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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DEXTER BROWN,  
  
Plaintiff,  
  
v.  
  
PURUSHOTTAMA SAGIREDDY,  
  
Defendant.

No. 2:17-cv-2041 KJM AC P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On October 13, 2017, the magistrate judge filed findings and recommendations, finding that plaintiff is a three strikes litigant under 28 U.S.C. § 1915(g). The findings and recommendations were served on plaintiff and contained notice that any objections were to be filed within twenty-one days. Plaintiff has filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a *de novo* review of this case. For the reasons explained below, the court declines to adopt the recommendation that plaintiff be required to pay the full filing fee of \$400.00 before proceeding with this action.

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1           The magistrate judge finds that prior to the commencement of this action plaintiff filed at  
2 least five lawsuits that qualify as strikes under 28 U.S.C. § 1915(g). ECF No. 3 at 2-3. Plaintiff  
3 does not object to this finding, and it will be adopted.

4           The magistrate judge also finds that the conduct complained of, defendant Sagireddy's  
5 reduction of plaintiff's hemodialysis treatment, took place almost four years before plaintiff filed  
6 the complaint in this action and, therefore, that plaintiff cannot demonstrate that he was "in  
7 imminent danger of serious physical injury" at the time he filed the complaint. *Id.* at 3; *see also*  
8 28 U.S.C. § 1915(g). Plaintiff's objections, ECF No. 6, and his proposed first amended complaint  
9 filed November 14, 2017, ECF No. 8, each contain allegations which, if proved, suggest that  
10 plaintiff has suffered and continues to suffer ongoing harm from the allegedly improper reduction  
11 in the frequency of dialysis treatment. *See* ECF No. 6 at 2; ECF No. 8 at 10-11. These  
12 allegations preclude this court from adopting the finding that plaintiff cannot show he was "in  
13 imminent danger of serious physical injury" when he filed this action.

14           Accordingly, IT IS HEREBY ORDERED that:

15           1. The findings and recommendations filed October 13, 2017, are adopted as to the  
16 finding that prior to filing this action plaintiff had at least five cases dismissed for failure to state  
17 a claim;

18           2. The findings and recommendations filed October 13, 2017 are not adopted as to the  
19 finding that plaintiff cannot demonstrate he was in imminent danger of serious physical injury  
20 when he filed this action;

21           3. The Clerk of the Court is directed to send plaintiff the court's form application to  
22 proceed in forma pauperis by a prisoner;

23           4. Plaintiff is directed to file the completed application to proceed in forma pauperis,  
24 including the required prison trust account statement, within thirty days from the date of this  
25 order;

26           5. Plaintiff is cautioned that failure to file a completed in forma pauperis application may  
27 result in the dismissal of this action; and

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6. This matter is referred back to the assigned magistrate judge for further proceedings consistent with this order.

DATED: May 2, 2018.

  
UNITED STATES DISTRICT JUDGE