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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-SKO
FINDINGS AND RECOMMENDATIONS TO DENY IN FORMA PAUPERIS STATUS
14-DAY OBJECTION PERIOD
Clerk of the Court to Assign District Judge

Plaintiff Marcus Brent Fields is proceeding pro se in this civil rights action pursuant to 42 U.S.C. section 1983.

I. INTRODUCTION

Plaintiff initiated this action by filing a complaint in the United States District Court for the Central District of California on August 16, 2024. (Doc. 1.) Plaintiff also filed a motion for the appointment of counsel. (Doc. 2.)

On August 19, 2024, the Central District issued a notice to Plaintiff advising him of a filing discrepancy as he had not paid the \$405 filing fee. (Doc. 3.) Plaintiff was advised that if he could not pay the entire filing fee, he must complete and return a request to proceed without prepayment of filing fees form within thirty days. (*Id.*)

On August 26, 2024, United States District Judge John W. Holcomb issued an Order transferring the action from the Central District to this Court. (Doc. 5.) Judge Holcomb found

1 venue is proper in the Eastern District where the events giving rise to Plaintiff's claims occurred
2 at Kern Valley State Prison in Delano, California. (*Id.*) For the reasons discussed below, the
3 Courts finds that Plaintiff need not submit an application to proceed *in forma pauperis* as he is
4 precluded from proceeding *in forma pauperis* in this action.

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

6 28 U.S.C. section 1915 governs IFP proceedings. The statute provides that “[i]n no event
7 shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more prior
8 occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of
9 the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state
10 a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious
11 physical injury.” 28 U.S.C. § 1915(g).

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

16 **III. DISCUSSION**

17 The Court takes judicial notice¹ of prior lawsuits filed by Plaintiff in the United States
18 District Court for Southern District of California and the Ninth Circuit Court of Appeals:

- 19 1. *Fields v. Newsom*, No. 3:22-00044-LL-MDD (S.D. Cal.) (dismissed for failure to state a
20 claim and as frivolous on May 16, 2022);
- 21 2. *Fields v. Bouria*, No. 3:22-cv-01656-JLS-MSB (S.D. Cal.) (dismissed for failure to state a
22 claim and as frivolous on November 18, 2022);²

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 At least three subsequent actions filed by Plaintiff in the Southern District have been dismissed after
26 Plaintiff failed to pay the filing fee as ordered by that Court: *Fields v. Newsome*, No. 3:23-cv-01416-
27 WQH-MSB; *Fields v. Macomber*, No. 3:23-cv-01575-DMS-JLB; and *Fields v. Macomber*, No. 3:23-cv-
28 02107-DAB-BLM. Additionally, an action filed by Plaintiff in the Central District of California has also
been dismissed for his failure to pay the filing fee as ordered: *Fields v. Macomber*, No. 2:24-cv-00207-
JWH-SHK.

1 3. *Fields v. Newsom*, No. 22-55519 (9th Cir.) (appeal dismissed as frivolous on November
2 17, 2022); and

3 4. *Fields v. Bouria*, No. 22-56171 (9th Cir.) (appeal dismissed as frivolous on May 18, 2023)

4 A dismissal for a failure to state a claim is a strike for purposes of 28 U.S.C. § 1915(g).
5 *Moore v. Maricopa Cty. Sheriff's Office*, 657 F.3d 890, 893-94 (9th Cir. 2011). An appeal
6 dismissed as frivolous also constitutes a strike. *El-Shaddai v. Zamora*, 833 F.3d 1036, 1042 (9th
7 Cir. 2016). Because Plaintiff has incurred at least three prior “strikes, and each was dismissed
8 prior to the commencement of the current action on August 16, 2024, Plaintiff is subject to the
9 section 1915(g) bar. Moreover, he is precluded from proceeding IFP in this action unless, at the
10 time he filed his complaint, he was under imminent danger of serious physical injury. *See*
11 *Andrews v. Cervantes*, 493 F.3d 1047, 1052-53 (9th Cir. 2007).

