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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

PATRICK WILLIAMS,

Plaintiff,

No. CIV S-11-0543 EFB P

vs.

J. CLARK KELSO, et al.,

Defendants.

ORDER AND  
FINDINGS AND RECOMMENDATIONS

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Plaintiff is a state prisoner without counsel seeking relief for civil rights violations. *See* 42 U.S.C. § 1983. He seeks leave to proceed *in forma pauperis*. *See* 28 U.S.C. § 1915(a). This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

For the reasons explained below, the court finds that plaintiff has not demonstrated he is eligible to proceed *in forma pauperis*. A prisoner may not proceed *in forma pauperis*,

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 prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). It appears that on at least three prior occasions, plaintiff brought actions

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1 while incarcerated that were dismissed as frivolous, malicious, or for failure to state a claim  
2 upon which relief may be granted.<sup>1</sup> See *Williams v. Dep't of Corrections*, No. 1:06-cv-01793 RC  
3 (E.D. Cal. June 5, 2009) (dismissing under Rule 8 of the Federal Rules of Civil Procedure where  
4 third amended complaint remained “an incoherent and jumbled narrative” that failed to  
5 “articulate the specific acts of Defendants that Plaintiff believe[d] [gave] rise to constitutional  
6 violations”); *Williams v. Dep't of Corrections*, No. 1:07-cv-0083 SMS (E.D. Cal. Jan. 12, 2011)  
7 (dismissing, with prejudice, for failure to state a claim); *Williams v. Kelso*, No:10-cv-2898 (E.D.  
8 Cal. Feb. 10, 2011) (dismissing as frivolous).

9         Additionally, plaintiff has not alleged facts suggesting that he is under imminent danger  
10 of serious physical injury. See Dckt. No. 1 (Complaint) (claiming defendants ordered milk of  
11 magnesia/colace for plaintiff’s constipation rather than discontinuing the medicine allegedly  
12 causing constipation, and that defendants have ignored his “tunneling tunneling jels/electrodes”).  
13 “[I]t is the circumstances at the time of the filing of the complaint that matters for purposes of  
14 the “imminent danger” exception to § 1915(g). *Andrews v. Cervantes*, 493 F.3d 1047, 1053 (9th  
15 Cir. Cal. 2007).

16         In light of these circumstances, the court will recommend that plaintiff’s application to  
17 proceed in forma pauperis be denied.

18         Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court shall randomly  
19 assign a United States District Judge to this case.

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26         <sup>1</sup> A court may take judicial notice of court records. See *MGIC Indem. Co. v. Weisman*,  
803 F.2d 500, 505 (9th Cir. 1986); *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980).

1 Further, it is hereby RECOMMENDED that plaintiff's February 28, 2011 application to  
2 proceed *in forma pauperis* be denied, that plaintiff be directed to pay the \$350 filing fee within  
3 30 days, and that plaintiff be warned that his failure to do so will result in dismissal of this  
4 action. See 28 U.S.C. § 1914(a).

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." Failure to file objections  
10 within the specified time may waive the right to appeal the District Court's order. *Turner v.*  
11 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

12 Dated: March 8, 2011.

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14 EDMUND F. BRENNAN  
15 UNITED STATES MAGISTRATE JUDGE  
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