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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHN THOMAS ENTLER,

Plaintiff,

v.

MARYWAVE VAN DEREN, et al.,

Defendants.

No. C10-5390BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation of the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 3) and Plaintiff's ("Entler") objection to the Report and Recommendation (Dkt. 4). The Court has considered the Report and Recommendation, Entler's objection, and the remaining record, and hereby adopts the Report and Recommendation.

I. DISCUSSION

This matter arises out of Entler's application to proceed *in forma pauperis* in a 42 U.S.C. §1983 civil rights action. *See* Dkt. 1.

On June 2, 2010, Entler filed his application to proceed *in forma pauperis* as well an attachment titled, "Proposed Prisoner Civil Rights Complaint." *See* Dkt. 1 at 1. The Magistrate Judge issued a Report and Recommendation on Entler's application to proceed *in forma pauperis*, recommending that Entler's application be denied. Dkt. 3. On August 20, 2008, Entler filed an objection to the Report and Recommendation, conceding that his civil

1 rights complaint was premature and his application to proceed *in forma pauperis* was
2 improperly supported. Dkt. 4 at ¶ 1. Today, Entler has yet to file the requisite trust account
3 statement, consent form, service copies, or Marshal’s forms required with an *in forma*
4 *pauperis* application. An *in forma pauperis* application cannot be considered without these
5 application materials, as correctly found by the Magistrate Judge and acknowledged by
6 Entler. *See* Dkts. 3 at 2; 2 at ¶ 1.

7 In his objection, Entler also claims that the Magistrate Judge committed fraud by
8 finding that Entler misled the court by misrepresenting the number of times that Entler has
9 filed a complaint. *See* Dkt. 4 at 2-3. In Entler’s complaint, Entler answered that he had filed
10 four lawsuits when asked on the complaint form how many other lawsuits he had brought in
11 *any* federal court while a prisoner. Dkt. 1 at 1. Furthermore, in the complaint, Entler
12 described five different lawsuits that he had previously brought. Dkt. 1, attach. 2 at 5-8.
13 Upon inquiry, the Magistrate Judge discovered that Entler had actually brought seven
14 federal lawsuits while a prisoner. Dkt. 3 at 2.

15 Entler argues that habeas corpus and § 1983 claims do not “qualify as prior
16 [lawsuits],” citing to *Andrews v. King*, 389 F.3d 1113 (9th Cir. 2005), and *Naddi v. Hill*, 106
17 F.3d 275 (9th Cir. 1997). Dkt. 4 at ¶ 2. Entler’s reliance on *Andrews* and *Naddi* (Dkt. 4 at ¶
18 2) is misplaced because those cases held that only habeas corpus claims would not count as a
19 *strike* against the prisoner for purposes of the Prison Litigation Reform Act. *See Andrews*,
20 389 F.3d at 1122, *quoting Naddi*, 106 F.3d at 277. The complaint form requires all federal
21 *lawsuits* to be listed, including all habeas corpus suits. *See* Dkt. 1 at 1. The Magistrate Judge
22 did not improperly find that Entler misrepresented the number of prior lawsuits filed. Dkt. 3
23 at 4. Furthermore, a Magistrate Judge is judicially immune, therefore, Entler’s fraud claim
24 has no merit. *See Mullis v. United States Bankruptcy Court*, 828 F.2d 1385, 1390 (9th Cir.
25 1987); *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986).


26 Finally, Entler objects to the Magistrate Judge’s finding that Entler’s claims are not
27 meritorious because they are barred by judicial immunity and should be dismissed. Dkt. 4 at

1 4-7. Entler's claims are solely against Washington State appellate court and Supreme Court
2 judges. *See* Dkt. 1. A frivolous *in forma pauperis* complaint is one that has no arguable basis
3 in law or fact. *See Franklin v. Murphy*, 745 F.2d 1221, 1227 (9th Cir. 1984). Entler's claims
4 are frivolous and cannot proceed, as they are barred by judicial immunity. *See Ashelman*,
5 793 F.2d at 1075 (a judge is absolutely immune for all judicial acts within the jurisdiction of
6 their court). Therefore, the Magistrate Judge properly recommended that Entler's claims
7 should be dismissed.

8 II. CONCLUSION

9 Therefore, the Court **ADOPTS** the report and recommendation. Entler's application to
10 proceed *in forma pauperis* is **DENIED** and Entler's claims are **DISMISSED without**
11 **prejudice.**

12 DATED this 1st day of October, 2010.

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15 BENJAMIN H. SETTLE
16 United States District Judge
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