12 The Court has reviewed the complaint in this action and finds that Plaintiff’s allegations do
13 not meet the imminent danger exception. Plaintiff alleges his constitutional rights were violated
14 when his C-PAP device was confiscated on October 25, 2023. (Doc. 1.) Although Plaintiff
15 complains the lack of his C-PAP device caused him “to suffer for months on end,” that his asthma
16 “put [him] in distress,” and that he would wake in the middle of the night choking and concerned
17 about his existing heart condition, these allegations are insufficient to demonstrate an imminent
18 danger of serious physical injury. A review of documents attached as exhibits to Plaintiff’s
19 complaint support this finding. (*Id.* at 15, 24 [referencing medical records].)

20 Plaintiff lost the use of his C-PAP device on October 25, 2023, but waited more than nine
21 months to file his complaint, suggesting any danger is not imminent. The “imminent danger”
22 exception cannot be triggered solely by complaints of past harm. *See Andrews v. Cervantes*, 493
23 F.3d 1047, 1053 (9th Cir. 2007) (“The exception's use of the present tense, combined with its
24 concern only with the initial act of ‘bring[ing]’ the lawsuit, indicates to us that the exception
25 applies if the danger existed at the time the prisoner filed the complaint”); *Rogers v. Sterling*, No.
26 2:20-cv-1508-TMC, 2021 WL 195298, at *1 (D.S.C. Jan. 20, 2021) (adopting recommendations
27 to deny IFP where plaintiff “failed to make a showing of ‘imminent danger’ as he had been
28 without a CPAP machine for a substantial period of time since being diagnosed with sleep apnea

1 but had not suffered any serious medical problems as a result”); *Blackman v. Mjening*, No. 1:16-
2 cv-01421-LJO-GSA-PC, 2016 WL 5815905, at *1 (E.D. Cal. Oct. 4, 2016) (“Imminent danger of
3 serious physical injury must be a real, present threat, not merely speculative or hypothetical”);
4 *Dickson v. United States*, No. 5:16cv215/MP/CJK, 2016 WL 6078330, at *2 (N.D. Fla. Aug. 8,
5 2016) (recommending IFP be denied because “allegations concerning denial of a ‘sleep study’
6 and CPAP machine, delay in receiving bottom dentures, lack of annual eye examinations and
7 denial of a paying prison job, even viewed collectively, do not arguably show plaintiff is under
8 imminent danger of serious physical injury”), recommendations adopted October 14, 2016, 2016
9 WL 6070074; *Staley v. Smalley*, No. 9:07-cv-1553-PMD, 2007 WL 2283647, at *2 (D.S.C. Aug.
10 6, 2007) (finding that plaintiff failed to show his medical condition placed him in imminent
11 danger of physical injury where he had been without medication for a sustained period of time);
12 *see also Lewis v. Sullivan*, 279 F.3d 526, 531 (7th Cir. 2002) (the “imminent danger” exception is
13 available “for genuine emergencies,” where “time is pressing” and “a threat ... is real and
14 proximate”).

15 In sum, this Court finds Plaintiff has suffered three or more strikes and was not under
16 imminent danger of serious physical injury when he filed the complaint in this action. Therefore,
17 Plaintiff should be precluded from proceeding *in forma pauperis* in this action. *Andrews*, 493
18 F.3d at 1052-53.

19 IV. ORDER AND RECOMMENDATIONS

20 For the foregoing reasons, the Court **DIRECTS** the Clerk of the Court to assign a district
21 judge to this action and **RECOMMENDS** that:

- 22 1. Plaintiff be precluded from proceeding *in forma pauperis* in this action in accordance
23 with 28 U.S.C. section 1915(g); and
- 24 2. Plaintiff be ordered to pay the \$405.00 filing fee in full within 30 days.

25 These Findings and Recommendations will be submitted to the United States District
26 Judge assigned to this case, pursuant to 28 U.S.C. § 636(b)(1). **Within 14 days** of the date of
27 service of these Findings and Recommendations, a party may file written objections with the
28 Court. The document should be captioned, “Objections to Magistrate Judge’s Findings and

1 Recommendations.” Plaintiff’s failure to file objections within the specified time may result in
2 waiver of his rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing
3 *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

4
5 IT IS SO ORDERED.

6 Dated: August 28, 2024

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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