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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

BARRY JAMESON,)	No. CV 10-08790-CAS (VBK)
)	
Plaintiff,)	ORDER TO SHOW CAUSE REGARDING
)	THREE STRIKES
v.)	
)	
JOHN MARSHALL,)	
)	
Defendant.)	

I

PROCEDURAL HISTORY

On February 11, 2011, Plaintiff Barry Jameson, a state prisoner proceeding pro se and in forma pauperis ("IFP"), filed a civil rights action pursuant to 42 U.S.C. § 1983.

On July 18, 2011, the Court issued an Order Dismissing Complaint with Leave to Amend.

On August 23, 2011, Plaintiff filed a First Amended Complaint.

A. Three Strikes.

A review of the record of actions filed by Plaintiff in the United States District Court reveals that Plaintiff has filed three

1 actions that were dismissed as frivolous, malicious or for failing to
2 state a claim upon which relief may be granted.

3 "[I]n no event shall a prisoner bring a civil action ... under
4 this section if the prisoner has, on 3 or more prior occasions, while
5 incarcerated or detained in any facility, brought an action or appeal
6 in a Court of the United States that was dismissed on the grounds that
7 it is frivolous, malicious or fails to state a claim upon which relief
8 may be granted, unless the prisoner is under imminent danger of
9 serious physical injury." 28 U.S.C. § 1915(g).¹

10 Determining whether Plaintiff's actions count as strikes under §
11 1915(g) requires the Court to conduct a "careful examination of the
12 order dismissing an action, and other relevant information," to
13 determine if, in fact, "the action was dismissed because it was
14 frivolous, malicious or failed to state a claim." Andrews, 398 F.3d
15 at 1121. Strikes include dismissals styled as denials of prisoner
16 applications to file an action without prepayment of the full filing
17 fee on the ground that the complaint is frivolous, malicious or fails
18 to state a claim. O'Neal v. Price, 531 F.3d 1146, 1152-53 (9th Cir.
19 2008). Pursuant to § 1915(g), a prisoner with three strikes or more
20 cannot proceed in forma pauperis. Andrews v. King, 398 F.3d at 1116
21 n.1; see also Andrews v. Cervantes, 493 F.3d 1047, 1052 (9th Cir.
22 2007)(Under the PLRA, "[p]risoners who have repeatedly brought
23 unsuccessful suits may entirely be barred from IFP status under the

24
25 ¹ Section 1915(g) was enacted as part of the 1996 amendments to the
26 Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321, §
27 804(d)(the "PLRA"). Andrews v. King, 398 F.3d 1113, 1116 n.1 (9th Cir.
28 2005). "This subdivision is commonly known as the 'three strikes'
Provision. 'Strikes' are prior cases or appeals, brought while the
plaintiff was a prisoner, which were dismissed on the ground that they
were frivolous, malicious, or failed to state a claim." Id.

1 three strikes rule[.]”).

2 The Court takes judicial notice of the following cases which
3 appear to count as strikes: (1) Jameson v. CDCR 3:96-CV-00889-IEG-RBB
4 (S.D. Cal.), dismissed January 27, 1997 for failure to state a claim,
5 pursuant to Heck v. Humphrey, 512 U.S. 477 (1994);² (2) Jameson v.
6 CDCR, 3:96-CCR-01175-H-LSP (S.D. Cal.)(dismissed January 24, 1997 for
7 failure to state a claim, pursuant to Heck); and (3) Jameson v. CDCR,
8 3:96-CV-01797-K-RBB (S.D. Cal.)(dismissed January 22, 1997, for
9 failure to state a claim, pursuant to Heck).

10 It appears to the Court that Plaintiff has three or more
11 “strikes” well before Plaintiff filed this action on February 11, 2011
12 and is subject to § 1915(g). Therefore, Plaintiff may be precluded
13 from proceeding in forma pauperis unless he was, at the time this
14 Complaint was filed, under imminent danger of serious physical injury.

17 CONCLUSION

18 Because it appears that Plaintiff has on three or more prior
19 occasions brought civil actions that have been dismissed as frivolous
20 or for failure to state a claim, the Court **HEREBY ORDERS:**

21 (1) Plaintiff **SHALL SHOW CAUSE** within thirty (30) days of the
22 date of service of this Order why the above-mentioned actions do not
23 count as “strikes” under 28 U.S.C. § 1915(g) and why the action should
24 not be dismissed without prejudice to allow Plaintiff to refile with

26 ² Dismissals pursuant to Heck count as § 1915(g) strikes as
27 Plaintiff would fail to state a claim. See Romero v. United States,
28 et al., 2011 U.S. Dist. Lexis 39224 (D. Az. April 5, 2011). (Finding
cases dismissed pursuant to Heck are dismissals for failure to state
a claim.)

1 the submission of the \$350 filing fee.

2 IT IS SO ORDERED.

3
4 DATED: May 2, 2012

5 /s/
VICTOR B. KENTON
6 UNITED STATES MAGISTRATE JUDGE
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