

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LATWAHN McELROY,

 Plaintiff,

 v.

CHCF, et al.,

 Defendants.

No. 2:18-cv-455 EFB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff,¹ a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983, has requested leave to proceed in forma pauperis. ECF Nos. 5, 12 & 13. 28 U.S.C. § 1915 provides that:

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.

28 U.S.C. § 1915(g). Court records indicate that plaintiff has previously had more than three cases dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted. See (1) *McElroy v. Gebbmedin*, No. 1:08-cv-0124-LJO-GSA (E.D. Cal. Dec. 11, 2008) (order dismissing action for failure to state a claim); (2) *McElroy v. Schultz*,

¹ Plaintiff has previously filed cases under the name “E.J. McElroy.”

1 No. 1:08-cv-0179-OWW-MJS (E.D. Cal. Apr. 30, 2010) (order dismissing action for failure
2 to state a claim); (3) *McElroy v. CDC*, 2:08-cv-0733-HWG (E.D. Cal. June 3, 2009) (order
3 dismissing action for failure to state a claim); and (4) *McElroy v. Ground*, No. 1:13-cv-483-
4 MJS (E.D. Cal. Nov. 1, 2013) (order dismissing action for failure to state a claim). *See also*
5 *McElroy v. Turner*, No. 2:12-cv-1182-CMK (E.D. Cal. Aug. 13, 2012) (order designating
6 plaintiff a three-strikes litigant pursuant to § 1915(g)).

7 Plaintiff would still be entitled to proceed in forma pauperis if his complaint indicated that
8 he was in imminent danger of serious physical injury. 28 U.S.C. § 1915(g); *Andrews v.*
9 *Cervantes*, 493 F.3d 1047, 1049-1050 (9th Cir. 2007). His allegations provide no such indication.
10 As best the court can discern, plaintiff alleges that various defendants at the California Healthcare
11 Facility have failed to “return authentic medical paperwork” which pertains to him. ECF No. 11
12 at 4. Plaintiff also appears to allege that, on some unspecified date, unnamed parties prevented
13 him from obtaining adequate dental and/or orthodontic care. *Id.* at 8. These claims are
14 interspersed amongst other statements that are incomprehensible. *Id.* at 7 (“[Defendants] has (sic)
15 nevertheless given into what will define a[n] ‘existing indebtedness’ liable to that obvious or
16 ‘careless to the fact’ . . .”).

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

20 Accordingly, it is ORDERED that the Clerk of Court shall randomly assign a United
21 States District Judge to this action.

22 Further, it is RECOMMENDED that:

23 1. Plaintiff’s applications for leave to proceed in forma pauperis (ECF Nos. 5, 12 & 13)
24 be denied; and

25 2. Plaintiff be directed to pay the full \$400 filing fee for this action within twenty-one
26 days of the district judge’s adoption of these findings and recommendations; failure to comply
27 with this directive should result in the dismissal of this action.

28 /////

1 These findings and recommendations are submitted to the United States District Judge
2 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
3 after being served with these findings and recommendations, any party may file written
4 objections with the court and serve a copy on all parties. Such a document should be captioned
5 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
6 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
7 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

8 DATED: May 22, 2019.

9
10 
11 EDMUND F. BRENNAN
12 UNITED STATES MAGISTRATE JUDGE
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28