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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JAMES SMITH,

Plaintiff,

v.

HARRINGTON et. al.,

Defendants.

CASE NO. 1:09-CV-00047 DLB PC

ORDER REQUIRING PLAINTIFF TO PAY
\$350.00 FILING FEE IN FULL WITHIN
TWENTY DAYS

Plaintiff James Smith (“plaintiff”) is a state prisoner proceeding pro se in this civil action pursuant to 42 U.S.C. § 1983.¹ Plaintiff filed this complaint on January 9, 2009. (Doc. 1).

28 U.S.C. § 1915 governs proceedings in forma pauperis. Section 1915(g) provides that “[i]n no event shall a prisoner bring a civil action . . . under this section 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.” To date, plaintiff has had three or more actions dismissed as frivolous, as

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¹ The case caption lists James E. Smith and H. Garrett as the plaintiffs in this action. However, the complaint is not signed by H. Garrett. Local Rule 7-131; Fed. R. Civ. P. 11(a). Further, Inmate Smith, who is a non-lawyer, may not represent anyone but himself in court. Johns v. County of San Diego, 114 F.3d 874, 877 (9th Cir. 1997); C. E. Pope Equity Trust v. United States, 818 F.2d 696, 697 (9th Cir. 1987).

1 malicious, or for failing to state a claim upon which relief may be granted.² Thus, plaintiff is subject
2 to 28 U.S.C. § 1915(g) and is precluded from proceeding in forma pauperis unless plaintiff is, at the
3 time the complaint is filed, under imminent danger of serious physical injury.

4 The court has reviewed plaintiff's complaint and finds that plaintiff has alleged no facts that
5 support a finding that he is, at this time, under imminent danger of serious physical injury.
6 Accordingly, plaintiff must submit the appropriate filing fee in order to proceed with this action.

7 Based on the foregoing, the court HEREBY ORDERS as follows:

- 8 1. Plaintiff is ordered to submit the \$350.00 filing fee in full within twenty (20) days;
9 and,
- 10 2. If plaintiff fails to pay the \$350.00 filing fee in full within twenty (20) days, this court
11 will recommend that the action be dismissed.

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13 IT IS SO ORDERED.

14 **Dated: January 14, 2009**

15 /s/ Dennis L. Beck
16 UNITED STATES MAGISTRATE JUDGE
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25 ² Among the dismissals suffered by plaintiff that count as strikes under 1915(g) are Smith v. Holm, 3:06-cv-
26 05992-SI (dismissed for failure to state a claim on 01/22/2007), Smith v. Does, 1:07-cv-00509 LJO SMS (dismissed
27 as frivolous, malicious, and for failure to state a claim on 05/04/2007), Smith v. Social Security Administrative
28 Office, Employees, 1:07-cv-00531-AWI-SMS (dismissed for failure to state a claim on 05/09/2007), Smith v. Board
of Prison Terms Personnel, et al., 1:06-cv-01434-LJO-NEW (DLB) PC (dismissed for failure to state a claim on
08/16/2007), and Smith v. Scribner, et al., 1:06-cv-00310-AWI-NEW (DLB) PC (dismissed for failure to state a
claim on 05/09/2007).