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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TRAVON LEON FREEMAN,
Plaintiff,
v.
SCOTT KERNAN, et al.,
Defendants.

No. 2:17-cv-02233-TLN-AC

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 pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On July 15, 2019, the magistrate judge filed findings and recommendations herein which were served on Plaintiff and which contained notice to Plaintiff that any objections to the findings and recommendations were to be filed within fourteen days. (ECF No. 9.) Plaintiff has filed objections to the findings and recommendations. (ECF No. 10.)

Plaintiff objects to the magistrate judge’s finding that he has three strikes under 28 U.S.C. § 1915(g) on the grounds that a court within this District previously found in Freeman v. Lynch, No. 2:16-cv-0705 MCE CMK, 2018 WL 3388611, (E.D. Cal. July 12, 2018, adopted Sept. 17, 2018¹) [hereinafter “Freeman I”], that the cases relied upon were not strikes because they were

¹ 2018 WL 4409131, 2018 U.S. Dist. LEXIS 158329.

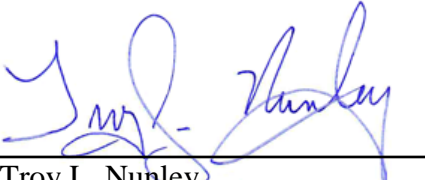
1 dismissed by a magistrate judge when only Plaintiff had consented to magistrate judge
2 jurisdiction. (ECF No. 10.) The decision in Freeman I was based upon the Ninth Circuit's
3 opinion in Williams v. King, 875 F.3d 500, 504–05 (9th Cir. 2017), which held that a magistrate
4 judge does not have authority to dismiss a case unless all parties, served or not, have consented to
5 magistrate judge jurisdiction. Freeman I, 2018 WL 3388611, at *1, 2018 U.S. Dist. LEXIS
6 116489, at *2–3. However, Freeman I was decided before the Ninth Circuit issued its opinion in
7 Hoffmann v. Pulido, 928 F.3d 1147 (9th Cir. 2019). In Hoffmann, the Ninth Circuit held that a
8 pre-Williams dismissal by a magistrate judge in a case where a plaintiff had consented, and the
9 defendants had not yet been served, can count as strikes under 28 U.S.C. § 1915(g).² 928 F.3d at
10 1150–51. In light of the decision in Hoffmann, the three cases identified by the magistrate judge
11 in this case are eligible to be counted as strikes under § 1915(g).

12 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this
13 Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the
14 Court finds the findings and recommendations to be supported by the record and by proper
15 analysis.

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. The findings and recommendations filed July 15, 2019 (ECF No. 9), are adopted in
18 full; and
- 19 2. Plaintiff is ordered to pay the entire \$400.00 in required fees within thirty days or face
20 dismissal of the case.

21 Dated: August 29, 2019

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27 Troy L. Nunley
28 United States District Judge

2 The magistrate judge's findings and recommendations in Freeman I explicitly noted that "the Ninth Circuit has yet to address the impact of the failure to appeal a final order issued by a Magistrate Judge in the absence of consent by all parties on it's [sic] holding in Williams." 2018 WL 3388611, at *1 n.2.