

1 of the United States that was dismissed on the grounds that it is frivolous, malicious,
2 or fails to state a claim upon which relief may be granted, unless the prisoner is under
3 imminent danger of serious physical injury.” For purposes of this section, the Ninth
4 Circuit has held that the phrase “fails to state a claim on which relief may be granted”
5 parallels the language of Fed. R. Civ. P. 12(b)(6) and carries the same interpretation;
6 that the word “frivolous” refers to a case that is “of little weight or importance:
7 having no basis in law or fact”; and that the word “malicious” refers to a case “filed
8 with the ‘intention or desire to harm another.’” See Andrews v. King, 398 F.3d 1113,
9 1121 (9th Cir. 2005) (as amended). The Ninth Circuit also has held that the prior
10 denial of in forma pauperis status on the basis of frivolity or failure to state a claim
11 constitutes a strike for purposes of § 1915(g). See O’Neal v. Price, 531 F.3d 1146,
12 1153 (9th Cir. 2008).

13 In Andrews, the Ninth Circuit held that the prisoner bears the ultimate burden
14 of persuasion that § 1915(g) does not bar in forma pauperis status for him. See id.
15 Courts in this Circuit have construed Andrews as permitting a district court to raise
16 the issue sua sponte of whether 28 U.S.C. § 1915(g) bars granting a request for leave
17 to proceed in forma pauperis, so long as the Court notifies the prisoner of the earlier
18 dismissals it considers to support a § 1915(g) dismissal (by citing the specific case
19 names, numbers, districts, and dates of dismissal for each civil action it considers a
20 “strike” or “prior occasion”) and allows the prisoner an opportunity to be heard on the
21 matter before denying the in forma pauperis request and/or dismissing the action.
22 See, e.g., Fkadu v. San Diego City Police Dep’t, 2007 WL 4259151, *2-*3 (S.D. Cal.
23 Dec. 4, 2007); Moore v. Thacker, 2007 WL 2900512, *1 (N.D. Cal. Sept. 28, 2007);
24 Weaver v. Inmates In Cell 218 219, 2007 WL 2462153, *1 (N.D. Cal. Aug. 29, 2007);
25 Hines v. Barra, 2007 WL 2462113, *2 (S.D. Cal. Aug. 28, 2007); Weaver v.
26 Mailroom Staff, 2007 WL 3028411, *1-*2 (E.D. Cal. Oct. 24, 2006); Mims v.
27 Sanchez, 2006 WL 2458711, *1-*2 (E.D. Cal. Aug. 22, 2006), Report and
28 Recommendation Adopted by 2006 WL 2849844 (E.D. Cal. Oct. 04, 2006).

1 The Court’s review of plaintiff’s prior prisoner actions reveals that plaintiff has
2 had at least four cases that qualify as strikes for purposes of § 1915(g):

3 1. Roddy v. State Prosecutor Office-DA, et al., Central
4 District of California Case No. CV 00-8622-UA (RZ), where plaintiff’s
5 request to proceed without prepayment of the full filing fee was denied
6 in an order filed on August 28, 2000 inter alia for failure to state a claim
7 upon which relief may be granted.

8 2. Roddy v. Los Angeles Police Dept., et al., Central District
9 of California Case No. CV 06-4464-UA (RZ), where plaintiff’s request
10 to proceed without prepayment of the full filing fee was denied in an
11 order filed on August 14, 2006 inter alia for failure to state a claim upon
12 which relief may be granted.

13 3. Roddy v. California Dept. of Corr., et al., Central District
14 of California Case No. CV 13-5423-UA (RZ), where plaintiff’s request
15 to proceed without prepayment of the full filing fee was denied in an
16 order filed on August 9, 2013 inter alia on the ground that the complaint
17 was “frivolous, malicious or fails to state a claim upon which relief may
18 be granted.”

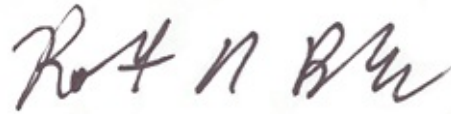
19 4. Roddy v. California Dept. of Corr., et al., Central District
20 of California Case No. CV 13-8524-UA (RZ), where plaintiff’s request
21 to proceed without prepayment of the full filing fee was denied in an
22 order filed on December 5, 2013 inter alia on the ground that the
23 complaint was “frivolous, malicious or fails to state a claim upon which
24 relief may be granted.”

25
26 Accordingly, plaintiff may proceed in forma pauperis only if he is seeking
27 relief from a danger of serious physical injury which is “imminent” at the time of
28 filing. See Andrews v. Cervantes, 493 F.3d 1047, 1055 (9th Cir. 2007) (as amended)

1 (holding that the § 1915(g) exception “applies if the complaint makes a plausible
2 allegation that the prisoner faced ‘imminent danger of serious physical injury’ at the
3 time of filing”). Here, plaintiff’s claims arise out of his arrest and prosecution in
4 2003. Plaintiff is not alleging that he was facing imminent danger of serious physical
5 injury at the time the complaint was lodged for filing herein.

6 IT THEREFORE IS ORDERED that, on or before **April 20, 2015**, plaintiff
7 show cause in writing, if any he has, why his motion to proceed in forma pauperis
8 should not be denied and why this action should not be dismissed pursuant to 28
9 U.S.C. § 1915(g). Plaintiff is forewarned that his failure to file a timely response to
10 this Order to Show Cause will be deemed by the Court as consent to the denial of his
11 motion to proceed in forma pauperis and to the dismissal of this action pursuant to 28
12 U.S.C. § 1915(g).

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14 DATED: March 17, 2015



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16
17 **ROBERT N. BLOCK**
UNITED STATES MAGISTRATE JUDGE