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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARL ECKSTROM,  
  
                                Plaintiff,  
  
                        v.  
  
BICK, et al.,  
  
                                Defendant.

No. 2:23-cv-1488 TLN AC P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se with this civil action and seeks leave to proceed in forma pauperis under 28 U.S.C. § 1915(a). For the reasons stated below, the undersigned recommends the plaintiff's in forma pauperis application (ECF No. 2) be denied.

I. Three Strikes Analysis

Plaintiff seeks leave to proceed in forma pauperis under 28 U.S.C. § 1915(a). ECF No. 2. The Prison Litigation Reform Act of 1995 (PLRA) permits any court of the United States to authorize the commencement and prosecution of any suit without prepayment of fees by a person who submits an affidavit indicating that the person is unable to pay such fees. However,

[i]n no event shall a prisoner bring a civil action or appeal a judgement in a civil action or proceeding under this section if the prisoner has, on 3 or more 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,

1 unless the prisoner is under imminent danger of serious physical  
2 injury.

3 28 U.S.C. § 1915(g). The plain language of the statute makes clear that a prisoner is precluded  
4 from bringing a civil action or an appeal in forma pauperis if the prisoner has brought three  
5 frivolous actions and/or appeals (or any combination thereof totaling three). Rodriguez v. Cook,  
6 169 F.3d 1176, 1178 (9th Cir. 1999). “[Section] 1915(g) should be used to deny a prisoner’s [in  
7 forma pauperis] status only when, after careful evaluation of the order dismissing an action, and  
8 other relevant information, the district court determines that the action was dismissed because it  
9 was frivolous, malicious or failed to state a claim.” Andrews v. King, 398 F.3d 1113, 1121 (9th  
10 Cir. 2005).

11 Inspection of other cases filed by plaintiff has led to the identification of at least 3 cases  
12 that qualify as strikes. The court takes judicial notice of the following lawsuits filed by plaintiff:<sup>1</sup>

- 13 1. Eckstrom v. Reagan, No. 2:98-cv-1034 LKK JFM (E.D. Cal.) (complaint dismissed  
14 October 20, 1998, for failure to state a claim (ECF No. 7));<sup>2</sup>
- 15 2. Eckstrom v. Beard, No. 2:15-cv-8560 TJH AS (C.D. Cal.) (third amended complaint  
16 dismissed on April 24, 2017, for failure to state a claim (ECF No. 36));
- 17 3. Eckstrom v. Hoshino, No. 2:16-cv-0538 TLN EFB (E.D. Cal.) (second amended  
18 complaint dismissed on January 23, 2020, for failure to state a claim (ECF No. 35)).

19 All of the preceding cases were dismissed well in advance of the July 18, 2023 filing of  
20 the instant action, and none of the strikes have been overturned. Therefore, this court finds that  
21 plaintiff is precluded from proceeding in forma pauperis unless he is “under imminent danger of

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23 <sup>1</sup> The court “may take notice of proceedings in other courts, both within and without the federal  
24 judicial system, if those proceedings have a direct relation to matters at issue.” United States ex  
25 rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992)  
(citation and internal quotation marks omitted) (collecting cases); Fed. R. Evid. 201(b)(2) (court  
26 may take judicial notice of facts that are capable of accurate determination by sources whose  
27 accuracy cannot reasonably be questioned).

28 <sup>2</sup> Because the case is over twenty years old, an electronic copy of the order dismissing the case  
could not be located. Nonetheless, the court was able to identify the basis for dismissal of the  
complaint from the Ninth Circuit’s memorandum decision in Case No. 98-17303. ECF No. 16.  
The Ninth Circuit summarized and affirmed the district court’s decision to dismiss the complaint  
for failure to state a claim. Id.

1 serious physical injury.” 28 U.S.C. § 1915(g). To satisfy the exception, plaintiff must have  
2 alleged facts that demonstrate that he was “under imminent danger of serious physical injury” at  
3 the time of filing the complaint. Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007)  
4 (“[I]t is the circumstances at the time of the filing of the complaint that matters for purposes of  
5 the ‘imminent danger’ exception to § 1915(g).”). “[T]he imminent danger exception to the PLRA  
6 three-strikes provision requires a nexus between the alleged imminent danger and the violations  
7 of law alleged in the complaint.” Ray v. Lara, 31 F.4th 692, 695 (9th Cir. 2022).

8 The complaint alleges that from December 3, 2022, to May 19, 2023, defendants failed to  
9 provide plaintiff with treatment for an enlarged prostate, causing plaintiff to urinate on himself  
10 while he slept. ECF No. 1 at 5-7. In alleging the injury suffered, the plaintiff acknowledges he  
11 “started to get adequate medication for [e]nlarged [p]rostate on May 19, 2023,” and that he does  
12 not have cancer. Id. at 5. Accordingly, the allegations do not demonstrate an imminent risk of  
13 serious physical injury at the time of filing, and the undersigned will therefore recommend that  
14 plaintiff be required to pay the filing fee in full or have the complaint dismissed.

15 II. Plain Language Summary of this Order for a Pro Se Litigant

16 You have at least three strikes under § 1915(g) and cannot be granted in forma pauperis  
17 status unless you show the court that you were in imminent danger of serious physical injury at  
18 the time you filed the complaint. You have not shown that you were in imminent danger of  
19 serious physical injury at the time you filed your complaint and so it is being recommended that  
20 your motion to proceed in forma pauperis be denied and you be required to pay the whole filing  
21 fee at one time.

22 Accordingly, IT IS 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 entire \$405.00 in required fees within thirty days or face  
25 dismissal of the case.

26 These findings and recommendations are submitted to the United States District Judge  
27 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
28 after being served with these findings and recommendations, plaintiff may file written objections

1 with the court. Such a document should be captioned “Objections to Magistrate Judge’s Findings  
2 and Recommendations.” Plaintiff is advised that failure to file objections within the specified  
3 time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153  
4 (9th Cir. 1991).

5 DATED: August 29, 2024

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7 ALLISON CLAIRE  
8 UNITED STATES MAGISTRATE JUDGE  
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