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

Edward Faye Parks, et al.,

Plaintiffs,

vs.

Mike McCluskey, et al.,

Defendants.

No. CV 10-8055-PCT-GMS (DKD)

ORDER

On March 17, 2010, Plaintiff Edward Faye Parks, who is confined in the Great Plains Correctional Facility in Hinton, Oklahoma, and Plaintiff Amelia French, who resides in Bullhead City, Arizona, filed a *pro se* Complaint in the United States District Court for the Southern District of New York. By Order filed March 17, 2010 (Doc. #3), that Court transferred the action to this Court.

Plaintiffs have not paid the \$350.00 civil action filing fee. Plaintiff Edward Faye Parks has filed a "Request To Proceed *In Forma Pauperis*" (Doc. #7). Plaintiff Amelia French has not filed an Application to Proceed *In Forma Pauperis*. The Court will deny the "Request To Proceed *In Forma Pauperis*" and dismiss the Complaint and this action without prejudice.

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

Title 28 U.S.C. § 1915(g) provides:

1 In no event shall a prisoner bring a civil action or appeal a judgment in a civil
2 action or proceeding under this section if the prisoner has, on 3 or more prior
3 occasions, while incarcerated or detained in any facility, brought an action or
4 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.

5 The constitutionality of this provision has been upheld by the Ninth Circuit Court of
6 Appeals. Andrews v. King, 398 F.3d 1113, 1123 (9th Cir. 2005); Rodriguez v. Cook, 169
7 F.3d 1176, 1181 (9th Cir. 1999).

8 Plaintiff Edward Faye Parks has filed numerous lawsuits in this District and in other
9 Districts while he has been a prisoner. At least three of his prior actions were dismissed for
10 failure to state a claim. See Parks v. Jensen, CV-07-8107-PCT-FJM (DKD) (D. Ariz. Order
11 of dismissal filed September 9, 2008); Parks v. Holy, CV-09-406-HE (W.D. Okla. Order of
12 dismissal filed October 14, 2009); and Parks v. Cornell Corrections of Oklahoma, CV-09-
13 450-HE (W.D. Okla. Order of dismissal filed September 1, 2009). Therefore, Plaintiff
14 Edward Faye Parks may not bring any civil action without complete pre-payment of the
15 \$350.00 filing fee unless he is in imminent danger of serious physical injury. 28 U.S.C.
16 § 1915(g).

17 **II. No Imminent Danger of Serious Physical Injury**

18 Plaintiff Edward Faye Parks does not allege in the Complaint that he is in imminent
19 danger of serious physical injury, and the facts presented by Plaintiff would not support such
20 an allegation. Accordingly, Plaintiff Edward Faye Parks is not entitled to proceed *in forma*
21 *pauperis*, and his Complaint and this action must be dismissed without prejudice for failure
22 to pre-pay the \$350.00 filing fee. If Plaintiff Edward Faye Parks wishes to reassert these
23 claims in the future, he must pre-pay the entire \$350.00 filing fee when he files his new
24 action.


25 In so doing, the Court notes that although this action has also been brought by Plaintiff
26 Amelia French, she has neither paid the \$350.00 filing fee, nor filed an Application to
27 Proceed *In Forma Pauperis*. Accordingly, the dismissal of the Complaint and this action
28 without prejudice will also apply to her.

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IT IS ORDERED:

- (1) The "Request To Proceed *In Forma Pauperis*" (Doc. #7) is **denied**.
- (2) The Complaint (Doc. #2) and this action are **dismissed without prejudice**.
- (3) The Clerk of Court **must enter judgment** accordingly and **close** this file.

DATED this 24th day of May, 2010.



G. Murray Snow
United States District Judge