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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN DAVID LOGAN, II,
Plaintiff,
v.
D.L. GAMBOA, et al.,
Defendants.

No. 2:16-cv-2020 AC P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has consented to the jurisdiction of the undersigned magistrate judge for all purposes pursuant to 28 U.S.C. § 636(c) and Local Rule 305(a). ECF No. 5. Currently before the court are plaintiff’s original complaint (ECF No. 1), amended complaints (ECF Nos. 6, 7, 11, 12, 13, 15, 16, 17, 26), motions for appointment of counsel (ECF Nos. 2, 18, 19, 20, 25, 28, 30), request for Priority Legal User status (ECF No. 8), request to issue subpoenas (ECF No. 21), requests for transfer (ECF Nos. 22, 24), request for discovery (ECF No. 27), and request for service forms (ECF No. 29).

I. Three Strikes Analysis

Plaintiff has not yet submitted an application to proceed in forma pauperis in this case or paid the required filing fee of \$350.00 plus the \$50.00 administrative fee. Accordingly, he will be provided the opportunity either to submit the appropriate application in support of a request to

1 proceed in forma pauperis or to submit the required fees totaling \$400.00. However, if he
2 submits an application to proceed in forma pauperis, it will not be granted unless he also
3 demonstrates that he meets the imminent danger exception as explained below.

4 The Prison Litigation Reform Act of 1995 (PLRA) permits any court of the United States
5 to authorize the commencement and prosecution of any suit without prepayment of fees by a
6 person who submits an affidavit indicating that the person is unable to pay such fees. However,

7 [i]n no event shall a prisoner bring a civil action or appeal a
8 judgement in a civil action or proceeding under this section if the
9 prisoner has, on 3 or more occasions, while incarcerated or detained
10 in any facility, brought an action or appeal in a court of the United
11 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.

12 28 U.S.C. § 1915(g). The plain language of the statute makes clear that a prisoner is precluded
13 from bringing a civil action or an appeal in forma pauperis if the prisoner has brought three
14 frivolous actions and/or appeals (or any combination thereof totaling three). Rodriguez v. Cook,
15 169 F.3d 1176, 1178 (9th Cir. 1999). Section 1915(g) should be used to deny a prisoner's in
16 forma pauperis status on upon a determination that each action reviewed (as a potential strike) is
17 carefully evaluated to determine that it was dismissed as frivolous, malicious, or for failure to
18 state a claim. Andrews v. King, 398 F.3d 1113, 1121 (9th Cir. 2005). "[W]hen a district court
19 disposes of an in forma pauperis complaint 'on the grounds that [the claim] is frivolous,
20 malicious, or fails to state a claim upon which relief may be granted,' such a complaint is
21 'dismissed' for purposes of § 1915(g) even if the district court styles such dismissal as denial of
22 the prisoner's application to file the action without prepayment of the full filing fee." O'Neal v.
23 Price, 531 F.3d 1146, 1153 (9th Cir. 2008) (second alteration in original).

24 The court takes judicial notice¹ of the national pro se "three strikes" database,² which
25 indicates that plaintiff has a three strikes order in the United States District Court for the Central

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27 ¹ A court may take judicial notice of court records. United States v. Wilson, 631 F.2d 118, 119
(9th Cir. 1980).

28 ² A Ninth Circuit committee has directed this court to access this database for PLRA three-strikes
screening purposes.

1 District of California in Logan v. La Duke, Case No. 2:10-cv-07612-UA-MLG. Upon inspection
2 of the order in that case, which deems plaintiff a three strikes litigant, and several other cases filed
3 by plaintiff in the Central District of California, this court has identified eight cases brought by
4 plaintiff that qualify as strikes. The court takes judicial notice of the following lawsuits filed by
5 plaintiff in the United States District Court for the Central District of California:

- 6 1. Logan v. Baker, 2:01-cv-08702-UA-MLG (dismissed as legally and/or factually patently
7 frivolous on October 26, 2001)
- 8 2. Logan v. Sheriff Department, 2:05-cv-01900-UA-MLG (dismissed as legally and/or
9 factually patently frivolous on March 25, 2005)
- 10 3. Logan v. Blunk, 2:06-cv-03639-UA-MLG (dismissed as legally and/or factually patently
11 frivolous on June 27, 2005)
- 12 4. Logan v. Zepeda, 2:07-cv-07314-UA-MLG (dismissed as legally and/or factually patently
13 frivolous on November 30, 2007)
- 14 5. Logan v. Zepeda, 2:08-cv-00631-UA-MLG (dismissed as legally and/or factually patently
15 frivolous on April 3, 2008)
- 16 6. Logan v. County of Los Angeles, 2:08-cv-01916-UA-MLG (dismissed as legally and/or
17 factually patently frivolous on April 3, 2008)
- 18 7. Logan v. Marshal, 2:09-cv-01883-UA-MLG (dismissed as legally and/or factually
19 patently frivolous on March 27, 2009)
- 20 8. Logan v. McClain, 2:09-cv-03614-UA-MLG (dismissed as legally and/or factually
21 patently frivolous on June 1, 2009).

22 All of the preceding cases were dismissed well in advance of the August 21, 2016 filing of
23 the instant action, and plaintiff did not appeal any of these decisions, so none of the strikes have
24 been overturned. Therefore, this court finds that plaintiff is precluded from proceeding in forma
25 pauperis unless he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).
26 To satisfy the exception, plaintiff must have alleged facts that demonstrate that he was “under
27 imminent danger of serious physical injury” at the time of filing the complaint. Andrews v.
28 Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007) (“[I]t is the circumstances at the time of the filing

1 of the complaint that matters for purposes of the ‘imminent danger’ exception to § 1915(g).”); see
2 also Abdul-Akbar v. McKelvie, 239 F.3d 307, 314 (3d Cir. 2001); Medberry v. Butler, 185 F.3d
3 1189, 1193 (11th Cir. 1999) (holding that a prisoner’s allegation that he faced imminent danger
4 sometime in the past is an insufficient basis for the exception under § 1915(g)); Ashley v.
5 Dilworth, 147 F.3d 715, 717 (8th Cir. 1998) (noting that “an otherwise ineligible prisoner is only
6 eligible to proceed [in forma pauperis] if he is in imminent danger *at the time of filing*”)
7 (emphasis in original); Banos v. O’Guin, 144 F.3d 883, 885 (5th Cir. 1998) (holding that danger
8 must exist “*at the time the plaintiff seeks to file his complaint*”) (emphasis in original).

9 Plaintiff is therefore precluded from proceeding in forma pauperis in this action unless he
10 has established that he was under imminent danger of serious physical injury at the time he filed
11 the complaint. Plaintiff’s claims in his original complaint against defendants Gamboa and
12 Birdsong regarding denial of morphine for pain management are insufficient to meet this standard
13 because plaintiff simply disagrees with the pain medication he was provided. ECF No. 1. There
14 are no allegations that he has been denied all pain medication or treatment, only that he disagrees
15 with the decision to discontinue morphine and other narcotic pain relievers. Id. at 3. In contrast,
16 one of plaintiff’s amended complaints, filed by the Clerk of the Court on November 17, 2016,³
17 may allege facts sufficient to establish imminent danger of serious physical injury, because
18 plaintiff states that his Wellbutrin medication was discontinued, causing him to hear voices and
19 experience paranoia. ECF No. 16 at 3.

20 However, none of plaintiff’s amended complaints are in the proper form. Although
21 plaintiff has filed each “amended complaint” on a complaint form, each complaint contains
22 completely different allegations and defendants. It appears that he is trying to add new
23 defendants and claims in a piecemeal fashion. Local Rule 220 requires that an amended
24 complaint be complete in itself without reference to any prior pleading. This requirement exists
25 because, as a general rule, an amended complaint supersedes the original complaint. Valadez-
26 Lopez v. Chertoff, 656 F.3d 851, 857 (9th Cir. 2011) (citing Forsyth v. Humana, Inc., 114 F.3d

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28 ³ The amended complaint was incorrectly docketed as a second sixth amended complaint.

1 1467, 1474 (9th Cir. 1997)). In other words, each time plaintiff files an amended complaint, it
2 completely replaces the previous complaint and the court only looks at the claims in the new
3 complaint. It is as if the old complaints do not exist. Additionally, the claims and defendants in
4 the various complaints are not all properly joined, because the claims do not involve the same
5 defendants or arise out of the same transaction or occurrence. Fed. R. Civ. P. 18; Fed. R. Civ. P.
6 20. A plaintiff may join multiple claims if they are all against a single defendant, Fed. R. Civ. P.
7 18(a), and joinder of defendants is only permitted if “any right to relief is asserted against
8 them . . . with respect to or *arising out of the same transaction, occurrence, or series of*
9 *transactions or occurrences*; and any question of law or fact common to all defendants will arise
10 in the action,” Fed. R. Civ. P. 20(a)(2) (emphasis added).

11 Since the disagreement with treatment alleged in the original complaint does not state a
12 claim,⁴ the “amended complaints” are not proper, and plaintiff might be able to allege imminent
13 danger, the court will dismiss the original complaint, strike plaintiff’s various “amended
14 complaints,” and allow plaintiff an opportunity to file a proper amended complaint. If plaintiff
15 chooses not to file an amended complaint, this action will be dismissed. If he files an amended
16 complaint but it does not allege imminent danger of serious physical injury, this action will be
17 dismissed unless plaintiff pays the filing fee.

18 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
19 about which he complains resulted in a deprivation of plaintiff’s constitutional rights. Rizzo v.
20 Goode, 423 U.S. 362, 370-71 (1976). Also, the complaint must allege in specific terms how each
21 named defendant is involved. Id. at 371. There can be no liability under 42 U.S.C. § 1983 unless
22 there is some affirmative link or connection between a defendant’s actions and the claimed
23 deprivation. Id.; May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588
24 F.2d 740, 743 (9th Cir. 1978). Vague and conclusory allegations of official participation in civil
25 rights violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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27 ⁴ Toguchi v. Chung, 391 F.3d 1051, 1058 (9th Cir. 2004) (difference of opinion between inmate
28 and medical personnel about what treatment is appropriate does not constitute deliberate
indifference).

1 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to
2 make plaintiff's amended complaint complete. Once plaintiff files an amended complaint, the
3 original pleading no longer serves any function in the case. In an amended complaint, as in an
4 original complaint, each claim and the involvement of each defendant must be sufficiently
5 alleged. Therefore, plaintiff's amended complaint must be filed as a single document, which
6 must contain all claims against all defendants. The court will not consider piecemeal, partial
7 filings such as those previously submitted by plaintiff. See ECF Nos. 6, 7, 11, 12, 13, 15, 16, 17,
8 26.

9 II. Motions for Counsel

10 Plaintiff has filed several motions for appointment of counsel. ECF Nos. 2, 18, 19, 20, 25,
11 28, 30. The United States Supreme Court has ruled that district courts lack authority to require
12 counsel to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490
13 U.S. 296, 298 (1989). In certain exceptional circumstances, the district court may request the
14 voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d
15 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).

16 The test for exceptional circumstances requires the court to evaluate the plaintiff's
17 likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in
18 light of the complexity of the legal issues involved. Wilborn v. Escalderon, 789 F.2d 1328, 1331
19 (9th Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances common
20 to most prisoners, such as lack of legal education and limited law library access, do not establish
21 exceptional circumstances that would warrant a request for voluntary assistance of counsel.
22 Plaintiff has failed to establish any exceptional circumstances exist. Additionally, plaintiff has
23 not filed an application to proceed in forma pauperis and therefore he lacks grounds to establish
24 indigence and eligibility for appointed counsel. Thus, plaintiff's requests for counsel (ECF Nos.
25 2, 18, 19, 20, 25, 28, 30) will be denied.

26 III. Request for Priority Legal User Status

27 Plaintiff has filed a request for Priority Legal User (PLU) status. ECF No. 8. The court
28 does not have authority to order the California Department of Corrections and Rehabilitation to

1 grant plaintiff PLU status and therefore this request will be denied.

2 IV. Request to Issue Subpoenas

3 Plaintiff has filed a request for the court to issue subpoenas for trial. ECF No. 21. At this
4 stage, it is not clear that this case will proceed to trial and the request will be denied.

5 V. Request for Transfer

6 Plaintiff has requested transfer to federal custody. ECF Nos. 22, 24. The court does not
7 have authority to order plaintiff into federal custody and therefore these requests will be denied.

8 VI. Request for Discovery

9 Plaintiff has requested discovery of his medical file. ECF No. 27. At this stage, it is not
10 clear that this case will proceed to discovery and the request will be denied. If the case proceeds
11 to discovery in the future, plaintiff will have the opportunity to request documents relevant to his
12 claims in this case.

13 VII. Request for Service Forms

14 Plaintiff has requested forms for completing service on defendants. ECF No. 29. The
15 court has not determined that service is appropriate at this stage and the request will be denied.

16 VIII. Conclusion

17 Plaintiff must file a request to proceed in forma pauperis or pay the required fees. If
18 plaintiff requests to proceed in forma pauperis, he must show that he meets the imminent danger
19 exception. Since plaintiff may be able to demonstrate that he was in imminent danger of serious
20 physical injury, the court will grant him leave to amend the complaint. Plaintiff's previously filed
21 amended complaints will be stricken from the record and the original complaint is dismissed with
22 leave to amend.

23 If plaintiff chooses to amend his complaint, the first amended complaint must include all
24 of the claims plaintiff wants to make because the court will not look at the claims or information
25 in any of his other complaints. **Any claims not in the first amended complaint will not be**
26 **considered.** In order to state a claim for deliberate indifference, plaintiff must state facts that
27 show that defendants knew about his serious medical needs and ignored the risk to his health and
28 safety.

1 Plaintiff's motions for counsel, request for PLU status, request to issue subpoenas, request
2 for transfer to a federal facility, request for discovery, and request for service forms are all denied.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. The original complaint (ECF No. 1) is dismissed with leave to amend;

5 2. The Clerk of the Court is directed to strike plaintiff's amended complaints (ECF
6 Nos. 6, 7, 11, 12, 13, 15, 16, 17, 26) from the record;

7 3. Within thirty days from the date of this order, plaintiff shall submit an amended
8 complaint. Plaintiff's amended complaint shall comply with the requirements of the Civil Rights
9 Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended
10 complaint must also bear the docket number assigned to this case and must be labeled "First
11 Amended Complaint." Failure to file an amended complaint in accordance with this order will
12 result in dismissal of this action;

13 4. The Clerk of the Court is directed to send plaintiff a copy of the prisoner complaint
14 form used in this district;

15 5. Plaintiff shall submit, within thirty days from the date of this order, an application
16 to proceed in forma pauperis on the form provided by the Clerk of Court or the appropriate filing
17 fee. Plaintiff's failure to comply with this order will result in a recommendation that this action
18 be dismissed;

19 6. The Clerk of the Court is directed to send plaintiff a new Application to Proceed In
20 Forma Pauperis By a Prisoner;

21 7. Plaintiff's motions for appointment of counsel (ECF Nos. 2, 18, 19, 20, 25, 28, 30)
22 are denied;

23 8. Plaintiff's request for PLU status (ECF No. 8) is denied;

24 9. Plaintiff's request to issue subpoenas (ECF No. 21) is denied;

25 10. Plaintiff's requests for transfer (ECF No. 22, 24) are denied;

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11. Plaintiff's request for discovery (ECF No. 27) is denied; and

12. Plaintiff's request for service forms (ECF No. 29) is denied.

DATED: March 31, 2017



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE