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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JAMES E. SMITH,

Plaintiff,

v.

HARRINGTON, et. al.,

Defendants.

CASE NO. 1:09-cv-00253 DLB PC

ORDER FINDING PLAINTIFF INELIGIBLE TO PROCEED IN FORMA PAUPERIS AND REQUIRING PLAINTIFF TO PAY \$350.00 FILING FEE WITHIN THIRTY DAYS OR THIS ACTION WILL BE DISMISSED

(Doc. 1)

Plaintiff James E. Smith (“plaintiff”) is a state prisoner proceeding pro se in this civil action filed on February 9, 2009.

28 U.S.C. § 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 filed over thirty-nine actions in the United States District Court for the Eastern District of California, and has had three or more actions dismissed as frivolous, as malicious, or for failing to state a claim upon which relief may be granted.¹ Thus, plaintiff is subject to section 1915(g) and is precluded from proceeding

¹ Among the dismissals suffered by plaintiff that count as strikes under 1915(g) are case numbers 3:06-cv-05992-SI Smith v. Holm (N.D. Cal.) (dismissed 01/22/2007 for failure to state a claim); 1:07-cv-00509-LJO-SMS Smith v. Scribner (E.D. Cal.) (dismissed 05/04/2007 for frivolousness, maliciousness, and failure to state a claim); 1:06-cv-00310-AWI-NEW (DLB) PC (E.D. Cal.) (dismissed 05/09/2007 for failure to state a claim); and 1:07-cv-00531-AWI-SMS Smith v. Social Sec. Admin. Office, Employees (E.D. Cal.) (dismissed 05/09/2007 for failure to state a claim).

1 in forma pauperis unless plaintiff is, at the time the complaint is filed, under imminent danger of
2 serious physical injury.

3 The Court has reviewed plaintiff's complaint and finds that plaintiff has alleged no facts that
4 support a finding he is, at this time, under imminent danger of serious physical injury. Accordingly,
5 plaintiff may not proceed in forma pauperis, and must submit the appropriate filing fee in order to
6 proceed with this action.

7 Based on the foregoing, it is HEREBY ORDERED that:

- 8 1. Pursuant to 28 U.S.C. § 1915(g), plaintiff is ineligible to proceed in forma pauperis
9 in this action; and
- 10 2. Plaintiff shall pay the \$350.00 filing fee in full within **thirty (30) days** or this action
11 will be dismissed, without prejudice.

12
13 IT IS SO ORDERED.

14 **Dated: February 19, 2009**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE