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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LONNIE WILLIAMS,  
Plaintiff,  
v.  
HAMAD, et al.,  
Defendants.

No. 2: 14-cv-0044 KJN P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff, a state prisoner proceeding without counsel, has filed a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff seeks leave to proceed in forma pauperis. See 28 U.S.C. § 1915(a). For the following reasons, the undersigned recommends that plaintiff's application to proceed in forma pauperis be denied and plaintiff be ordered to pay the filing fee.

A prisoner may not proceed in forma pauperis,

If the prisoner has, on 3 or more 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).

On at least three prior occasions, plaintiff has brought actions while incarcerated that were dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted.

1 See Williams v. Andrew, 1: 01-cv-6222 REC HGB P (E.D. Cal. Feb. 22, 2002) (order dismissing  
2 action for failure to state a claim); Williams v. Wood, 1: 01-cv-6151 REC LJO P (E.D. Cal. Feb.  
3 28, 2002) (order dismissing action with prejudice for failure to state a claim); Williams v.  
4 Rendon, 1: 01-cv-5891 AWI SMS P (E.D. Cal. Mar. 18, 2002) (order dismissing action for failure  
5 to state a claim). See also Williams v. Gonzales, 1: 03-cv-6770 REC WMW P (E.D. Cal. Sept.  
6 10, 2004) (order designating plaintiff as a three strikes litigant under 28 U.S.C. § 1915(g)).

7 In the complaint, filed January 28, 2014 (ECF No. 7), plaintiff<sup>1</sup> suggests that she meets the  
8 imminent danger exception contained in 28 U.S.C. § 195(g). The complaint contains five claims.  
9 In claim one, plaintiff alleges that prison officials threatened her with retaliation for pursuing the  
10 instant action. Plaintiff alleges that prison officials took her television in retaliation for filing this  
11 action. Plaintiff alleges that prison officials threatened to have her transferred and also to file  
12 false prison disciplinary complaints against her in retaliation for pursuing this action. In claim  
13 two, plaintiff alleges that prison officials are poisoning her with rat poison. In claim three,  
14 plaintiff alleges that she is being poisoned with arsenic, mercury, lead and nitrite in her food. In  
15 claim four, plaintiff alleges that she was denied the right to enter into a same-sex marriage with  
16 another inmate. In claim five, plaintiff alleges that prison officials refused to process her  
17 administrative grievance regarding the claims raised in this action.

18 Plaintiff's claims alleging retaliation, denial of the right to enter a same-sex marriage and  
19 the alleged refusal to process administrative grievances do not raise claims alleging the imminent  
20 danger of serious physical injury. For the following reasons, the undersigned finds that plaintiff's  
21 claims alleging poisoning also do not meet the imminent danger exception.

22 In the complaint filed on August 17, 2012, in Williams v. Bauer, 2: 12-cv-2158 MCE EFP  
23 P, plaintiff also alleged that she was in imminent danger because the defendants named in that  
24 action were poisoning her food. On December 6, 2012, Magistrate Judge Brennan found that  
25 section 1915(g)'s imminent danger exception did not apply because plaintiff's allegations were  
26 not plausible. See 2: 12-cv-2158 MCE EFB P, Dkt. No. 12 at 2. See Andrews v. Cervantes, 493  
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28 <sup>1</sup> The court refers to plaintiff in the feminine because plaintiff identifies herself as a female.

1 F.3d 1047, 1055 (9th Cir. 2007) (section 1915(g) imminent danger exception applies where  
2 complaint makes a “plausible” allegation that prisoner faced imminent danger of serious physical  
3 injury at the time of filing). Magistrate Judge Brennan recommended that plaintiff’s application  
4 to proceed in forma pauperis be denied. See 2: 12-cv-2158 MCE EFB P, Dkt. No. 12. On  
5 January 30, 2013, the Honorable Morrison C. England adopted these findings and  
6 recommendations. (Id., Dkt. No. 14).

7 In his December 6, 2012 findings and recommendations, Magistrate Judge Brennan also  
8 observed that plaintiff had been informed on several prior occasions that her allegations regarding  
9 poisoning were not plausible:

10 Moreover, the “court has the inherent ability to restrict a litigant’s  
11 ability to commence abusive litigation in forma pauperis.” Visser  
12 v. Supreme Court of California, 919 F.2d 113, 114 (9th Cir. 1990)  
13 (citing In re McDonald, 489 U.S. 180 (1989)). The court has  
14 informed plaintiff, on numerous prior occasions, that her allegations  
15 about being poisoned are not plausible. See Williams v. Norton, 2:  
16 12-cv-2998 CKD (E.D. Cal. Dec. 4, 2012) (finding plaintiff’s  
17 allegations of being poisoned implausible and denying application  
18 to proceed in forma pauperis); Williams v. CDCR, 2: 12-cv-1616  
19 JAM EFB P (E.D. Cal. Aug. 1, 2012) (finding implausible  
20 plaintiff’s allegations of being poisoned, and recommending that  
21 plaintiff’s in forma pauperis status be denied), adopted (E.D. Cal.  
22 Oct. 29, 2012); Williams v. Willie, 2: 11-cv-1532 MCE DAD P  
23 (E.D. Cal. March 16, 2012) (finding implausible plaintiff’s  
24 allegations of being poisoned, noting that she had been making such  
25 claims since 2006, and determining that the imminent danger  
26 exception of section 1915(g) did not apply), adopted (E.D. Cal.  
27 Apr. 23, 2012); Williams v. Gomez, 2: 11-cv-426 GEB EFP P  
28 (E.D. Cal. Dec. 21, 2011) (finding implausible plaintiff’s  
allegations of being poisoned and denied HIV medication, and  
recommending that plaintiff’s in forma pauperis status be revoked),  
adopted (E.D. Cal. Feb. 6, 2012). Nevertheless, plaintiff continues  
to initiate lawsuits in forma pauperis, on the grounds that the  
imminent danger exception applies based on her allegations of  
being poisoned on a daily basis and/or being denied her HIV  
medication. See e.g., Williams v. Bal, 2: 12-cv-1005 LKK EFB P  
(E.D. Cal. April 17, 2012 complaint alleging imminent danger of  
injury or death because she was denied HIV medication and prison  
officials were poisoning her food); Williams v. Wedell, 2: 12-cv-  
1438 GEB GGH P (E.D. Cal.) (May 29, 2012 complaint alleging  
denial of HIV medication and imminent danger of poisoning);  
Williams v. Nappi, 2: 12-cv-1604 GEB CMK P (E.D. Cal.) (June  
14, 2012 complaint alleging imminent danger because of daily  
poisoning); Williams v. CDCR, 2: 12-cv-1616 JAM EFB P (E.D.  
Cal.) (June 15, 2012 complaint alleging the same). Given these  
filings, the court finds that plaintiff’s application for leave to  
proceed in forma pauperis should be denied because plaintiff has

1 “engaged in a pattern of litigation which is manifestly abusive.”  
2 Visser, 919 F.2d at 114.

3 Williams v. Bauer, 2: 12-cv-2158 MCE EFB P, Dkt. No. 12 at 2-3.

4 In Williams v. Wedell, 2: 12-cv-1438 GEB GGH P, Magistrate Judge Hollows observed,

5 As for the alleged poisoning, U.S. Magistrate Judge John F. Moulds  
6 recognized in one of plaintiff’s many cases filed with this court,  
7 that he has been alleging arsenic poisoning since 2006 and the  
8 plausibility of his claims in this regard are belied by the fact that  
9 plaintiff remains alive today despite alleged arsenic poisoning for  
10 more than five years by dozens of prison officials. See Williams v.  
Murray, 11-cv-0069 MCE JFM P (E.D. Cal.), Order filed June 10,  
2011 (Doc. No. 9 at 3) (denying plaintiff’s motion for  
reconsideration of an order finding that § 1915(g) barred plaintiff  
from proceeding in forma pauperis and citing several other of  
plaintiff’s actions that allege poisoning).

11 2: 12-cv-1438 GEB GGH P, Dkt. No. 12 at 3.

12 For the reasons discussed above, the undersigned finds that plaintiff has not met the  
13 imminent danger exception to 28 U.S.C. § 1915g). Plaintiff’s application to proceed in forma  
14 pauperis should be denied.

15 On January 17, 2014, plaintiff filed a motion for a thirty day extension of time to file her  
16 form addressing the issue of consent. While the court has not addressed this motion, thirty days  
17 passed and plaintiff did not file the form. Accordingly, the Clerk of the Court is directed herein  
18 to assign a district judge to this action. Plaintiff’s motion for an extension of time to file the  
19 consent form is denied as unnecessary.

20 On March 20, 2014, plaintiff filed a motion for the appointment of counsel. District  
21 courts lack authority to require counsel to represent indigent prisoners in section 1983 cases.  
22 Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In exceptional circumstances, the  
23 court may request an attorney to voluntarily to represent such a plaintiff. See 28 U.S.C. §  
24 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900  
25 F.2d 1332, 1335-36 (9th Cir. 1990). When determining whether “exceptional circumstances”  
26 exist, the court must consider plaintiff’s likelihood of success on the merits as well as the ability  
27 of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues  
28 involved. Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (district court did not abuse

1 discretion in declining to appoint counsel). The burden of demonstrating exceptional  
2 circumstances is on the plaintiff. Id. Circumstances common to most prisoners, such as lack of  
3 legal education and limited law library access, do not establish exceptional circumstances that  
4 warrant a request for voluntary assistance of counsel.

5 Having considered the factors under Palmer, the court finds that plaintiff has failed to  
6 meet his burden of demonstrating exceptional circumstances warranting the appointment of  
7 counsel at this time.

8 Accordingly, IT IS HEREBY ORDERED that:


- 9 1. Plaintiff's motion for an extension of time (ECF No. 5) is denied;
- 10 2. Plaintiff's motion for the appointment of counsel (ECF No. 11) is denied;
- 11 3. The Clerk of the Court shall appoint a district judge to this action; and

12 IS HEREBY RECOMMENDED that plaintiff's application to proceed in forma pauperis  
13 (ECF No. 9) be denied; plaintiff shall pay the filing fee within 28 days if these findings and  
14 recommendations are adopted. Failure to pay the filing fee will result in a recommendation that  
15 this case be dismissed.

16 These findings and recommendations are submitted to the United States District Judge  
17 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
18 after being served with these findings and recommendations, plaintiff may file written objections  
19 with the court and serve a copy on all parties. Such a document should be captioned  
20 "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that  
21 failure to file objections within the specified time may waive the right to appeal the District  
22 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

23 Dated: March 27, 2014

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KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE