

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSHUA NEIL HARRELL,
Plaintiff,
v.
COUNTY OF SOLANO, et al.,
Defendants.

No. 2:19-cv-2092-WBS-EFB P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner 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 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) *Harrell v. Fairfield Police Department*, No. 2:12-cv-1904-KJN (E.D. Cal.), ECF No. 15 (Dec. 5, 2012 order dismissing action after

1 plaintiff failed to submit an amended complaint within allotted time following dismissal of
2 complaint as either frivolous or for failure to state a claim); (2) *Harrell v. Target*, No. 2:15-cv-
3 0634-CKD (E.D. Cal.), ECF No. 20 (Apr. 12, 2016 order dismissing action for failure to state a
4 claim upon which relief could be granted), ECF No. 31 (order affirming dismissal on appeal); (3)
5 *Harrell v. State of California*, No. 2:15-cv-0470-KJM-EFB (E.D. Cal.), ECF No. 27 (Sept. 13,
6 2016 order dismissing action for failure to state a claim upon which relief could be granted), ECF
7 No. 35 (order affirming dismissal on appeal); (4) *Harrell v. Solano County Jail*, No. 2:14-cv-
8 1592-AC (E.D. Cal.), ECF No. 39 (Apr. 27, 2017 order dismissing action after plaintiff failed to
9 submit an amended complaint within the allotted time following dismissal of third amended
10 complaint for failure to state a claim); and (5) *Harrell v. California Forensic Medical Group Inc.*,
11 E.D. Cal. No. 2:15-cv-0579-KJM-DB (E.D. Cal.), ECF No. 68 (May 14, 2018 order dismissing
12 case for failure to state a claim).

13 The section 1915(g) exception applies if the complaint makes a plausible allegation that
14 the prisoner faced “imminent danger of serious physical injury” at the time of filing. 28 U.S.C.
15 § 1915(g); *Andrews v. Cervantes*, 493 F.3d 1047, 1055 (9th Cir. 2007). In this case, plaintiff
16 seeks to recover damages resulting from the loss of his personal vehicle/trailer and its contents,
17 following his arrest on April 6, 2017. *See* ECF No. 1. These allegations fail to demonstrate that
18 plaintiff was under an imminent danger of serious physical injury when he filed this action, in
19 October of 2019, from Folsom State Prison. Plaintiff’s application for leave to proceed in forma
20 pauperis must therefore be denied pursuant to § 1915(g). Plaintiff must submit the appropriate
21 filing fee in order to proceed with this action.

22 Accordingly, 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: April 8, 2020.

7 
8 EDMUND F. BRENNAN
9 UNITED STATES MAGISTRATE JUDGE
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28