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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DEXTER BROWN,
Plaintiff,
v.
EDMUND G. BROWN, Jr., et al.,
Defendants.

No. 2:18-cv-2141-KJM-EFB 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 11, 2018, the magistrate judge filed findings and recommendations, 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. 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. Having reviewed the file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

The magistrate judge found that plaintiff is a three-strikes litigant for purposes of 28 U.S.C. § 1915(g) and that his complaint fails to demonstrate he is under imminent danger of

1 serious physical injury. Although plaintiff asserted in his complaint that he faced “[i]mminent
2 threat to life and limb due to circumstances giving rise to this complaint,” the complaint
3 concerned plaintiff’s access to mail and right to free speech. *See* ECF No. 1 at 2–3. The
4 complaint also alleged that plaintiff had “suffered repeated acts of attempted murder,” but did not
5 include any specific allegations that plaintiff was in any imminent danger of serious physical
6 injury at the time he filed the complaint. *Id.* at 19. *Compare Brown v. United States*, No. 2:18-
7 cv-1719-MCE-CKD (E.D. Cal. Jul. 31, 2018), *with* ECF Nos. 1 & 5 (finding plaintiff’s similarly
8 vague allegations of “attempted murder” insufficient to demonstrate imminent danger of serious
9 physical injury).

10 Plaintiff’s most concrete allegations of imminent harm were presented by way of an
11 attachment to his complaint. *See* ECF No. 1 at 18–19 (“statement of why in forma pauperis status
12 should be granted,” previously filed in *Brown v. California*, Case No. 17-175727 (9th Cir. May 3,
13 2018), ECF No. 10). There, plaintiff alleged that as recently as April 2018, he had been the
14 victim of “attempted murder” because he was being “deliberately poisoned,” putting him at risk
15 of a “heart attack and/or death” caused by “potassium toxicity.” ECF No. 1 at 19; *see also id.*
16 (alleging medical records would reflect he had “suffered many such poisonings in recent
17 months”). The Ninth Circuit Court of Appeals previously has found, however, these
18 allegations—which plaintiff has a lengthy history of making¹—were not sufficient to show
19 imminent danger of serious physical injury. *See Brown v. California*, Case No. 17-175727 (9th
20 Cir. Jul. 19, 2018), ECF No. 13 (denying plaintiff’s motion for leave to proceed in forma pauperis
21 on appeal). Plaintiff’s ongoing similar complaints, as presented in the objections and amended
22 complaints filed in this action (*see* ECF Nos. 6, 7, 8), do not warrant a different outcome.

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25 ¹ Court records reflect that plaintiff has been alleging that prison officials have been attempting to
26 kill him since as early as 2011. *See Brown v. Brown*, No. 2:11-cv-3053-KJM-KJN (E.D. Cal.),
27 ECF No. 1 (Nov. 17, 2011 complaint). Courts have rejected these repeated allegations from
28 plaintiff as “frivolous,” “delusional,” “far-fetched,” and “fantastical.” *See Brown v. Mueller*, No.
2:12-cv-2321-KJM-DAD (E.D. Cal.), ECF Nos. 33 & 39; *Brown v. Feinstein*, No. 18-cv-0670-
TLN-CKD (E.D. Cal.), ECF No. 7 at 4. Nothing before the court now leads to a different
conclusion.

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Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed October 11, 2018, are adopted in full;
2. Plaintiff's application to proceed in forma pauperis (ECF No. 4) is denied; and
3. Plaintiff is ordered to pay the \$400 filing fee within fourteen days from the date of this order and is admonished that failure to do so will result in the dismissal of this action.

DATED: March 11, 2019.


UNITED STATES DISTRICT JUDGE