

1 On August 27, 2009, Plaintiff filed an application to proceed in forma pauperis pursuant to 28
2 U.S.C. 1915(a). (Doc. 2.) On August 31, 2009, the Court issued an order granting Plaintiff's application
3 to proceed in forma pauperis and directing the California Department of Corrections ("CDC") to
4 facilitate payment of the \$350.00 filing fee from Plaintiff's prison trust account. (Doc. 4.) To date, the
5 Court has not received any payments for Plaintiff's filing fee in this action. Further review of Plaintiff's
6 filing history by the Court reveals that Plaintiff is not entitled to proceed in forma pauperis. Therefore,
7 Plaintiff's in forma pauperis status shall be revoked, the Court's orders shall be vacated, and Plaintiff
8 shall be required to pay the \$350.00 filing fee for this action within thirty days.

9 **II. THREE STRIKES PROVISION**

10 The Prison Litigation Reform Act governs proceedings in forma pauperis. 28 U.S.C. 1915.
11 Section 1915(g) provides that "[i]n no event shall a prisoner bring a civil action . . . under this section
12 if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought
13 an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous,
14 malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under
15 imminent danger of serious physical injury." Plaintiff became subject to section 1915(g) on January 13,
16 2000, and is precluded from proceeding in forma pauperis unless he is, at the time the complaint is filed,
17 under imminent danger of serious physical injury.¹

18 The Court has reviewed Plaintiff's Complaint and finds that Plaintiff does not meet the
19 imminent danger exception.² Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007). Because
20 Plaintiff was not under imminent danger of serious physical injury at the time he filed the Complaint,

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22 ¹ In an order entered in the U.S. District Court for the Northern District of California on January 13, 2000, the court
23 found that in the three years prior, Plaintiff has "filed at least eight pro se prisoner actions dismissed by this court on the
24 ground that they are frivolous, malicious, or fail to state a claim upon which relief may be granted." See, e.g. Sierra v.
25 Terhune, slip op. no. C 98-089 MHP (N.D. Cal. July 28, 1998 (Order of Dismissal); Sierra v. Gomez, slip. op. no. C 97-3336
MHP (N.D. Cal. Dec. 23, 1997)(same); Sierra v. Gomez, slip. op. no. C-97 0939 MHP (N.D. Cal. June 2, 1997)(same). In
addition, Plaintiff's case 1:08-cv-00887-RTB-CAB-PC, Sierra v. Grannis, was dismissed by the Eastern District of California
as frivolous on January 21, 2009.

26 ² Plaintiff's claim in this action arises from generalized conditions of confinement issues at Corcoran State Prison.
27 Plaintiff Complaint was dismissed by the Court on February 2, 1010, for failure to state a claim, with leave to amend. (Doc.
28 10.) Because Plaintiff has not submitted an amended complaint, there is no pleading on file which sets forth any claims upon
which relief may be granted under section 1983.

1 he is ineligible to proceed in forma pauperis in this action and must submit the appropriate filing fee in
2 order to proceed with this action.

3 **III. CONCLUSION**

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

- 5 1. Pursuant to 28 U.S.C. § 1915(g), Plaintiff is ineligible to proceed in forma pauperis in
6 this action, and Plaintiff's in forma pauperis status is REVOKED;
- 7 2. The Court's order of August 20, 2009, which granted Plaintiff's application to proceed
8 in forma pauperis, is VACATED ;
- 9 3. The Court's order of August 20, 2009, which directed the CDC to make payments to the
10 Court from Plaintiff's prison trust account for payment of the filing fee for this action is
11 VACATED;
- 12 4. The Court's order of February 2, 2010, which granted Plaintiff leave to file an amended
13 complaint, is VACATED;
- 14 5. Plaintiff shall submit the \$350.00 filing fee in full within **thirty (30) days**;
- 15 6. The Clerk of Court is directed to serve a copy of this order on:
 - 16 (1) the Director of the CDCR; and
 - 17 (2) the Financial Department, U.S. District Court, Eastern District of California,
18 Fresno Division; and
- 19 7. If Plaintiff fails to pay the \$350.00 filing fee in full within thirty days, this action will be
20 dismissed, without prejudice.

21 IT IS SO ORDERED.

22 **Dated: March 3, 2011**

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE

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