

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHAI ALKEBU-LAN,
Plaintiff,
v.
K. DICKINSON, Warden, et al.,
Defendants.

No. 2:11-cv-0291 LKK KJN P
ORDER and
FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se in this action brought pursuant to 42 U.S.C. § 1983. Plaintiff challenges the district judge’s order revoking plaintiff’s in forma pauperis status.¹ By order filed March 31, 2014, the district judge granted defendants’ motion to revoke plaintiff’s in forma pauperis status, on the ground that plaintiff is a three-strikes litigant under 28 U.S.C. § 1915(g),² who failed to demonstrate that he was “under imminent danger of serious physical

¹ Also pending is plaintiff’s appeal to the Ninth Circuit Court of Appeals of the undersigned’s order denying plaintiff’s second request for appointment of counsel. (See ECF Nos. 54, 55, 59, 60.)

² 28 U.S.C. § 1915(g) provides:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the

1 injury” when he filed this action. (See ECF No. 53.) The district judge directed plaintiff to pay
2 the full filing fee within thirty days, and informed plaintiff that “[f]ailure to pay the filing fee as
3 required by this order will result in the dismissal of this action.” (Id. at 4.)

4 Plaintiff now seeks to “stay” the district judge’s March 31, 2014 order to permit plaintiff
5 time to appeal the order, and to “preserve these issues for Supreme Court review” (ECF No. 56);
6 to pay the filing fee in installments “until his appeals upon review is granted” (ECF No. 57); and
7 to be accorded a 60-day extension of time within which to file objections to the order³ (ECF No.
8 58).

9 The undersigned finds no precedent for plaintiff’s requests. “Section 1915(g) . . .
10 preclude[s] a three struck inmate from using the installment payment mechanism of § 1915(b)
11 unless he is in imminent danger of serious physical injury.” Beeson v. Copsey, 2011 WL
12 4948218, *2 (D. Idaho 2011) (quoting Hughes v. Correctional Med. Servs., 2008 WL 4099259,
13 *2 (N.D. Ind. 2008)).

14 The thirty-day deadline established by the district judge for plaintiff to pay the filing fee
15 expired on April 30, 2014. Since then, plaintiff has had an additional month within which to pay
16 the fee. In light of the requirements of 28 U.S.C. § 1915(g), and plaintiff’s failure to comply with
17 the district judge’s order, the undersigned will recommend dismissal of this action without
18 prejudice to plaintiff renewing his claims in a new action commenced with full payment of the
19 filing fee.

20 For these reasons, IT IS HEREBY ORDERED that:

- 21 1. Plaintiff’s motion to stay the district judge’s March 31, 2014 order revoking plaintiff’s
22 in forma pauperis status (ECF No. 56), is denied.
- 23 2. Plaintiff’s motion to pay the filing fee in installments (ECF No. 57), is denied.

24 ///

25 prisoner is under imminent danger of serious physical injury.

26 ³ This motion also seeks additional time to file objections to the undersigned’s order denying
27 plaintiff’s request for appointment of counsel. (See n.1, supra.) However, because plaintiff has
28 appealed this matter to the Ninth Circuit Court of Appeals, the undersigned finds this request
moot.


1 3. Plaintiff's motion for an extension of time within which to file objections to the district
2 judge's March 31, 2014 order (ECF No. 58), is denied.

3 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed without
4 prejudice.

5 These findings and recommendations are submitted to the United States District Judge
6 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
7 after being served with these findings and recommendations, any party may file written
8 objections with the court and serve a copy on all parties. Such a document should be captioned
9 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
10 objections shall be filed and served within fourteen days after service of the objections. The
11 parties are advised that failure to file objections within the specified time may waive the right to
12 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

13 Dated: June 4, 2014

14
15 /alke0291.f&r.dsms


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE