

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
CALIFORNIA

Anthony Lee Allen, Jr. v. Daneile Cuevo, et al.

No. 2:24-cv-02989-EFB (PC) · No. No. 2:24-cv-02989-EFB (PC) · Decided March 27, 2025

SUMMARY

The court found that plaintiff Anthony Lee Allen, Jr. was disqualified from proceeding in forma pauperis under the three-strikes provision of 28 U.S.C. § 1915(g). After plaintiff failed to pay the filing fee or respond to the court's order, the magistrate judge recommended dismissal without prejudice for failure to pay the fee. The order also directed the clerk to randomly assign a district judge and advised the parties regarding objections.

CASE DETAILS

|                    |                                                                                                                                                                                                                                                                                                                    |
|--------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT              | United States District Court for the Eastern District of California                                                                                                                                                                                                                                                |
| JURISDICTION       | United States District Court for the Eastern District of California                                                                                                                                                                                                                                                |
| DECIDED            | March 27, 2025                                                                                                                                                                                                                                                                                                     |
| DOCKET             | No. 2:24-cv-02989-EFB (PC)                                                                                                                                                                                                                                                                                         |
| DISPOSITION        | other                                                                                                                                                                                                                                                                                                              |
| PROCEDURAL POSTURE | A state prisoner proceeding pro se under 42 U.S.C. § 1983 failed to pay the filing fee after the court determined that he was barred from proceeding in forma pauperis under the three-strikes provision. The magistrate judge issued findings and recommendations that the action be dismissed without prejudice. |
| PRECEDENTIAL VALUE | Nonprecedential magistrate judge findings and recommendations; not a final adjudication.                                                                                                                                                                                                                           |
| PARTIES            | Anthony Lee Allen, Jr. v. Daneile Cuevo, et al.                                                                                                                                                                                                                                                                    |

TOPICS

- prisoners rights
- section 1983
- civil procedure

PRACTICE AREAS

- Prisoner civil rights
- Federal civil procedure

QUESTIONS PRESENTED

1. Whether the action should be dismissed without prejudice after plaintiff failed to pay the filing fee following a determination that he could not proceed in forma pauperis under 28 U.S.C. § 1915(g).

## HOLDINGS

1. The magistrate judge recommended that the action be dismissed without prejudice because plaintiff failed to pay the filing fee or otherwise respond after being found ineligible to proceed in forma pauperis under the three-strikes provision.

## KEY QUOTATIONS

*“It is further RECOMMENDED that the case be dismissed without prejudice for failure to pay the filing fee.”*  
(at 1)

*“The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order.”* (at 2)

## FACTUAL BACKGROUND

Plaintiff is a state prisoner who brought this action under 42 U.S.C. § 1983 and sought to proceed in forma pauperis. The court determined that he had three strikes under 28 U.S.C. § 1915(g), ordered him to pay the filing fee within 21 days, and plaintiff did not pay or otherwise respond.

## PROCEDURAL HISTORY

On January 23, 2025, the court found that plaintiff was not qualified to proceed in forma pauperis because he had three qualifying strikes under 28 U.S.C. § 1915(g), and ordered him to pay the filing fee within 21 days. Plaintiff neither paid the fee nor responded. The magistrate judge recommended dismissal without prejudice and advised the parties of the procedure and deadline for filing objections.

## DISPOSITION

other

## CASES CITED

- Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998)
- Martinez v. Yist, 951 F.2d 1153 (9th Cir. 1991)

## OPINION

(PC) Allen v. Cuevo

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 ANTHONY LEE ALLEN, JR., No. 2:24-cv-02989-EFB (PC)

12 Plaintiff,

13 v. ORDER AND FINDINGS AND  
RECOMMENDATIONS

14 DANEILE CUEVO, et al., 15 Defendants. 16 17 Plaintiff is a state prisoner proceeding pro se  
in this action brought pursuant to 42 U.S.C. § 18 1983. This proceeding was referred to this court  
by Local Rule 302 pursuant to 28 U.S.C. 19 § 636(b)(1). 20 On January 23, 2025, the court found  
that plaintiff was not qualified to proceed in forma 21 pauperis in this action due to having “three  
strikes” under 28 U.S.C. § 1915(g). ECF No. 18. The 22 court ordered plaintiff to pay the filing  
fee within 21 days. Plaintiff has not paid the fee or 23 otherwise responded to the order. 24  
Accordingly, it is hereby ORDERED that the Clerk of Court randomly assign a district 25 judge to  
this action. It is further RECOMMENDED that the case be dismissed without prejudice 26 for  
failure to pay the filing fee. 27 //// 28 //// ] These findings and recommendations are submitted to  
the United States District Judge 2 || assigned to the case, pursuant to the provisions of 28 U.S.C. §  
636(b)(1). Within fourteen days 3 || after being served with these findings and recommendations,  
any party may file written 4 || objections with the court and serve a copy on all parties. Such a  
document should be captioned 5 || “Objections to Magistrate Judge’s Findings and  
Recommendations.” Any response to the 6 || objections shall be served and filed within fourteen  
days after service of the objections. The 7 || parties are advised that failure to file objections within  
the specified time may waive the right to 8 | appeal the District Court’s order. Turner v. Duncan,  
158 F.3d 449, 455 (9th Cir. 1998); Martinez 9 || v. Yist, 951 F.2d 1153 (9th Cir. 1991). 10 11 |  
Dated: March 26, 2025 Duta SEZ

12 UNITED STATES MAGISTRATE JUDGE

13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28