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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BRANDON FAVOR,
Plaintiff,
v.
S. VILLEGAS, et al.,
Defendants.

Case No.: 1:24-cv-00610-SKO
FINDINGS AND RECOMMENDATIONS TO DENY PLAINTIFF’S APPLICATION TO PROCEED *IN FORMA PAUPERIS*
(Doc. 2)
14-DAY OBJECTION PERIOD
Clerk of the Court to Assign District Judge

Plaintiff Brandon Favor is proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. On May 22, 2024, Plaintiff filed an Application to Proceed *In Forma Pauperis* (“IFP”). (Doc. 2.)

Plaintiff’s application to proceed IFP should be denied for two reasons: (1) Plaintiff sets forth substantial income and assets in his IFP application; and (2) he is not entitled to proceed without prepayment of fees because he has accrued three or more “strikes” under section 28 U.S.C. § 1915 and does not qualify for the imminent danger exception.

I. PLAINTIFF’S INCOME AND ASSETS ARE SIGNIFICANT

To proceed in court without prepayment of the filing fee, a plaintiff must submit an affidavit demonstrating that he “is unable to pay such fees or give security therefor.” 28 U.S.C. § 1915(a)(1). The right to proceed without prepayment of fees in a civil case is a privilege and not a

1 right. *Rowland v. California Men’s Colony, Unit II Men’s Advisory Council*, 506 U.S. 194, 198
2 n.2 (1993); *Franklin v. Murphy*, 745 F.2d 1221, 1231 (9th Cir. 1984) (“permission to proceed *in*
3 *forma pauperis* is itself a matter of privilege and not right; denial of *in forma pauperis* status does
4 not violate the applicant’s right to due process”). A plaintiff need not be absolutely destitute to
5 proceed IFP and the application is sufficient if it states that due to his poverty he is unable to pay
6 the costs and still be able to provide himself and his dependents with the necessities of life.
7 *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948). Whether to grant or deny an
8 application to proceed without prepayment of fees is an exercise of the district court’s discretion.
9 *Escobedo v. Applebees*, 787 F.3d 1226, 1236 (9th Cir. 2015).

10 In his IFP application, Plaintiff states he has received money from the following sources
11 within the last 12 months: business, profession, or other self-employment; rent payments, interest,
12 or dividends; pensions, annuities, or life insurance payments; disability or workers compensation
13 payments, gifts or inheritances; and other sources. (*See* Doc. 2 at 1 [Question 3].) Asked to
14 describe “each source of money” and to “state the amount received,” Plaintiff sets forth various
15 sums totaling more than \$5,000,000. (*Id.*) Plaintiff also states he has “\$500,000” in cash. (*Id.* at 3
16 [Question 4].) Plaintiff also claims he owns property valued between “\$500,000 and \$1,000,000”
17 and has assets valued at “\$200,000,000.” (*Id.* [Questions 5 & 6].)

18 In sum, Plaintiff’s IFP application should be denied based on the substantial amount of
19 income and assets set forth in his application. *See* 28 U.S.C. § 1915(a)(1); *Escobedo*, 787 F.3d at
20 1236.

21 **II. THREE-STRIKES PROVISION OF 28 U.S.C. § 1915**

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

1 In determining whether a case counts as a “strike,” “the reviewing court looks to the
2 dismissing court’s action and the reasons underlying it.... This means that the procedural
3 mechanism or Rule by which the dismissal is accomplished, while informative, is not
4 dispositive.” *Knapp v. Hogan*, 738 F.3d 1106, 1109 (9th Cir. 2013) (citation omitted).

5 ***Analysis***

6 The Court takes judicial notice¹ of several prior lawsuits filed by Plaintiff² in this Court
7 and another district court in this Circuit involving dismissals on the grounds that they are
8 frivolous, malicious, or fails to state a claim upon which relief may be granted, while Plaintiff
9 was incarcerated:

10 (1) *Favor-El v. Rome*, Case No. 1:15-cv-01865-LJO-EPG (E.D. Cal.) (dismissed on
11 11/22/2016 for failure to state a claim);

12 (2) *Favor v. State of California*, Case No. 2:16-cv-02870-JGB-JEM (C.D. Cal.) (dismissed on
13 5/2/2016 as frivolous, malicious, and for failure to state a claim);

14 (3) *Favor-El v. United States of America*, Case No. 2:15-cv-01448-GEB-AC (E.D. Cal.)
15 (dismissed on 10/22/2015 as frivolous); and

16 (4) *Favor-El v. Rihanna*, Case No. 2:15-cv-09502-JGB-JEM (C.D. Cal.) (dismissed on
17 12/16/2015 as frivolous, malicious, and for failure to state a claim)

18 A dismissal on the grounds of frivolousness or maliciousness, or for a failure to state a claim
19 upon which relief may be granted, is a strike for purposes of 28 U.S.C. § 1915(g). *Moore v.*
20 *Maricopa Cty. Sheriff’s Office*, 657 F.3d 890, 893 (9th Cir. 2011).³

21 Because Plaintiff has incurred at least three prior “strikes” and each was dismissed prior to
22 the commencement of the current action on May 22, 2024, Plaintiff is subject to the section

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

25 ² Plaintiff has filed actions under the surnames “Favor” and “Favor-El.”

26 ³ The undersigned has previously found, in *Favor v. Black Lives Matter*, Case No. 1:20-cv-01165-DAD-
27 SKO, 2020 WL 8614094, at *2, n.1 (E.D. Cal. Sept. 15, 2020) that “[i]t is also noteworthy that Plaintiff
28 has been deemed a vexatious litigant, has filed over fifty actions in this district alone, and has filed
numerous other actions in the other district courts in this state”

1 1915(g) bar. He is also precluded from proceeding IFP in this action unless at the time he filed his
2 complaint, he was under imminent danger of serious physical injury. *See Andrews v. Cervantes*,
3 493 F.3d 1047, 1052-53 (9th Cir. 2007). The Court has reviewed the complaint in this action and
4 finds that Plaintiff's allegations do not meet the imminent danger exception. Although very
5 difficult to read, this Court cannot discern any factual allegation asserting Plaintiff is in imminent
6 danger of serious physical injury. (*See Doc. 1 at 3-5.*)

7 In sum, Plaintiff is precluded from proceeding IFP in this action because when he filed his
8 complaint, he was not under imminent danger of serious physical injury. *Andrews*, 493 F.3d at
9 1052-53.

10 III. CONCLUSION AND RECOMMENDATIONS

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

- 13 1. Plaintiff's application to proceed IFP (Doc. 2) be **DENIED**; and,
- 14 2. Plaintiff be ordered to pay the \$405.00 filing fee in full within 30 days.

15 These Findings and Recommendations will be submitted to the district judge assigned to
16 this case, pursuant to 28 U.S.C. § 636(b)(1). **Within 14 days** of the date of service of these
17 Findings and Recommendations, a party may file written objections with the Court. The
18 document should be captioned, "Objections to Magistrate Judge's Findings and
19 Recommendations." Failure to file objections within the specified time may result in waiver of
20 rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v.*
21 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

22 IT IS SO ORDERED.

23 Dated: June 4, 2024

24 */s/ Sheila K. Oberto*
25 UNITED STATES MAGISTRATE JUDGE