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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAYSHON THOMAS,
Plaintiff,
v.
MANUEL PEREZ, et al.,
Defendants.

No. 2:14-cv-915-EFB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a county inmate proceeding without counsel in an action brought under 42 U.S.C. § 1983. He seeks leave to proceed in forma pauperis. See 28 U.S.C. § 1915(a). 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). Court records reflect that 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. See (1) *Thomas v. Madera County Dept. of*

1 *Corrections*, 1:06-cv-0649-AWI-GSA (E.D. Cal.) (dismissed April 30, 2012 for failure to state a
2 claim); (2) *Thomas v. Avela*, 12-cv-9778-UA-JEM (C.D. Cal.) (dismissed November 30, 2012 as
3 frivolous and for failure to state a claim); and (3) *Thomas v. Parties Calipatria*, 12-cv-10220-UA-
4 JEM (C.D. Cal.) (dismissed December 7, 2012 as frivolous and for failure to state a claim). *See*
5 *also Thomas v. Grounds*, 2:13-cv-0240-UA-JEM (C.D. Cal.) (dismissed as barred by 28 U.S.C.
6 § 1915(g)); *Thomas v. California Supreme Court*, 2:13-cv-1891-GEB-EFB (E.D. Cal.) (same).

7 The section 1915(g) exception applies if the complaint makes a plausible allegation that
8 the prisoner faced “imminent danger of serious physical injury” at the time of filing. 28 U.S.C.
9 § 1915(g); *Andrews v. Cervantes*, 493 F.3d 1047, 1055 (9th Cir. 2007). For the exception to
10 apply, the court must look to the conditions the “prisoner faced at the time the complaint was
11 filed, not at some earlier or later time.” *Andrews*, 493 F.3d at 1053, 1056 (requiring that prisoner
12 allege “an ongoing danger” to satisfy the imminency requirement). Courts need “not make an
13 overly detailed inquiry into whether the allegations qualify for the exception.” *Id.* at 1055.

14 Here, the April 14, 2014 complaint is rambling and largely incomprehensible. Its focus
15 appears to be on alleged emotional injuries stemming from a purported conspiracy to deny
16 plaintiff legal materials and access to the courts, and not physical injuries. *See generally* ECF No.
17 1. Though he claims his thumb was slammed in a cell door on December 23, 2013, and that he
18 was assaulted on January 3, 2014, these allegations do not plausibly demonstrate that he faced
19 imminent danger of serious physical injury at the time he filed his complaint. *See id.* at 3, 5.
20 Likewise, plaintiff’s allegations that he is “in profound malnutrition,” in “imminent danger of
21 diabetes from sweet carbohydrates,” and complaint regarding a lack of “quality proteins,” do not
22 satisfy the standard. *See id.* at 7. Because the complaint fails to demonstrate that plaintiff faced
23 any imminent danger of serious physical injury at the time he filed his complaint, the imminent
24 danger exception does not apply.

25 Because plaintiff has not paid the filing fee and is not eligible to proceed in forma
26 pauperis, this action must be dismissed.

27 Accordingly, it is hereby ORDERED that the Clerk of the Court randomly assign a United
28 States District Judge to this case.

1 Further, IT IS HERBEY RECOMMENDED that plaintiff's request for leave to proceed in
2 forma pauperis be denied and this action be dismissed without prejudice to re-filing upon pre-
3 payment of the \$400 filing fee. See 28 U.S.C. §§ 1914(a), 1914 (District Court Miscellaneous
4 Fee Schedule, No. 14), 1915(g).

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: June 25, 2014.

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14 EDMUND F. BRENNAN
15 UNITED STATES MAGISTRATE JUDGE
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