

1
2 UNITED STATES DISTRICT COURT
3 WESTERN DISTRICT OF WASHINGTON
4 AT TACOMA

4 DONALD MORRIS LEE,

5 Plaintiff,

6 v.

7 BRIGADOON DOGS,

8 Defendant.

CASE NO. C16-5914BHS-JRC

ORDER ADOPTING REPORT
AND RECOMMENDATION

9
10 This matter comes before the Court on the Report and Recommendation (“R&R”)
11 of the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 7), and
12 Plaintiff Donald Morris Lee’s (“Lee”) objections to the R&R (Dkt. 9).

13 On November 22, 2016, Judge Creatura issued the R&R recommending that the
14 Court deny Morris’s motion to proceed *in forma pauperis* because he has three previous
15 strikes and fails to meet the immediate danger exception. Dkt. 7. On December 7, 2016,
16 Morris filed objections. Dkt. 9.

17 The district judge must determine de novo any part of the magistrate judge’s
18 disposition that has been properly objected to. The district judge may accept, reject, or
19 modify the recommended disposition; receive further evidence; or return the matter to the
20 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

21 In this case, Morris objects to the R&R arguing that (1) the three previous
22 dismissals should not be considered strikes and (2) he should be allowed to proceed *in*

1 *forma pauperis* because his rights have been violated. Dkt. 9, 9-1. Regarding the former
2 issue, the Court agrees with Judge Creatura that Lee filed three previous cases that were
3 dismissed as frivolous, malicious, or for failure to state a claim. Dkt. 7 at 3. Although
4 the Ninth Circuit Court of Appeals granted Lee's motion to appeal *in forma pauperis* in
5 his most recent dismissal, the district court dismissed the case for failure to state a claim.
6 *See Lee v. Brier et al.*, Case No. 2:14-cv-01994-MJP (W.D. Wash.). Therefore, the Court
7 adopts the R&R on this issue.

8 Regarding Lee's assertion that his rights have been violated, the assertion
9 concedes that he is not in immediate danger. The event involving the loud, barking dogs
10 that allegedly caused his post traumatic syndrome has already occurred as alleged in the
11 complaint. Accordingly, the Court having considered the R&R, Lee's objections, and the
12 remaining record, does hereby find and order as follows:

- 13 (1) The R&R is **ADOPTED**;
- 14 (2) Lee's motion to proceed *in forma pauperis* is **DENIED**;
- 15 (3) Lee must pay the filing fee to proceed with this action no later than
16 February 10, 2017; and
- 17 (4) Failure to timely pay the fee will result in **DISMISSAL** by the Clerk with
18 no further action by the Court.

19 Dated this 26th day of January, 2017.

20
21 

22 _____
BENJAMIN H. SETTLE
United States District Judge