

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

Elijah Lee Miller v. M. Bobbala, et al.

No. 2:25-cv-0467-SCR · No. No. 2:25-cv-0467-SCR · Decided September 17, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 ELIJAH LEE MILLER, No. 2:25-cv-0467-SCR 12 Plaintiff, 13 v. ORDER
AND 14 M. BOBBALA, et al., FINDINGS AND RECOMMENDATIONS 15 Defendants. 16 17
Plaintiff is a transgender person incarcerated in prison who is representing herself in this 18 civil
rights action filed pursuant to 42 U.S.C. § 1983.

This proceeding was referred to the 19 undersigned by operation of Local Rule 302 pursuant to 28
U.S.C. § 636(b)(1). 20 Plaintiff has requested leave to proceed in forma pauperis. Title 28 U.S.C.
§ 1915(g) 21 reads as follows: 22 In no event shall a prisoner bring a civil action... [in forma
pauperis] if the prisoner has, on 3 or more prior occasions, while incarcerated 23 or detained in
any facility, brought an action or appeal in a court of the United States that was dismissed on the
grounds that it is 24 frivolous, malicious, or fails to state a claim upon which relief may be
granted, unless the prisoner is under imminent danger of serious 25 physical injury.

26 This is known as the “three strikes” provision. A review of court records reveals that, while 27
incarcerated, and before this action was filed, another judge found plaintiff to have accrued three
28 or more prior strikes. *Miller v. Lynch*, No. 2:23-cv-2145-TLN-JDP, ECF No. 9 (E.D. Cal. Feb.
6, 1 2024) (finding that four dismissals of plaintiff’s prior cases counted as strikes), ECF No. 10 2
(March 12, 2024) (order adopting those findings).¹ The undersigned has independently reviewed
3 those prior dismissals and agrees they are strikes.

Therefore, it is recommended that plaintiff’s 4 motion to proceed in forma pauperis be denied
under 28 U.S.C. § 1915(g). 5 Having determined that plaintiff has accrued three prior strikes, she
is therefore precluded 6 from proceeding in forma pauperis in this action unless she is “under
imminent danger of serious 7 physical injury.” 28 U.S.C. § 1915(g). This exception applies at the
time of filing the complaint.

8 *Andrews v. Cervantes*, 493 F.3d 1047, 1053 (9th Cir. 2007) (emphasizing that “it is the 9
circumstances at the time of the filing of the complaint that matters for purposes of the ‘imminent
10 danger’ exception to § 1915(g).”).

The allegations in the complaint concern the specific number 11 of liquid nutritional supplements
that plaintiff should receive at each meal. ECF No. 1 at 3. 12 Plaintiff contends that she should

receive two per meal, but she is only receiving a total of two 13 each day. ECF No. 1 at 3. These factual allegations are not sufficient to demonstrate the type of 14 imminent harm that would allow plaintiff to proceed with this action without paying fees.

15 Section § 1915(g)'s "imminent danger" exception cannot be triggered solely by complaints of 16 past harm or generalized fears of potential harm. See *Andrews*, 493 F.3d at 1053. In light of 17 plaintiff's prior strikes and the lack of imminent danger at the time this complaint was filed, the 18 undersigned recommends requiring plaintiff to pay the entire filing fee within a period of 30 days 19 or face dismissal of the present action.

20 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court randomly assign this 21 matter to a district court judge. 22 IT IS FURTHER RECOMMENDED that: 23 1. Plaintiff's motion for leave to proceed in forma pauperis (ECF No. 2) be denied based 24 on plaintiff's three or more prior strikes under 28 U.S.C. § 1915(g). 25 26 1 The court takes judicial notice of this finding that plaintiff is a three strikes litigant.

See Fed. R. Evid. 201 (the court may take judicial notice of facts that are capable of accurate determination by 27 sources whose accuracy cannot reasonably be questioned); *Harris v. County of Orange*, 682 F.3d 1126, 1131-32 (9th Cir. 2012) (a court may take judicial notice of undisputed matters of public 28 record including documents on file in federal or state courts).] 2.

Plaintiff be required to pay the full \$405 filing fee for this action within 30 days or face 2 || dismissal of this action. 3 These findings and recommendations are submitted to the United States District Judge 4 | assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty one days 5 || after being served with these findings and recommendations, plaintiff may file written objections 6 || with the court.

Such a document should be captioned "Objections to Magistrate Judge's Findings 7 || and Recommendations." Plaintiff is advised that failure to file objections within the specified 8 | time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 9 | (Oth Cir. 1991). 10 | DATED: September 16, 2025 12 SEAN C. RIORDAN 13 UNITED STATES MAGISTRATE JUDGE 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28