

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

John Paul Schowachert v. Smiley

Schowachert v. Smiley · No. 1:25-cv-01293-BAM (PC) · Decided October 6, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 JOHN PAUL SCHOWACHERT, Case No. 1:25-cv-01293-BAM (PC) 12
Plaintiff, ORDER DIRECTING CLERK OF COURT TO RANDOMLY ASSIGN DISTRICT
JUDGE TO 13 v. ACTION 14 SMILEY, FINDINGS AND RECOMMENDATIONS
RECOMMENDING PLAINTIFF’S MOTION 15 Defendant. FOR LEAVE TO PROCEED IN
FORMA PAUPERIS BE DENIED 16 (ECF No. 2) 17 FOURTEEN (14) DAY DEADLINE 18 19
Plaintiff John Paul Schowachert (“Plaintiff”) is a state prisoner proceeding pro se in this 20 civil
rights action pursuant to 42 U.S.C. § 1983.

Plaintiff initiated this action on October 1, 2025, 21 together with a motion to proceed in forma
pauperis. (ECF Nos. 1, 2.) 22 Although the motion to proceed in forma pauperis is incomplete, the
Court finds that 23 Plaintiff is subject to 28 U.S.C. § 1915(g), which provides that “[i]n no event
shall a prisoner 24 bring a civil action... under this section if the prisoner has, on 3 or more prior
occasions, while 25 incarcerated or detained in any facility, brought an action or appeal in a court
of the United States 26 that was dismissed on the grounds that it is frivolous, malicious, or fails to
state a claim upon 27 which relief may be granted, unless the prisoner is under imminent danger
of serious physical 28 1 injury.”¹ 2 The Court has reviewed Plaintiff’s complaint and finds that his
allegations do not satisfy 3 the imminent danger exception to section 1915(g).² *Andrews v.*
Cervantes, 493 F.3d 1047, 4 1053–55 (9th Cir.

2007). In the complaint, Plaintiff alleges that on an unspecified date Tuolumne 5 County Jail
Custodial Officer Smiley hit Plaintiff on the top of his head and crushed in his skull, 6 causing
him to fall to the ground and into a 6-month coma. Plaintiff contends this resulted in 7 permanent
physical and mental disability. (ECF No. 1.) 8 Based on the allegations in the complaint, Plaintiff
has failed to allege that he was in any 9 imminent danger of serious physical injury at the time the
complaint was filed.

Plaintiff appears 10 to allege that the incident at issue occurred while Plaintiff was housed at
Tuolumne County Jail, 11 but at the time of filing, Plaintiff was housed at R.J. Donovan
Correctional Facility. (ECF No. 1.) 12 “[I]n order to qualify for the § 1915(g) imminent danger
exception, a three-strikes prisoner must 13 allege imminent danger of serious physical injury that

is both fairly traceable to unlawful conduct 14 alleged in his complaint and redressable by the court.” Ray v. Lara, 31 F.4th 692, 701 (9th Cir.

15 2022). Plaintiff is no longer housed at the institution where Defendant Smiley is employed, and 16 Plaintiff does not allege that he is in any imminent danger of serious physical injury that is related 17 to the incident raised in the complaint or that could be redressed by the court in this action. 18 Plaintiff has not satisfied the exception from the three strikes bar under 28 U.S.C. 19 § 1915(g), and Plaintiff must pay the \$405.00 filing fee if he wishes to litigate this action.

20 Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a 21 1 The Court takes judicial notice of the following United States District Court cases: (1) Schowachert v. Polley, Case 22 No. 1:22-cv-01249-JLT-BAM (E.D. Cal.) (dismissed on November 8, 2022 as duplicative); (2) Schowachert v. Sorano, Case No. 1:21-cv-00975-JLT-HBK (E.D. Cal.) (dismissed on November 2, 2023 for failure to exhaust clear 23 on the face of the complaint); (3) Schowachert v. Polley, Case No. 1:23-cv-01579-JLT-EPG (E.D.

Cal.) (dismissed on December 19, 2023 as duplicative); (4) Schowachert v. Polley, Case No. 1:23-cv-01645-KES-SAB (E.D. Cal.) 24 (dismissed on July 8, 2024 as duplicative); (5) Schowachert v. Polley, Case No. 1:24-cv-00713-KES-CDB (E.D. Cal.) (dismissed on December 19, 2024 as duplicative and time-barred).

In actions filed by a plaintiff proceeding in 25 forma pauperis, a dismissal of the action as duplicative is considered a dismissal of a case on the grounds that it is frivolous or malicious pursuant to 28 U.S.C. § 1915(g). Cato v. United States, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995). 26 2 While the Court expresses no opinion on the merits of Plaintiff’s claims, it appears Plaintiff’s claim may be time 27 barred.

Although Plaintiff does not specify a date when the events in the complaint occurred, based on a review of Plaintiff’s extensive litigation history it appears Plaintiff has repeatedly attempted to raise the same claim involving 28 alleged blunt force head trauma, arising from an incident in 2017. See cases cited supra, footnote 1. 1 District Judge to this action.

2 Further, it is HEREBY RECOMMENDED that: 3 1. The motion to proceed in forma pauperis, (ECF No. 2), be DENIED, pursuant to 28 4 U.S.C. § 1915(g); and 5 2. Plaintiff be ORDERED to pay the \$405.00 initial filing fee in full to proceed with this 6 action. 7 These Findings and Recommendations will be submitted to the United States District 8 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).

Within 9 fourteen (14) days after being served with these Findings and Recommendations, the parties may 10 file written objections with the court. The document should be captioned “Objections to 11 Magistrate Judge’s Findings and Recommendations.” Objections, if any, shall

not exceed 12 fifteen (15) pages or include exhibits. Exhibits may be referenced by CM/ECF document 13 and page number if already in the record before the Court.

Any pages filed in excess of the 14 15-page limit may not be considered. The parties are advised that failure to file objections 15 within the specified time may result in the waiver of the “right to challenge the magistrate’s 16 factual findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing 17 *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir.

1991)). 18 IT IS SO ORDERED. 19 20 Dated: October 6, 2025 /s/ Barbara A. McAuliffe _
UNITED STATES MAGISTRATE JUDGE 21 22 23 24 25 26 27 28