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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JON HUMES,

Plaintiff,

v.

SACRAMENTO COUNTY, et al.,

Defendants.

No. 2:18-cv-0691 AC P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff has filed motions to proceed in forma pauperis. ECF Nos. 3, 5. Plaintiff has also filed a “motion for funds to facilitate discovery.” ECF No. 4. For the reasons stated below, the motion for funds will be denied. In addition, the court will recommend that plaintiff be formally declared a three-strikes litigant pursuant to 28 U.S.C. § 1915(g) and that plaintiff’s motions to proceed in forma pauperis be denied.

I. APPLICABLE LAW

A. 28 U.S.C. § 1915(g): Three Strikes Rule

Section 1915(g) states:

1 In no event shall a prisoner bring a civil action or appeal a judgment in a civil
2 action or proceeding under this section if the prisoner has, on 3 or more prior
3 occasions, while incarcerated or detained in any facility, brought an action or
4 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.

5 28 U.S.C. § 1915(g).

6 “It is well-settled that, in determining a [Section] 1915(g) ‘strike,’ the reviewing court
7 looks to the dismissing court’s action and the reasons underlying it.” Knapp v. Hogan, 738 F.3d
8 1106, 1109 (9th Cir. 2013) (citation omitted). “[Section] 1915(g) should be used to deny a
9 prisoner’s in forma pauperis status only when, after careful evaluation of the order dismissing an
10 action, and other relevant information, the district court determines that the action was dismissed
11 because it was frivolous, malicious or failed to state a claim.” Andrews v. King, 398 F.3d 1113,
12 1121 (9th Cir. 2006).

13 B. Judicial Notice of Court Records

14 It is well-established that a court may take judicial notice of its own records. See United
15 States v. Author Servs., Inc., 804 F.2d 1520, 1523 (9th Cir. 1986) overruled on other grounds,
16 United States v. Jose, 131 F.3d 1325, 1328-29 (9th Cir. 1997); Diamond v. Pitchess, 411 F.2d
17 565, 566 (9th Cir. 1969) (court may take judicial notice of own records to determine whether in
18 forma pauperis complaint should be dismissed). A judicially noticed fact must be one not subject
19 to reasonable dispute in that it is either “(1) generally known within the territorial jurisdiction of
20 the trial court or (2) capable of accurate and ready determination from sources whose accuracy
21 cannot be reasonably questioned.” Fed. R. Evid. 201(b).

22 II. RELEVANT FACTS AND ANALYSIS

23 Plaintiff has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.
24 See ECF Nos. 3, 5. A review of court records reveals that on at least three occasions, lawsuits
25 filed by the plaintiff have been dismissed on the grounds that they were frivolous or malicious or
26 failed to state a claim upon which relief may be granted. The court takes judicial notice of these
27 cases and the fact that each of them constitutes a “strike” under 28 U.S.C. § 1915(g). They are
28 the following:

1 ▪ Humes v. Sacramento County, No. 2:18-cv-0241 KJM AC P (“Humes I”):

2 On June 7, 2018, this case was dismissed for failure to state a claim. See Humes I, ECF
3 No. 10. At that time, the matter was declared a “strike” pursuant to 28 U.S.C. § 1915(g) and the
4 case was closed. See id.

5 ▪ Humes v. Spence, No. 2:17-cv-2617 MCE KJN P (“Spence”):

6 On June 8, 2018, the court dismissed this case for failure to state a claim, and the matter
7 was closed. See Spence, ECF No. 15. Although the Spence court did not formally declare the
8 matter a “strike” pursuant to 28 U.S.C. § 1915(g), the court’s dismissal of the matter for failure to
9 state a claim makes it a “strike.” See Andrews v. King, 398 F.3d 1113, 1121 (9th Cir, 2005)
10 (holding that prior dismissals qualify as strikes if after reviewing dismissal orders, district court
11 determines they were dismissed because they were frivolous or malicious or they failed to state a
12 claim).

13 ▪ Humes v. Faris, No. 2:17-cv-2440 JAM AC P (“Faris”):

14 On July 18, 2018, this case of plaintiff’s was also dismissed for failure to state a claim.
15 See Faris, ECF No. 18. The court ordered that the case be counted as a “strike” pursuant to 18
16 U.S.C. § 1915(g), and the matter was closed. See Faris, ECF No. 18.

17 Given that plaintiff has three strikes on the record, he is precluded from proceeding in
18 forma pauperis in this action unless he is “under imminent danger of serious physical injury.” 28
19 U.S.C. § 1915(g). Plaintiff has not alleged any facts in his complaint which suggest that he is
20 under imminent danger of serious physical injury.¹ See generally ECF No. 1. Therefore, plaintiff
21 will be required to submit the appropriate filing fee in order to proceed with this action.

22 Because plaintiff may not proceed with this action prior to submitting the filing fee,
23 plaintiff’s motion for funds to facilitate discovery (ECF No. 4) is premature. For this reason, it
24 will be denied.

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28 ¹ The complaint asserts that plaintiff’s Fourteenth Amendment due process rights were violated
when the Sacramento County Superior Court issued a warrant for his arrest for having failed to
register as a sex offender, despite the fact that plaintiff’s sex crime convictions have been
expunged. See ECF No. 1 at 4.

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Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff’s motion for funds to facilitate discovery (ECF No. 4) is DENIED as premature, and
2. A District Court Judge be assigned to this case.

IT IS FURTHER RECOMMENDED that:

1. The court’s dismissal of Humes v. Spence, No. 2:17-cv-2617 MCE KJN P be formally declared a “strike” pursuant to 28 U.S.C. § 1915(g);
2. Plaintiff be declared a three-strikes litigant pursuant to 28 U.S.C. § 1915(g); and
3. Plaintiff’s motions to proceed in forma pauperis (ECF Nos. 3, 5) be DENIED.

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 fourteen 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).

IT IS SO ORDERED

DATED: July 31, 2018


ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE