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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MARCUS BRENT FIELDS,  
Plaintiff,  
v.  
SAMAN SAMADANI, et al.,  
Defendants.

Case No.: 1:24-cv-01019-KES-SKO  
ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS TO DENY IN FORMA  
PAUPERIS STATUS AND ORDERING  
PLAINTIFF TO PAY FILING FEE  
Doc. 9

Plaintiff Marcus Brent Fields is proceeding pro se in this civil rights action pursuant to 42 U.S.C. section 1983. This matter was referred to a United States magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On August 16, 2024, plaintiff initiated this action in the United States District Court for the Central District of California. Doc. 1. On August 19, 2024, the clerk of the court for the Central District informed plaintiff that he needed to pay the filing fee in full or submit a motion to proceed in forma pauperis to proceed with his case. Doc. 3. On August 29, 2024, following transfer to this Court from the Central District, the assigned magistrate judge issued findings and recommendations finding plaintiff ineligible to proceed in forma pauperis and recommending plaintiff be required to pay the filing fee in full to proceed. Doc. 9. Specifically, the findings and recommendations find that plaintiff has accumulated more than three “strikes” and that he has failed to demonstrate that he meets the imminent danger exception under 28 U.S.C. section

1 1915(g). *Id.* Plaintiff filed timely objections on September 16, 2024. Doc. 12.

2 Plaintiff's objections do not address the magistrate judge's analysis. *See id.* Plaintiff's  
3 objections mostly appear to argue that he exhausted his administrative remedies prior to bringing  
4 this action. Doc. 12 at 1-2. While exhausting administrative remedies is a prerequisite to  
5 bringing suit in federal court, whether plaintiff has exhausted his administrative remedies has no  
6 bearing on the analysis of the findings and recommendations. The magistrate judge's  
7 recommendation that plaintiff be denied in forma pauperis status was based on plaintiff's prior  
8 three "strikes" and his failure to demonstrate that he met the imminent danger exception under 28  
9 U.S.C. section 1915(g).

10 Plaintiff also asks the Court to "keep [his] case open [until] it get[s] resolved" and he gets  
11 "[his] CPAP back if acc[u]rate test says." *Id.* at 1. However, the findings and recommendations  
12 do not recommend dismissal of plaintiff's case; they recommend that plaintiff not be allowed to  
13 proceed in forma pauperis. Though the Court recognizes that "the denial of IFP status effectively  
14 . . . denies many indigent prisoners access to the courts," plaintiff's concern that his complaint  
15 could be dismissed should he ultimately be unable to pay the filing fee does not undermine the  
16 findings and recommendations' conclusion that plaintiff does not qualify for IFP status. *Harris v.*  
17 *Harris*, 935 F.3d 670, 676 (9th Cir. 2019) (cleaned up).

18 To the extent plaintiff is asking that the Court delay action on his IFP status because  
19 future test results may indicate that he has a medical need for a CPAP machine, the Court cannot  
20 evaluate his IFP eligibility based on a hypothetical future need for medical treatment. Plaintiff's  
21 complaint alleges he suffered harm because about a month after his transfer to Kern Valley State  
22 Prison he was made to hand over his CPAP machine. However, he attached to his complaint  
23 documentation noting that he was given the CPAP machine pending a March 2023 sleep study  
24 and that the machine was removed after testing revealed he did not have obstructive sleep apnea.  
25 Doc. 1 at 6, 15.

26 As the findings and recommendations correctly note, the relevant inquiry is whether  
27 plaintiff faced imminent danger *at the time* that he filed his complaint. *See* Doc. 9 at 3 (citing  
28 *Andrews v. Cervantes*, 493 F.3d 1047, 1053 (9th Cir. 2007)). "The [imminent danger] exception's

1 use of the present tense, combined with its concern only with the initial act of ‘bring[ing]’ the  
2 lawsuit, indicates to us that the exception applies if the danger existed *at the time* the prisoner  
3 filed the complaint.” *Andrews*, 493 F.3d at 1053. Nearly all of plaintiff’s allegations regarding  
4 the harm he allegedly suffered are in the past tense, and the findings and recommendations  
5 correctly reasoned that plaintiff does not qualify for the imminent danger exception under 28  
6 U.S.C. § 1915(g). Though “[u]nder certain facts, it is possible that a plaintiff’s sleep apnea could  
7 be so severe and the need for a CPAP machine could be so urgent that a plaintiff might be in  
8 imminent danger of serious physical injury,” *see Abordo v. Dept. of Justice*, Civil No. 24-00233  
9 MWJS-WRP, 2024 WL 3618659, at \*2 (D. Haw. Aug. 1, 2024), plaintiff’s allegations do not  
10 meet this bar.

11 Pursuant to 28 U.S.C. § 636(b)(1), this Court conducted a de novo review of this case.  
12 Having carefully reviewed the matter, the Court concludes the findings and recommendations are  
13 supported by the record and proper analysis. Thus, plaintiff may not proceed in forma pauperis and  
14 is required to pay the filing fee in full before proceeding any further with this action.

15 Accordingly, IT IS HEREBY ORDERED:

- 16 1. The findings and recommendations issued August 29, 2024, Doc. 9, are **ADOPTED**  
17 in full;
- 18 2. Plaintiff is **PRECLUDED** from proceeding in forma pauperis in this action pursuant  
19 to 28 U.S.C. section 1915(g); and,
- 20 3. Plaintiff **SHALL** pay the \$405.00 filing fee in full **within 30 days** of the date of  
21 service of this order.

22  
23  
24 IT IS SO ORDERED.

25 Dated: January 3, 2025

  
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UNITED STATES DISTRICT JUDGE