

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

ANTOINE DESHAWN BARNES,

Plaintiff,

v.

SAM LAHORATO, Jr., et al.,

Defendants.

No. 2:23-cv-0534-DJC-EFB (PC)

FINDINGS AND RECOMMENDATIONS

Plaintiff, a state prisoner proceeding without counsel, has filed a civil rights complaint. ECF No. 1. He seeks leave to proceed in forma pauperis (“IFP”). *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 reveals that it was determined in *Barnes v. Harris*, No. 2:21-cv-08336-PA-KES (E.D. Cal. Oct. 26, 2021) and in *Barnes v. Wolf*, No. 1:22-cv-00955-ADA-SKO (E.D. Cal. Sept. 6, 2022), 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, the complaint does
4 not allege that plaintiff faced an imminent danger of serious physical injury at the time plaintiff
5 filed the complaint. See ECF No. 1 (alleging he is wrongfully imprisoned). Plaintiff’s
6 application for leave to proceed in forma pauperis must therefore be denied pursuant to § 1915(g).
7 Plaintiff must submit the appropriate filing fee in order to proceed with this action.

8 Accordingly, because plaintiff has not paid the filing fee and is not eligible to proceed in
9 forma pauperis, it is RECOMMENDED that:

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

14 These findings and recommendations are submitted to the United States District Judge
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
16 after being served with these findings and recommendations, any party may file written
17 objections with the court and serve a copy on all parties. Such a document should be captioned
18 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
19 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
20 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

21
22 Dated: May 25, 2023.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE