

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 24 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MICHAEL JAMES HICKS,

Plaintiff-Appellant,

v.

M. BOBBALLA; et al.,

Defendants-Appellees.

No. 15-17255

D.C. No. 2:15-cv-01332-EFB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Edmund F. Brennan, Magistrate Judge, Presiding**

Submitted February 14, 2017***

Before: GOODWIN, FARRIS, and FERNANDEZ, Circuit Judges.

California state prisoner Michael James Hicks appeals pro se from the district court's judgment denying him leave to proceed in forma pauperis in his 42

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The parties consented to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c).

*** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

U.S.C. § 1983 action alleging constitutional violations in connection with his medical treatment. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's interpretation and application of 28 U.S.C. § 1915(g), *Andrews v. Cervantes*, 493 F.3d 1047, 1052 (9th Cir. 2007), and for an abuse of discretion its denial of leave to proceed in forma pauperis, *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990). We reverse and remand.

The district court improperly denied Hicks' request to proceed in forma pauperis because Hicks made plausible allegations that he was "under imminent danger of serious physical injury" at the time he lodged the complaint, including that the inadequate physical therapy he received caused paralysis in his left arm and his prescribed pain medication puts him at heightened risk for liver disease because he suffers from hepatitis C. 28 U.S.C. § 1915(g); *see also Andrews*, 493 F.3d at 1055 (an exception to the three-strikes rule exists "if the complaint makes a plausible allegation that the prisoner faced 'imminent danger of serious physical injury' at the time of filing").

REVERSED and REMANDED.