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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

AARON LAMONT STRIBLING,

Plaintiff,

v.

J. LEWIS,

Defendant.

No. 2:18-cv-0951-EFB P

ORDER AND 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. See 28 U.S.C. § 1915(a). For the reasons stated below, the court finds that plaintiff has not demonstrated he is eligible to proceed in forma pauperis.

A prisoner may not proceed 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 reflect that on at least three prior occasions, plaintiff has brought actions while incarcerated that were dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted. See (1) *Stribling v. Defazio*, No. 2:12-cv-2729-JAM-EFB (E.D. Cal.), ECF No. 14 (September 5, 2013 order dismissing action for failure to

1 prosecute and failure to state a claim); (2) *Stribling v. Tobias*, No. 2:16-cv-00399-MCE-EFB
2 (E.D. Cal.), ECF No. 17 (September 2, 2016 order dismissing action for failure to prosecute and
3 failure to state a claim); and (3) *Stribling v. Chooljian*, No. 2:18-cv-00266-CAS-FFM (C.D. Cal.),
4 ECF No. 5 (January 17, 2018 order dismissing action as frivolous, failing to state a claim, and
5 seeking monetary relief from a defendant immune from such relief).

6 The section 1915(g) exception applies if the complaint makes a plausible allegation that
7 the prisoner faced “imminent danger of serious physical injury” at the time of filing. 28 U.S.C.
8 § 1915(g); *Andrews v. Cervantes*, 493 F.3d 1047, 1055 (9th Cir. 2007). In this case, plaintiff
9 alleges that his personal medical information was stolen after being left unprotected by an
10 employee of the California Correctional Health Care Services (CCHCS). ECF No. 1 at 3.
11 Attached to the complaint is a May 16, 2016 letter from CCHCS notifying plaintiff of this
12 “potential breach” of his confidential information. *See id.* at 12 (notifying plaintiff that a laptop,
13 which *might* have contained sensitive personal information, was stolen from the vehicle of a
14 CCHCS employee). Plaintiff claims that having his identity stolen stresses him out “beyond
15 belief.” *Id.* at 3. These allegations do not demonstrate that plaintiff was under an imminent
16 danger of serious physical injury when he filed this action, on April 17, 2018. Plaintiff’s
17 application for leave to proceed in forma pauperis must therefore be denied pursuant to § 1915(g).
18 Plaintiff must submit the appropriate filing fee in order to proceed with this action.

19 Accordingly, IT IS HEREBY ORDERED that the Clerk randomly assign a United States
20 District Judge to this action.

21 Further, because plaintiff has not paid the filing fee and is not eligible to proceed in forma
22 pauperis, IT IS HEREBY RECOMMENDED that:

- 23 1. Plaintiff’s application to proceed in forma pauperis (ECF No. 2) be denied; and
- 24 2. Plaintiff be ordered to pay the \$400 filing fee within fourteen days from the date of any
25 order adopting these findings and recommendations and be warned that failure to do so will result
26 in the dismissal of this action.

27 These findings and recommendations are submitted to the United States District Judge
28 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days

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

6 Dated: May 2, 2018.

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8 EDMUND F. BRENNAN
9 UNITED STATES MAGISTRATE JUDGE
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