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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ZANE HUBBARD,

 Plaintiff,

 v.

DAVID BAUGHMAN, et al.,

 Defendants.

No. 2:19-cv-1482 KJN P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983, and requests leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Review of court records reveals that on at least three occasions lawsuits filed by the plaintiff have been dismissed on the grounds that they were frivolous or malicious or failed to state a claim upon which relief may be granted:

1. Hubbard v. Flores, No. 1:13-cv-01056 AWI BAM (E.D. Cal.) (dismissed June 30, 2014, for failure to state a claim; no appeal filed).
2. Hubbard v. Mendes, No. 1:13-cv-01078 LJO MJS (E.D. Cal.) (dismissed March 17, 2014, for failure to state a claim; no appeal filed).
3. Hubbard v. Corcoran State Prison, No. 1:13-cv-1511 AWI MJS (E.D. Cal.) (dismissed on April 24, 2015, for failure to state a claim; no appeal filed).

1 4. Hubbard v. Marchak, No. 1:14-cv-00274 LJO GSA (E.D. Cal.) (dismissed on June 4,
2 2015, for failure to state a claim, no appeal filed).

3 5. Hubbard v. Lua, No. 1:14-cv-00351 LJO SAB (E.D. Cal.) (dismissed May 6, 2014, for
4 failure to state a claim; no appeal filed).

5 6. Hubbard v. Austin, No. 2:15-cv-2279 JAM CMK (E.D. Cal.) (dismissed August 11,
6 2016, for failure to state a claim; no appeal filed).

7 All of the above cases constitute strikes that were final prior to the date plaintiff filed this
8 action. Silva v. Di Vittorio, 658 F.3d 1090, 1098-100 (9th Cir. 2011).

9 Plaintiff is therefore precluded from proceeding in forma pauperis in this action unless
10 plaintiff is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

11 Plaintiff sues the Warden, Associate Warden, Supervising Correctional Cook Vang, and
12 Food Manager McCulloch at California State Prison, Sacramento (“CSP-SAC”), and claims that
13 from 2016 to “current,” defendants Vang and McCulloch served contaminated food, as well as a
14 shortage of food, to inmates housed in administrative segregation, and states that on November
15 18, 2017, plaintiff was admitted to the hospital emergency room for food poisoning. (ECF No. 1
16 at 3, 4.) However, plaintiff is no longer housed at CSP-SAC. Rather, at the time he filed this
17 action on July 19, 2019, plaintiff was housed at Salinas Valley State Prison. The allegations in
18 plaintiff’s complaint do not suggest that plaintiff was under imminent danger of serious physical
19 injury at the time he filed the instant action. Thus, plaintiff must submit the appropriate filing fee
20 in order to proceed with this action.

21 On September 26, 2019, plaintiff was ordered to submit, within 21 days, the court’s filing
22 fee, and was cautioned that failure to comply with such order would result in a recommendation
23 that this action be dismissed. Twenty-one days have now passed, and plaintiff has not paid the
24 court’s filing fee or otherwise responded to the court’s order.

25 In accordance with the above, IT IS HEREBY ORDERED the Clerk of the Court is
26 directed to assign a district judge to this case; and

27 IT IS RECOMMENDED that:

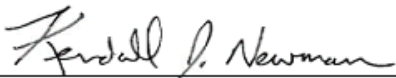
28 1. Plaintiff’s motion to proceed in forma pauperis be denied; and

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2. This action be dismissed without prejudice.

These findings and recommendations are submitted to the United States District Judge assigned to the 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 and serve a copy on all parties. 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).

Dated: November 5, 2019


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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