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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TONY BLACKMAN,

Plaintiff,

v.

FRANCISCH P. TISHER, et al.,

Defendants.

No. 2:17-cv-1926-JAM EFB P

FINDINGS AND RECOMMENDATIONS

Plaintiff, a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983, seeks leave to proceed in forma pauperis (ECF No. 2, 5). After review of plaintiff’s litigative history, the court finds, for the reasons stated below, that he is a “three-striker” within the meaning of U.S.C. § 1915(g) and his request must be denied.

Pursuant to Title 28 U.S.C. § 1915(g):

In no event shall a prisoner bring a civil action . . . [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.

Court records indicate that plaintiff has previously had at least three cases dismissed at the screening stage for failure to state a claim. Plaintiff’s three “strikes” include: *Blackman v. Hartwell*, 1:99-cv-05822 REC HGB P (E.D. Cal.) (dismissed on 3/12/2001 for failure to state a

1 claim); *Blackman v. Medina*, 3:05-cv-05390 SI (N.D. Cal.) (dismissed on 3/13/2006 for failure to
2 state a claim); and *Blackman v. Variz*, 3:06-cv-06398 SI (N.D. Cal.) (dismissed on 12/18/2006 for
3 failure to state a claim).

4 Plaintiff may only proceed in forma pauperis if his complaint indicates that he is in
5 imminent danger of serious physical injury. 28 U.S.C. § 1915(g); *Andrews v. Cervantes*, 493
6 F.3d 1047, 1049-1050 (9th Cir. 2007). His current allegations are convoluted and difficult to
7 parse, but the court is able to determine that they do not present a claim of imminent danger.¹ He
8 alleges that: (1) several state superior court judges violated his constitutional rights when they
9 declined to issue an order enforcing plaintiff's First Amendment right to receive a "Walkenhorst
10 Catalog" (ECF No. 4 at 3); (2) defendants Allison and Voong violated his rights by interfering
11 with his prison grievance appeals (*id.*); (3) that unspecified defendants interfered with plaintiff's
12 right to counsel during unspecified proceedings (*id.* at 7); and (4) that unspecified defendants
13 failed to arraign plaintiff within forty-eight hours of an unspecified arrest (*id.*). None of these
14 claims implicate an imminent danger of physical injury.

15 In light of the foregoing, plaintiff's request to proceed in forma pauperis should be denied.
16 Plaintiff should be granted twenty-one days to pay the filing fee for this action. If he fails to do
17 so, this action should be dismissed.

18 Accordingly, it is HEREBY RECOMMENDED that:

- 19 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) be denied; and
- 20 2. Plaintiff be required to pay the filing of \$400.00 in full within twenty-one (21) days of
21 any order adopting these findings and recommendations and admonished that failure to timely
22 comply will result in the dismissal of this action.

23 These findings and recommendations are submitted to the United States District Judge
24 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
25 after being served with these findings and recommendations, any party may file written
26

27 ¹ The court notes that review of plaintiff's complaint raises questions of whether venue in
28 this district is appropriate. Venue is not jurisdictional, however. *See Libby, McNeill, & Libby v.*
City National Bank, 592 F.2d 504, 510 (1979).

1 objections with the court and serve a copy on all parties. Such a document should be captioned
2 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
3 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
4 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

5 DATED: July 2, 2018.

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7 EDMUND F. BRENNAN
8 UNITED STATES MAGISTRATE JUDGE
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