

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

FILED

JAN 06 2014

Clerk, U.S. District Court
District Of Montana
Missoula

LLOYD SCOTT MAIER,

CV 13-92-GF-DWM-RKS

Plaintiff,

vs.

ORDER

MARTIN FRINK, MS. CHRISTIAN,
MS WANDLER, MS. TEMPLE, C.O.
BOTTS, C.O. COLBERT, and PAUL
LUCER,

Defendants.

This matter comes before the Court on review of the Findings and Recommendations of United States Magistrate Judge Keith Strong, (Doc. 6), regarding a *pro se* Complaint filed by Lloyd Scott Maier, (Doc. 2). Maier seeks to proceed *in forma pauperis*. (Doc. 1.) Because he is an inmate subject to the three-strikes rule, (*see* Doc. 4 at 4), he may only do so upon showing he is in imminent danger of serious physical injury, 28 U.S.C. § 1915(g). Because his Complaint fails to make that showing, Judge Strong granted Maier leave to file a brief in which he might specifically allege sufficient facts to meet that standard. (Doc. 4.) Maier filed a supplemental brief in accordance with Judge Strong's Order. (Doc.

5.) After review of Maier's submission, Judge Strong finds that Maier has failed to demonstrate that he is not subject to the three-strikes rule and recommends Maier's Motion for Leave to proceed *in forma pauperis* be denied. (Doc. 6 at 4.) Maier did not formally object to Judge Strong's Findings and Recommendations.

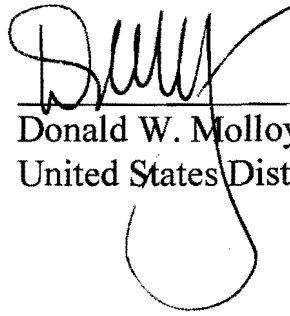
The Court reviews the Findings and Recommendations of a United States Magistrate Judge for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error is present only if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

After a review of Judge Strong's Findings and Recommendations, I find no clear error. Maier responded to Judge Strong's Findings and Recommendations. (Doc. 7.) In his response, Maier notes his agreement with Judge Strong. (*Id.*) He also presents a factual development which came to light after he submitted his supplemental brief alleging imminent physical danger. (*Id.*) These new facts do not disturb Judge Strong's findings in support of his conclusion that the three-strikes rule applies. Maier's statement that he and the gang leader are now in custody in the same facility does not amount to a showing of imminent danger of serious physical injury. Even after this factual development, "Mr. Maier does not allege he is at risk in administrative segregation where he currently held." (Doc. 6

at 3.)

Therefore, IT IS ORDERED that Judge Strong's Findings and Recommendations, (Doc. 6), are ADOPTED IN FULL. Maier's Motion for Leave to proceed *in forma pauperis*, (Doc. 1), is DENIED.

DATED this 10th day of January, 2014.



Donald W. Molloy, District Judge
United States District Court