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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JOSEPH DANNY PROPHET,

Plaintiff,

v.

KEN CLARK, et al.,

Defendants.

CASE NO. 1:09-cv-01254-OWW DLB PC

ORDER DENYING PLAINTIFF’S MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS, AND REQUIRING PLAINTIFF TO PAY \$350.00 FILING FEE IN FULL WITHIN THIRTY DAYS, OR DISMISSAL WILL OCCUR

(Doc. 2)

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Plaintiff Joseph Danny Prophet (“Plaintiff”), a state prisoner proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983 on July 20, 2009. Plaintiff seeks leave to proceed in forma pauperis.

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.” A review of the actions filed by Plaintiff reveals that Plaintiff is subject to section

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1 1915(g) and is precluded from proceeding in forma pauperis unless Plaintiff is, at the time the
2 complaint is filed, under imminent danger of serious physical injury.¹

3 The Court has reviewed Plaintiff's complaint and finds that Plaintiff does not meet the
4 imminent danger exception.² Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007). Because
5 Plaintiff has alleged no facts that support a finding that he is under imminent danger of serious
6 physical injury, Plaintiff is ineligible to proceed in forma pauperis in this action, and must submit
7 the appropriate filing fee in order to proceed with this action.

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

- 9 1. Plaintiff's motion for leave to proceed in forma pauperis in this action is denied; and
- 10 2. Plaintiff shall pay the \$350.00 filing fee in full within **thirty (30) days** from the date
11 of service of this order or this action will be dismissed, without prejudice.

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13 IT IS SO ORDERED.

14 **Dated: July 24, 2009**

15 /s/ Oliver W. Wanger
16 UNITED STATES DISTRICT JUDGE

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25 ¹ The Court takes judicial notice of case numbers 1:07-cv-01372 OWW DLB Prophet v. Allison Dunham,
26 et al. (E.D. Cal.) (dismissed on 11/21/2007 for failure to state a claim); 2:06-cv-02822 FCD EFB PC Prophet v.
27 Department of Corrections, et al (E.D. Cal.) (dismissed on 3/19/2009 for failure to state a claim); and 1:08-cv-01748
28 SMS PC Prophet v. Clark et al. (E.D. Cal.) (dismissed on 02/26/2009 for failure to state a claim).

² Plaintiff's alleges that defendants have placed him in a mental treatment program in order to deny him
access to the courts, and have taken his property in retaliation. (Doc. 1, court record p. 3.) Plaintiff seeks, *inter alia*,
the return of his property and removal from the program.