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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT BENYAMINI,
Plaintiff,
v.
T. MINTON,
Defendants.

No. 2:13-cv-01632 JAM DAD P

ORDER

Plaintiff, a former state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

On May 13, 2014, the undersigned issued findings and recommendations dismissing this action without prejudice based on plaintiff's failure to either pay the required filing fee of \$350.00 or file an application to proceed in forma pauperis. (ECF No. 8.) On May 21, 2014, plaintiff filed objections to the findings and recommendations in which he alleged that he had mailed an application to proceed in forma pauperis to the court on April 14, 2014. (ECF No. 9.) The court has no record of having received such an application, and plaintiff neglected to include either a new application or a copy of his allegedly previously filed application with his objections.

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1 In any event, review of court records reveals that on at least three occasions, lawsuits filed
2 by the plaintiff have been dismissed on the grounds that they were frivolous or malicious or failed
3 to state a claim upon which relief may be granted:

4 1. Benyamini v. Anderson, No. 1:07-cv-1596-OWW-GS (E.D. Cal.). On May 13,
5 2009, the action was dismissed for failure to state a claim.

6 2. Benyamini v. Simpson, No. 2:08-cv-1552-GEB-DAD (E.D. Cal.). On June 8,
7 2009, findings and recommendations issued, recommending that the action be
8 dismissed for failure to state a claim. On July 8, 2009, the findings and
9 recommendations were adopted in full.

10 3. Benyamini v. Johnson, No. 11-16971 (9th Cir.). On November 15, 2011,
11 plaintiff was denied leave to proceed in forma pauperis because his appeal was
12 deemed frivolous.

13 4. Benyamini v. Byrd, No. 11-17218 (9th Cir.). On December 8, 2011, plaintiff
14 was denied leave to proceed in forma pauperis because his appeal was deemed
15 frivolous. The appellate court also found that plaintiff had three or more prior
16 actions or appeals dismissed as frivolous or for failure to state a claim.

17 5. Benyamini v. Mendoza, No. 13-15026 (9th Cir.). On August 20, 2014, the
18 appellate court upheld the district court's determination in case no. 2:09-cv-02602-
19 LKK-AC, that three of plaintiff's prior § 1983 actions had been dismissed for
20 failure to state a claim.

21 Based upon this history plaintiff is precluded from proceeding in forma pauperis in this
22 action unless plaintiff is "under imminent danger of serious physical injury." 28 U.S.C. §
23 1915(g). Plaintiff has not alleged any facts in his complaint which suggest that he is under
24 imminent danger of serious physical injury. Indeed, plaintiff is no longer in state custody. Thus,
25 plaintiff must submit the appropriate filing fee in order to proceed with this action.

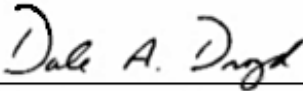
26 In accordance with the foregoing, IT IS HEREBY ORDERED that

- 27 1. The findings and recommendations filed on May 13, 2014 (ECF No. 8) are hereby
28 vacated.

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2. Plaintiff shall submit, within twenty-one days from the date of this order, the appropriate filing fee. Plaintiff's failure to comply with this order will result in a recommendation that this action be dismissed.

Dated: January 16, 2015



DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

DAD:10
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