDED that, pursuant to 28 U.S.C. § 1915(g), Plaintiff
25 not be allowed to proceed in forma pauperis and instead be directed to pay the \$405.00 filing fee
26 in full if he wishes to proceed with this action.

27 These Findings and Recommendations will be submitted to the United States District
28 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen**

1 (14) days after being served with these Findings and Recommendations, Plaintiff may file written
2 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s
3 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the
4 specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834,
5 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

6
7 IT IS SO ORDERED.

8 Dated: May 10, 2024


UNITED STATES MAGISTRATE JUDGE

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