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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERTO HERRERA,

 Plaintiff,

 v.

UNKNOWN, et al.,

 Defendants.

No. 2:21-cv-1170-EFB P

ORDER AND 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). A review of court records from this court reveals that it was determined in *Herrera v. Ulit*, No. 1:13-cv-1806-AWI-MJS, that plaintiff has “struck out” under 28 U.S.C. § 1915(g).

1 The section 1915(g) exception applies if the complaint makes a plausible allegation that
2 the prisoner faced “imminent danger of serious physical injury” at the time of filing. 28 U.S.C.
3 § 1915(g); *Andrews v. Cervantes*, 493 F.3d 1047, 1055 (9th Cir. 2007). Here, plaintiff alleges he
4 has suffered “off and on” from chest pains for many years. ECF No. 1 at 3. On June 9, 2021, he
5 allegedly reported chest pains to “RN Sandra.” *Id.* She allegedly did nothing to ensure that he
6 was not having a stroke or otherwise save his life. Without further elaboration, plaintiff states
7 that “this has not been the first time this has happened with CDCR HC Staff.” *Id.* Plaintiff does
8 not indicate whether he ever received medical care for the June 9th incident, or whether the chest
9 pains persist or have resolved. The allegations do not show that when plaintiff filed his complaint
10 on June 24, 2021, he faced an imminent danger of serious physical injury.

11 Plaintiff’s application for leave to proceed in forma pauperis must therefore be denied
12 pursuant to § 1915(g). Plaintiff must submit the appropriate filing fee in order to proceed with
13 this action.

14 Accordingly, it is ORDERED that the Clerk of the Court randomly assign a United States
15 District Judge to this action.

16 Further, because plaintiff has not paid the filing fee and is not eligible to proceed in forma
17 pauperis, it is RECOMMENDED that:

- 18 1. Plaintiff’s application to proceed in forma pauperis (ECF No. 2) be denied; and
- 19 2. Plaintiff be ordered to pay the \$402 filing fee within fourteen days from the date of any
20 order adopting these findings and recommendations and be warned that failure to do so will result
21 in the dismissal of this action.


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

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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: September 7, 2021.

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5 EDMUND F. BRENNAN
6 UNITED STATES MAGISTRATE JUDGE
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