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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

JEFF E. WALKER,  
CDCR No. F-11343,

Plaintiff,

vs.

C/O D. HUBERT; C/O C. MOORE;  
SGT. LUNA; LT. ACUNA; C/O  
LABACO; C/O MURPHY; NURSE  
DONOHUE; JOHN/JANE DOES,

Defendants.

Civil 14cv0788 BTM (KSC)  
No.

**ORDER DENYING MOTION TO  
PROCEED *IN FORMA PAUPERIS*  
AS BARRED BY  
28 U.S.C. § 1915(g)**

**I. Procedural History**

Plaintiff, a state inmate currently incarcerated at the California Health Care Facility located in Stockton, California, has filed an action pursuant to 42 U.S.C. § 1983. (ECF Doc. No. 1.) In addition, Plaintiff has filed a Motion to Proceed *In Forma Pauperis* (“IFP”). (ECF Doc. No. 6.) The Court found that Plaintiff was not entitled to proceed IFP due to three previous “strikes” as defined by 28 U.S.C. § 1915(g). However, the Court issued an Order to Show Cause (“OSC”) on July 8, 2014 requiring

1 Plaintiff to show why he would be entitled to the “imminent danger” exception of  
2 § 1915(g).

3 On August 20, 2014, Plaintiff filed his response to the Court’s July 8, 2014 OSC.  
4 (ECF Doc. No. 9.)

5 **II. PLAINTIFF’S MOTION TO PROCEED IFP**

6 The Court has already determined that the following three cases constitute  
7 “strikes” for purposes of § 1915(g). *See* July 8, 2014 Order at 3.

8 They are:

- 9 1) *Walker v. San Francisco County Jail*, Civil Case No. 3:08-cv-1264-CRB  
10 (N.D. Cal. Mar. 14, 2008) (Order of Dismissal for failing to state a claim)  
11 (strike one);
- 12 2) *Walker v. Jane Doe, et al.*, Civil Case No. 3:08-cv-01265-CRB (N.D. Cal.  
13 Mar 14, 2008) (Order of Dismissal for failing to state a claim (strike two);  
14 and
- 15 3) *Walker v. Gradillas, et al.*, Civil Case No. 3:09-cv-02845-CRB (N.D. Cal.  
16 Aug. 6, 2009) (Order of Dismissal for failing to state a claim) (strike three).

17 Plaintiff has filed a one (1) page response to the Court’s OSC. In this response,  
18 which is not entirely coherent, Plaintiff claims that he was “under ‘imminent danger’ at  
19 the time the events in his Complaint took place. (*See* Pl.’s Decl. at 1.) However, as the  
20 Court noted in its previous Order, Plaintiff’s allegations refer to incidents that were  
21 alleged to occur several months prior to the date that Plaintiff submitted his Complaint  
22 to this Court. In his Declaration, Plaintiff contends that Defendant Hubert “not only  
23 assaulted Plaintiff but threatened his life and retaliation as noted.” (*Id.*) These are the  
24 same allegations set forth in Plaintiff’s Complaint that pertain to the incidents that  
25 occurred in January of 2014. As the Court stated in the previous Order, there are no  
26 allegations that Plaintiff was in *imminent danger* at the time he filed his Complaint  
27 several months later.

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1 Plaintiff also states that there is proof of imminent danger because he was  
2 “assaulted” by “C/O/ Heddy” in May of 2014. There is no such person identified in  
3 Plaintiff’s Complaint, there is no Defendant named “Heddy” and it is unclear if this  
4 person is employed at the Richard J. Donovan Correctional Facility (“RJD”) where the  
5 allegations took place or Plaintiff’s current place of incarceration.

6 The imminent danger exception “applies if the complaint makes a plausible  
7 allegation that the prisoner faced ‘imminent danger of serious physical injury’ at the time  
8 of filing.” *Andrews v. Cervantes*, 493 F.3d 1047, 1055 (9th Cir. 2007). While Plaintiff  
9 makes serious allegations in his Complaint that Defendant Hubert allegedly raped  
10 Plaintiff, he then states that he “wasn’t sure if [Hubert] was involved or not” with the  
11 alleged rape. (*See* Compl. at 4-5.) Plaintiff also alleges that it was the person who was  
12 tasked with overseeing Plaintiff’s suicide watch who allegedly raped him in his cell.  
13 (*Id.*) A number of Plaintiff’s claims appear to be borderline delusional and the Court  
14 finds there are no plausible allegations that Plaintiff was in imminent danger of serious  
15 physical injury at the time he filed this action on April 3, 2014.

### 16 **III. CONCLUSION AND ORDER**

17 For the reasons set forth above, the Court hereby:

18 (1) **DENIES** Plaintiff’s Motion to Proceed IFP (ECF Doc. No. 6) as barred by  
19 28 U.S.C. § 1915(g);

20 (2) **DISMISSES** this civil action sua sponte without prejudice for failing to  
21 prepay the \$400 civil and administrative filing fees required by 28 U.S.C. § 1914(a); and

22 (3) **CERTIFIES** that an IFP appeal from this Order would also be frivolous and  
23 therefore, not taken in good faith pursuant to 28 U.S.C. § 1915(a)(3). *See Coppedge v.*  
24 *United States*, 369 U.S. 438, 445 (1962); *Gardner v. Pogue*, 558 F.2d 548, 550 (9th Cir.  
25 1977) (indigent appellant is permitted to proceed IFP on appeal only if appeal would not  
26 be frivolous).

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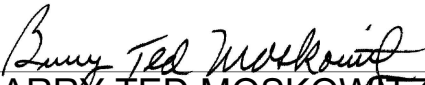
2 The Clerk shall close the file.

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4 **IT IS SO ORDERED.**

5 DATED: November 18, 2014

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BARRY TED MOSKOWITZ, Chief Judge  
United States District Court

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