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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LANCE WILLIAMS,  
  
  Plaintiff,  
  
  v.  
  
L. ZARAGOZA, et al.,  
  
  Defendants.

No. 2:21-cv-0153 TLN AC P

ORDER

Plaintiff, a former state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983 and has requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis. See ECF No. 2. The matter has been referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. The undersigned previously issued Findings and Recommendations (“F&Rs”) regarding plaintiff’s application to proceed in forma pauperis. ECF No. 10. Plaintiff has filed objections to the F&Rs. ECF No. 11.

For the reasons stated below, the court will vacate the outstanding F&Rs. In addition, plaintiff will be directed to fill out and return a non-prisoner in forma pauperis application.

I. RELEVANT HISTORY

When plaintiff filed his IFP application in January 2021, he was incarcerated at Deuel Vocational Institute (“DVI”). ECF No. 2 at 1. He was still at DVI when he filed the First Amended Complaint. ECF No. 6 at 1. Since then plaintiff has filed several change of address

1 notices, most recently in August 2022. ECF No. 9. The address on that notice is not for a state  
2 prison.

3 On November 2, 2022, the court screened the FAC and determined that plaintiff was a  
4 three strikes litigant within the meaning of 28 U.S.C. § 1915(g). ECF No. 10. Accordingly, the  
5 court refrained from conducting a substantive review of the FAC, and instead recommended that  
6 plaintiff's in forma pauperis application be denied and that plaintiff be ordered to pay the filing  
7 fees prior to proceeding further with this action. Id. at 2-6. Though difficult to read and  
8 understand, the plaintiff's objections appear to contest the findings regarding imminent danger as  
9 they relate to the court's three strikes analysis. The objections also state that plaintiff been  
10 released on parole. Id. at 1.

## 11 II. DISCUSSION

### 12 A. Applicable Law

13 A plaintiff who is released from prison is no longer a prisoner for purposes of Section  
14 1915(g), the three strikes rule. See Moore v. Maricopa County Sheriff's Office, 657 F.3d 890,  
15 892, 893 n.3 (9th Cir. 2011) (Section 1915(g) not applicable to plaintiff released from prison on  
16 parole and emphasizing court should reconsider anew any in forma pauperis application in case  
17 where district court erred in dismissing case). Upon release from prison, a former inmate must be  
18 allowed to apply to proceed under general in forma pauperis provisions of 28 U.S.C. §  
19 1915(a)(1). See DeBlasio v. Gilmore, 315 F.3d 396, 399 (4th Cir. 2003); In re Prison Litigation  
20 Reform Act, 105 F.3d 1131, 1139 (6th Cir. 1997) (upon release, obligation to pay remainder of  
21 fees to be determined solely on question of whether individual qualifies for pauper status). A  
22 released prisoner may proceed in forma pauperis upon satisfying the poverty provisions  
23 applicable to non-prisoners. McGann v. Comm'r, Soc. Sec. Admin., 96 F.3d 29, 30 (2d Cir.  
24 1996).

### 25 B. Analysis

26 Plaintiff reports that he has been released on parole. ECF No. 11 at 1. A search of the  
27 CDCR website for plaintiff via his inmate identification number indicates that he is no longer in  
28 its system. See <https://inmatelocator.cdcr.ca.gov/search.aspx> (search CDCR Number field for

1 “AG2394” (last visited December 1, 2022). The court takes judicial notice of this fact.  
2 Accordingly, plaintiff is no longer a prisoner within the meaning of the Prison Litigation Reform  
3 Act and Section 1915(g), and it is no longer applicable to him. See 42 U.S.C. § 1997e(h)  
4 (defining “prisoner” as “any person incarcerated . . . in any facility who is . . . convicted of . . .  
5 violations of criminal law.”); Page v. Torrey, 210 F.3d 1136, 1139 (2000) (referencing 42 U.S.C.  
6 § 1997e(h) for definition of “prisoner”); see generally Jackson v. Fong, 870 F.3d 928, 931 (9th  
7 Cir. 2017) (a plaintiff not in custody when filing amended operative complaint is not a prisoner  
8 subject to PLRA exhaustion defense).

9 A prisoner’s application to proceed in forma pauperis does not become moot upon  
10 subsequent release. Moore, 657 F.3d at 892 n.2. Because plaintiff is no longer a prisoner,  
11 however, he must be given the opportunity to file a non-prisoner in forma pauperis application.  
12 See generally McGann, 96 F.3d at 30. Once it has been filed, the court will consider it anew. See  
13 Moore, 657 F.3d at 893 n.3; see, e.g., Sierra v. Director for Dep’t of Corr. and Rehab., 846 F.  
14 App’x 545, 546 (9th Cir. 2021) (citing Moore and stating Section 1915(g) no longer applied to  
15 plaintiff released from prison while appeal was pending and that any in forma pauperis  
16 application should be reconsidered anew).

17 For these reasons, the court will vacate the pending recommendation that plaintiff be  
18 required to pay the filing fees in full prior to proceeding further with this matter. In addition,  
19 plaintiff will be given the opportunity to file a new in forma pauperis application for non-  
20 prisoners. If plaintiff is granted leave to proceed in forma pauperis, the court will conduct a  
21 substantive review of the claims in plaintiff’s FAC at that time.

22 Accordingly, IT IS HEREBY ORDERED that:

23 1. The Clerk of Court shall send plaintiff a copy of the court’s in forma pauperis  
24 application form for non-prisoners;

25 2. The Findings and Recommendations issued November 2, 2022 (ECF No. 10), are  
26 VACATED; and

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3. Within thirty days of this order, plaintiff shall fully complete and return the application to proceed in forma pauperis by a non-prisoner in compliance with 28 U.S.C. 1915(a)(1).

DATED: December 5, 2022

  
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ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE