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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DEXTER BROWN,

 Plaintiff,

 v.

GARCIA,

 Defendant.

No. 2:19-cv-1677-TLN-EFB P

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).

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1 Court records (and plaintiff's own complaint, ECF No. 1 at 2) show that plaintiff has been
2 designated a three-strikes litigant for purposes of § 1915(g).¹ Further, plaintiff's complaint fails
3 to allege facts that adequately demonstrate he is under imminent danger of serious physical
4 injury.² Plaintiff's application for leave to proceed in forma pauperis must therefore be denied
5 pursuant to § 1915(g). Plaintiff must submit the appropriate filing fee in order to proceed with
6 this action.

7 Accordingly, IT IS RECOMMENDED that:

- 8 1. Plaintiff's application to proceed in forma pauperis (ECF No. 6) be denied; and
- 9 2. Plaintiff be ordered to pay the \$400 filing fee within fourteen days from the date of any
10 order adopting these findings and recommendations and be admonished that failure to do so will
11 result in the dismissal of this action.

12 These findings and recommendations are submitted to the United States District Judge
13 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
14 after being served with these findings and recommendations, any party may file written
15 objections with the court and serve a copy on all parties. Such a document should be captioned
16 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections

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22 ¹ See *Brown v. Sagireddy*, No. 2:17-cv-2041-KJM-AC (E.D. Cal. May 2, 2018), ECF No.
23 14.

24 ² Plaintiff claims he was poisoned with potassium on August 24, 2019. ECF No. 1 at 2.
25 The U.S. Court of Appeals for the Ninth Circuit Court has previously found that these allegations
26 -- which plaintiff has a lengthy history of making -- were not sufficient to show imminent danger
27 of serious physical injury. See *Brown v. California*, Case No. 17-17527, 2018 U.S. App. LEXIS
28 20131 (9th Cir. Jul. 19, 2018), ECF No. 13 (denying plaintiff's motion for leave to proceed in
forma pauperis on appeal). Plaintiff's ongoing similar complaints, as alleged here, do not warrant
a different outcome. See *Brown v. United States*, No. 2:18-cv-3197-KJN (E.D. Cal. May 1, 2019)
(noting plaintiff's history of alleging his life is in danger due to potassium toxicity and finding
that such allegations did not suggest he was under imminent danger of serious physical injury).

1 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
2 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

3 Dated: April 9, 2020.

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5 EDMUND F. BRENNAN
6 UNITED STATES MAGISTRATE JUDGE
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