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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Frank Racer,)	No. CV 10-2615-PHX-DGC (LOA)
Plaintiff,)	ORDER
vs.)	
Officer Hays, et al.,)	
Defendants.)	

Plaintiff Frank Racer, who is confined in the Arizona State Prison Complex-Alhambra, has filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983. Plaintiff has not paid the filing fee or filed an Application to Proceed *In Forma Pauperis*.

I. “Three Strikes Provision” of 28 U.S.C. § 1915(g)

The Prison Litigation Reform Act of 1995 (PLRA), enacted on April 26, 1996, provides that a prisoner may not bring a civil action or appeal a civil judgment *in forma pauperis* under 28 U.S.C. § 1915 “if the prisoner has, on 3 or more prior occasions, while incarcerated 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 frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). Because § 1915(g) is a procedural rule that does not raise retroactivity concerns, cases that were dismissed before the effective date of § 1915(g), i.e., April 26, 1996, may be counted as qualifying dismissals or “strikes.” Tierney

1 v. Kupers, 128 F.3d 1310, 1311-12 (9th Cir. 1997). A prisoner barred from proceeding *in*
2 *forma pauperis* pursuant to § 1915(g) may proceed under the fee provisions of 28 U.S.C.
3 §§ 1911-14 applicable to everyone else. Adepegba v. Hammons, 103 F.3d 383, 388 (5th
4 Cir.1996).

5 More than three of the prior actions Plaintiff has filed in federal courts have been
6 dismissed as frivolous, malicious, or as failing to state a claim:

- 7 (1) Racer v. Scott, CIV 01-289-PHX-ROS (LOA), April 4, 2001 Order of
8 Dismissal (Doc. 4) and May 29, 2001 Judgment (Doc. 5) dismissing the
9 Complaint for failure to state a claim and dismissing the action for failure to
10 file an amended complaint;
- 11 (2) Racer v. Mcauley, CIV 03-1119-PHX-DGC (LOA), February 4, 2004 Order
12 of Dismissal (Doc. 6) and March 22, 2004 Judgment (Doc. 8) dismissing the
13 Complaint for failure to state a claim and the action for failure to file an
14 amended complaint;
- 15 (3) Racer v. Beaty, CIV 03-1459-PHX-DGC (LOA), February 4, 2004 Order of
16 Dismissal (Doc. 5) and March 22, 2004 Judgment (Doc. 7) dismissing the
17 Complaint for failure to state a claim and dismissing the action for failure to
18 file an amended complaint;
- 19 (4) Racer v. Bailey, CIV 03-1460-PHX-DGC (LOA), February 4, 2004 Order of
20 Dismissal (Doc. 4) and March 22, 2004 Judgment (Doc. 6) dismissing the
21 Complaint for failure to state a claim and dismissing the action for failure to
22 file an amended complaint;
- 23 (5) Racer v. Earles, CIV 03-1490-PHX-DGC (LOA), March 9, 2004 Order of
24 Dismissal (Doc. 5) and April 23, 2004 Judgment (Doc. 7) dismissing the
25 Complaint for failure to state a claim and dismissing the action for failure to
26 file an amended complaint;
- 27 (6) Racer v. Marquez, CIV 03-2597-PHX-DGC (LOA), February 11, 2004 Order
28 of Dismissal (Doc. 3) and March 29, 2004 Judgment (Doc. 5) dismissing the
Complaint for failure to state a claim and dismissing the action for failure to
file an amended complaint; and
- (7) Racer v. Pegg, CIV 08-1220-PHX-DGC (LOA), July 10, 2008 Order of
Dismissal (Doc. 4) and October 31, 2008 Judgment (Doc. 6) dismissing the
Complaint for failure to state a claim and dismissing the action for failure to
file an amended complaint.

Accordingly, Plaintiff may not bring a civil action without complete pre-payment of
the \$350.00 filing fee unless he is in imminent danger of serious physical injury. 28 U.S.C.
§ 1915(g).

1 **II. Failure to Allege Imminent Danger of Serious Physical Injury**

2 Plaintiff's Complaint raises a claim of denial of access to the courts. Plaintiff has not
3 demonstrated that he is in imminent danger of serious physical injury as required by 28
4 U.S.C. § 1915(g) in order for Plaintiff to bring this action without complete pre-payment of
5 the \$350.00 filing fee. Accordingly, the Complaint and this action will be dismissed without
6 prejudice pursuant to 28 U.S.C. § 1915(g) for failure to pre-pay the \$350.00 filing fee. If
7 Plaintiff wishes to reassert these claims in the future, he must pre-pay the entire \$350.00
8 filing fee when he files his action.

9 **IT IS ORDERED:**

10 (1) Plaintiff's Complaint (Doc. 1) and this action are **dismissed** pursuant to 28
11 U.S.C. § 1915(g) without prejudice to Plaintiff filing a complaint in a new case accompanied
12 by the full \$350.00 filing fee.

13 (2) The Clerk of Court must enter judgment and close this case.

14 DATED this 21st day of December, 2010.

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19 David G. Campbell
20 United States District Judge
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