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

Edward F. Parks,

Plaintiff,

vs.

Charles Ryan, et al.,

Defendants.

) No. CV 12-1350-PHX-GMS (DKD)

) **ORDER**

On June 22, 2012, Plaintiff Edward F. Parks, who is confined in the Arizona State Prison Complex-Yuma in San Luis, Arizona, filed a *pro se* civil rights Complaint and an Application to Proceed *In Forma Pauperis*. In a July 9, 2012 Order, the Court denied the deficient Application to Proceed and gave Plaintiff 30 days to either pay the filing fee or file a complete Application to Proceed *In Forma Pauperis*.

On July 30, 2012, Plaintiff filed a “Notice of Complain” regarding the processing of his request for a copy of his certified six-month trust account statement. On August 6, 2012, he filed a “Motion to Pre[s]ent Account 6 mo Print-Out” (Doc. 6), which contains a certified statement of account. On August 13, 2012, Plaintiff filed a “Motion to Show Medical Violations” (Doc. 7). On August 20, 2012, he filed a second Application to Proceed *In Forma Pauperis* (Doc. 8).

1 To the extent Plaintiff is seeking in his “Motion to Pre[s]ent 6 mo Print-Out” to have
2 the Court accept his certified six-month account statement, the Court will grant his Motion.
3 The Court will deny the second Application to Proceed and will dismiss this action pursuant
4 to 28 U.S.C. § 1915(g). Because the Court is dismissing the action, the Court will deny as
5 moot the “Motion to Show Medical Violations.”

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

7 A prisoner may not bring a civil action or appeal a civil judgment *in forma pauperis*
8 if:

9 the prisoner has, on 3 or more prior occasions, while
10 incarcerated or detained in any facility, brought an action or
11 appeal in a court of the United States that was dismissed on the
12 grounds that it is frivolous, malicious, or fails to state a claim
13 upon which relief may be granted, unless the prisoner is under
14 imminent danger of serious physical injury.

15 28 U.S.C. § 1915(g).

16 “[Section] 1915(g) should be used to deny a prisoner’s *IFP* status only when, after
17 careful evaluation of the order dismissing an action, and other relevant information, the
18 district court determines that the action was dismissed because it was frivolous, malicious
19 or failed to state a claim.” Andrews v. King, 398 F.3d 1113, 1121 (9th Cir. 2005). “In some
20 instances, the district court docket records may be sufficient to show that a prior dismissal
21 satisfies at least one of the criteria under § 1915(g) and therefore counts as a strike.” Id. at
22 1120.

23 At least three of Plaintiff’s prior actions were dismissed for failure to state a claim.
24 See Parks v. Jensen, CV-07-8107-PCT-FJM (DKD) (D. Ariz. Sept. 2, 2008 Order of
25 dismissal); Parks v. Holy, CV-09-406-HE (W.D. Okla. Oct. 14, 2009 Order of dismissal);
26 and Parks v. Cornell Corrections of Oklahoma, CV-09-450-HE (W.D. Okla. Sept. 1, 2009
27 Order of dismissal). See also Parks v. McCluskey, 10-CV-8055-PCT-GMS (DKD) (May 24,
28 2012 Order listing Plaintiff’s strikes and dismissing case pursuant to § 1915(g)). Therefore,
Plaintiff may not bring a civil action without complete prepayment of the \$350.00 filing fee
unless he is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g).

.....

1 **II. Imminent Danger**

2 A plaintiff who has three or more strikes may not bring a civil action without complete
3 prepayment of the \$350.00 filing fee unless he is in imminent danger of serious physical
4 injury. 28 U.S.C. § 1915(g). To meet the “imminent danger” requirement, the “threat or
5 prison condition [must be] real and proximate,” Ciarpaglini v. Saini, 352 F.3d 328, 330 (7th
6 Cir. 2003) (quoting Lewis v. Sullivan, 279 F.3d 526, 531 (7th Cir. 2002)), and the allegations
7 must be “specific or credible.” Kinnell v. Graves, 265 F.3d 1125, 1128 (10th Cir. 2001).

8 “[T]he availability of the [imminent danger] exception turns on the conditions a
9 prisoner faced at the time the complaint was filed, not some earlier or later time” Andrews
10 v. Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007). “[T]he exception applies if the complaint
11 makes a plausible allegation that the prisoner faced ‘imminent danger of serious physical
12 injury’ at the time of filing.” Id. at 1055. Claims concerning an “imminent danger of serious
13 physical injury” cannot be triggered solely by complaints of past abuse. See Ashley v.
14 Dilworth, 147 F.3d 715, 717 (8th Cir. 1998); Luedtke v. Bertrand, 32 F. Supp. 2d 1074, 1077
15 (E.D. Wis. 1999).

16 Plaintiff does not allege that he is in imminent danger of serious physical injury and
17 his allegations do not support such an allegation—his claims relate to past exposures to
18 pepper spray. Thus, the Court will deny the second Application to Proceed and will dismiss
19 without prejudice Plaintiff’s Complaint and this action, pursuant to 28 U.S.C. § 1915(g). If
20 Plaintiff wishes to reassert these claims in the future, he must *prepay* the **entire** \$350.00
21 filing fee when he files his action.

22 **IT IS ORDERED:**

23 (1) Plaintiff’s “Motion to Pre[s]ent Account 6 mo Print-Out” (Doc. 6) is **granted**.

24 (2) Plaintiff’s second Application to Proceed *In Forma Pauperis* (Doc. 8) is
25 **denied**.

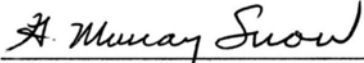
26 (3) Plaintiff’s Complaint (Doc. 1) and this action are **dismissed without**
27 **prejudice**, pursuant to 28 U.S.C. § 1915(g). If Plaintiff wishes to reassert these claims in the
28 future, he must prepay the entire \$350.00 filing fee when he files his action.

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(4) Plaintiff's "Motion to Show Medical Violations" (Doc. 7) is **denied as moot**.

(5) The Clerk of Court must enter judgment accordingly and close this case.

DATED this 4th day of September, 2012.



G. Murray Snow
United States District Judge