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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

EDDIE L. YOUNG,  
  
Plaintiff,  
  
v.  
  
R. EHLERS, et al.,  
  
Defendants.

No. 2:24-cv-0361 AC P

ORDER AND 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).

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

1 28 U.S.C. § 1915(g). The plain language of the statute makes clear that a prisoner is precluded  
2 from bringing a civil action or an appeal in forma pauperis if the prisoner has brought three  
3 frivolous actions and/or appeals (or any combination thereof totaling three). Rodriguez v. Cook,  
4 169 F.3d 1176, 1178 (9th Cir. 1999).

5 “[Section] 1915(g) should be used to deny a prisoner’s [in forma pauperis] status only  
6 when, after careful evaluation of the order dismissing an action, and other relevant information,  
7 the district court determines that the action was dismissed because it was frivolous, malicious or  
8 failed to state a claim.” Andrews v. King, 398 F.3d 1113, 1121 (9th Cir. 2005). “[W]hen a . . .  
9 court disposes of an in forma pauperis complaint ‘on the grounds that [the claim] is frivolous,  
10 malicious, or fails to state a claim upon which relief may be granted,’ such a complaint is  
11 ‘dismissed’ for purposes of § 1915(g) even if the . . . court styles such dismissal as denial of the  
12 prisoner’s application to file the action without prepayment of the full filing fee.” O’Neal v.  
13 Price, 531 F.3d 1146, 1153 (9th Cir. 2008) (second alteration in original).

14 Inspection of other cases filed by plaintiff has led to the identification of at least five cases  
15 that qualify as strikes.<sup>1</sup> The court takes judicial notice of the following lawsuits filed by  
16 plaintiff:<sup>2</sup>

- 17 1. Young v. McCargar, No. 2:00-cv-2393 GEB DAD (E.D. Cal.) (complaint dismissed  
18 on August 13, 2002, for failure to state a claim (ECF No. 33));
- 19 2. Young v. Bowen, No. 2:01-cv-6368 DSF MLG (C.D. Cal.) (second amended  
20 complaint dismissed on July 12, 2007, for failure to state a claim (ECF No. 213));
- 21 3. Young v. Edwards, No. 2:02-cv-2289 CAS MLG (C.D. Cal.) (complaint dismissed on  
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23 <sup>1</sup> The Ninth Circuit has also determined that plaintiff has accrued at least three strikes. In Young  
24 v. Curliss, 9th Cir. No. 13-15226, the Ninth Circuit denied plaintiff’s application to proceed in  
25 forma pauperis both because the appeal was frivolous and because plaintiff had accrued at least  
26 three strikes under § 1915(g). No. 13-15226, ECF No. 7.

27 <sup>2</sup> The court “may take notice of proceedings in other courts, both within and without the federal  
28 judicial system, if those proceedings have a direct relation to matters at issue.” United States ex  
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  
may take judicial notice of facts that are capable of accurate determination by sources whose  
accuracy cannot reasonably be questioned).

1 May 1, 2002, for failure to state a claim (ECF No. 6));

2 4. Young v. Parks, 9th Cir. No. 09-16957 (in forma pauperis status denied because the  
3 appeal was frivolous and plaintiff had three strikes under § 1915(g) (Dkt. 11),  
4 dismissed on April 9, 2010, for failure to pay the filing fee (Dkt. 12); and

5 5. Young v. Curliss, 9th Cir. No. 13-15226 (in forma pauperis status denied because the  
6 appeal was frivolous and plaintiff had three strikes under § 1915(g) (Dkt. 7), dismissed  
7 on July 5, 2013, for failure to pay the filing fee (Dkt. 9)).

8 All of the preceding cases were dismissed well in advance of the January 30, 2024 filing  
9 of the instant action, and none of the strikes have been overturned. Therefore, this court finds that  
10 plaintiff is precluded from proceeding in forma pauperis unless he is “under imminent danger of  
11 serious physical injury.” 28 U.S.C. § 1915(g). To satisfy the exception, plaintiff must have  
12 alleged facts that demonstrate that he was “under imminent danger of serious physical injury” at  
13 the time of filing the complaint. Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007)  
14 (“[I]t is the circumstances at the time of the filing of the complaint that matters for purposes of  
15 the ‘imminent danger’ exception to § 1915(g).”). “[T]he imminent danger exception to the PLRA  
16 three-strikes provision requires a nexus between the alleged imminent danger and the violations  
17 of law alleged in the complaint.” Ray v. Lara, 31 F.4th 692, 695 (9th Cir. 2022).

18 The complaint alleges violations of plaintiff’s constitutional rights stemming from a use of  
19 force that occurred on March 6, 2023,<sup>3</sup> and the subsequent decision to place plaintiff in  
20 administrative segregation. ECF No. 1 at 8-18. There are no allegations that would demonstrate  
21 an imminent risk of serious physical injury at the time of filing, and the undersigned will  
22 therefore recommend that plaintiff be required to pay the filing fee in full or have the complaint  
23 dismissed.

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27 <sup>3</sup> Plaintiff alleges that some defendants used excessive force against him or sexually assaulted  
28 and harassed, while others failed to intervene or provide medical treatment and subsequently left  
him in a cold cell while only wearing boxers. ECF No. 1 at 8-15.

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

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

7 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court shall randomly  
8 assign a United States District Judge to this action.

9 IT IS FURTHER 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 entire \$405.00 in required fees within thirty days or face  
12 dismissal of the case.

13 These findings and recommendations are submitted to the United States District Judge  
14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
15 after being served with these findings and recommendations, plaintiff may file written objections  
16 with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings  
17 and Recommendations." Plaintiff is advised that failure to file objections within the specified  
18 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153  
19 (9th Cir. 1991).

20 DATED: February 7, 2024

21   
22 ALLISON CLAIRE  
23 UNITED STATES MAGISTRATE JUDGE  
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