

1 The undersigned found that plaintiff had three prior cases dismissed in this court at the
2 screening stage for failure to state a claim: (1) Joseph v. California Prison Industry Authority et
3 al., Case No. 2:13-cv-00122 CKD, 2013 U.S. Dist. LEXIS 78588 (E.D. Cal. June 4, 2013); (2)
4 Joseph v. Smith, Case No. 2:12-cv-01935 CMK, 2016 U.S. Dist. LEXIS 23324 (E.D. Cal. Feb.
5 25, 2016); and (3) Joseph v. Heatley, et al., Case No. 2:13-cv-00879 CMK, 2016 U.S. Dist.
6 LEXIS 129994 (E.D. Cal. Sep. 22, 2016). Moreover, the undersigned found pursuant to Andrews
7 v. Cervantes, 493 F.3d 1047, 1049-50 (9th Cir. 2007), that the complaint did not allege sufficient
8 facts to indicate that plaintiff was in imminent danger of serious physical injury. See ECF No. 6.
9 The complaint alleged, inter alia, that defendant had falsely accused plaintiff of indecent
10 exposure, and that the false accusation caused him “shame, humiliation, and belittlement.”
11 Specifically, a yellow card was placed in the window of plaintiff’s cell, and he faced disciplinary
12 charges. ECF No. 1 at 3-4. Although plaintiff averred that “the defendant[’s] actions almost
13 cause me to be assaulted or killed by having the yellow placecard,” ECF No. 4, he provided no
14 facts regarding any actual, attempted, or threatened assault, and alleged no facts indicating that he
15 was at any risk of future violence. Accordingly, the undersigned found that his allegations were
16 insufficient to give rise to an inference of imminent physical danger. See ECF No. 6 at 2 & n.2.

17 On July 5, 2017, plaintiff filed a motion for reconsideration of his request to proceed with
18 in forma pauperis status. ECF No. 10. The motion was denied. ECF No. 11. On July 10, 2017,
19 plaintiff filed an interlocutory appeal in the Ninth Circuit. ECF Nos. 13, 16. On appeal, plaintiff
20 presented the substance of his claims for relief. Compare ECF No. 1, with ECF No. 16 at 1-6. A
21 copy of this court’s denial of plaintiff’s in forma pauperis request was attached to the pleading as
22 an exhibit. See ECF No. 16 at 8-10.

23 On November 15, 2017, the Ninth Circuit issued a remand order directing this court to
24 vacate its June 12, 2017 order denying IFP status, on grounds that the magistrate judge was
25 without authority to enter the order absent consent of the parties. See ECF No. 17 (citing 28
26 U.S.C. § 636(c) and Tripati v. Rison, 847 F.2d 548 (9th Cir. 1988)). On December 6, 2017, the
27 mandate issued. ECF No. 18.

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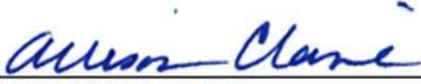
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Accordingly, IT IS HEREBY ORDERED that this court’s June 12, 2017 order denying plaintiff in pauperis status (ECF No. 6) is VACATED.

It is HEREBY RECOMMENDED, for the reasons set forth above, that the court deny plaintiff’s request for in forma pauperis status (ECF No. 2) pursuant to 28 U.S.C. § 1915(g).

These findings and recommendations are submitted to the United States District Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days after being served with these findings and recommendations, plaintiff may file written objections with the court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: December 18, 2017



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE