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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PETER JOHN ARENDAS,
Plaintiff,
v.
DUSTIN VEGA,
Defendant.

No. 2:19-cv-1332-TLN-EFB P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a county inmate proceeding without counsel in an action brought under 42 U.S.C. § 1983. He 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 plaintiff has been designated a three-strikes litigant for purposes of § 1915(g). *See Arendas v. Kessler*, No. 09-6530 (KSH), 2010 U.S. Dist. LEXIS 68309 (July 10, 2010, D.N.J.) (identifying plaintiff as a three-strikes litigant); *see also Arendas v. Somerset County Sheriff's Dep't*, No. 3:09-cv-5782-FLW-TJB (June 16, 2010, D.N.J.)

1 (dismissed for failure to state a claim); *Arendas v. Hillsborough Police Dep't.*, No. 3:09-cv-2965-
2 MLC-DEA (July 2, 2010, D.N.J.) (dismissed for failure to state a claim); *Arendas v. Hillsborough*
3 *Police Dep't.*, No. 09-5965 (July 2, 2010, D.N.J.) (dismissed for failure to state a claim); *Arendas*
4 *v. Somerset County Sheriff's Dep't.*, No. 3:09-cv-6061-JAP-TJB (July 6, 2010, D.N.J.) (dismissed
5 for failure to state a claim).

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). Here, the allegations do
9 not demonstrate that plaintiff was under an imminent danger of serious physical injury when he
10 filed this action. *See* ECF No. 1 (seeking damages for allegedly wrongful arrest). Plaintiff’s
11 application for leave to proceed in forma pauperis must therefore be denied pursuant to § 1915(g).
12 Plaintiff must submit the appropriate filing fee in order to proceed with this action.

13 Accordingly, because plaintiff has not paid the filing fee and is not eligible to proceed in
14 forma pauperis, IT IS HEREBY RECOMMENDED that:

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

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

26 Dated: September 24, 2019.

27 
28 EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE