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U.S. COURT OF APPEALS

## NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT P. BENYAMINI,

Plaintiff - Appellant,

v.

MENDOZA; et al.,

Defendants - Appellees.

No. 13-15026

D.C. No. 2:09-cv-02602-LKK-AC

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Lawrence K. Karlton, District Judge, Presiding

Submitted August 13, 2014\*\*

Before: SCHROEDER, THOMAS, and HURWITZ, Circuit Judges.

Former California state prisoner Robert P. Benyamini appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action for failure to pay the required filing fee, after revoking Benyamini's in forma pauperis status on the ground that he has "three strikes" under 28 U.S.C. § 1915(g). We have

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

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 formal pauperis, *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990). We affirm.

The district court did not abuse its discretion by revoking Benyamini's in forma pauperis status because three of Benyamini's prior § 1983 actions were dismissed for failure to state a claim, and Benyamini did not plausibly allege that he was "under imminent danger of serious physical injury" at the time that he lodged the complaint. 28 U.S.C. § 1915(g); *see also Andrews*, 493 F.3d at 1055 (an exception to the three-strikes rule exists only where "the complaint makes a plausible allegation that the prisoner faced 'imminent danger of serious physical injury' at the time of filing").

Defendants' motion for judicial notice, filed November 27, 2013, is denied as unnecessary.

**AFFIRMED.**