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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JAMES E. SMITH,

Plaintiff,

v.

JONES, et al.,

Defendants.

CASE NO. 1:09-cv-01553-OWW-DLB PC

ORDER DISMISSING ACTION, WITHOUT
PREJUDICE, FOR FAILURE TO PAY FILING
FEE

(Doc. 1)

_____ /

Plaintiff James E. Smith, a state prisoner proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983 on August 31, 2009.

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.” Plaintiff became subject to section 1915(g) on May 9, 2007, and is precluded from proceeding in forma pauperis unless he is, at the time the complaint is filed, under imminent danger

1 of serious physical injury.¹

2 The Court has reviewed Plaintiff's complaint and finds that Plaintiff does not meet the
3 imminent danger exception.² Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007). Because
4 Plaintiff is not under imminent danger of serious physical injury, he is ineligible to proceed in forma
5 pauperis in this action, and is precluded from proceeding on his complaint absent the submission of
6 the filing fee in full.

7 Based on the foregoing, it is HEREBY ORDERED that this action is dismissed, without
8 prejudice to re-filing if accompanied by the \$350.00 filing fee.

9 IT IS SO ORDERED.

10 **Dated: March 9, 2010**

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

23 ¹ The Court takes judicial notice of case numbers: 3:06-cv-05992-SI, Smith v. Holm, (N. D. Cal.)
24 (dismissed for failure to state a claim on 01/22/2007); 1:07-cv-00509-LJO-SMS, Smith v. Does, et al., (E.D. Cal.)
25 (dismissed for failure to state a claim on 05/04/2007); 1:06-cv-00310-AWI-DLB PC, Smith v. Scribner, et al., (E.D.
26 Cal.) (dismissed for failure to state a claim on 05/09/2007); 1:07-cv-00531-AWI-SMS, Smith v. Social Security
27 Administrative Office, Employees, (E.D. Cal.) (dismissed for failure to state a claim on 05/09/2007); 1:06-cv-01434-
28 LJO-DLB PC, Smith v. Board of Prison Term Personnel, et al., (E.D. Cal.) (dismissed for failure to state a claim on
08/16/2007); 1:06-cv-01799-OWW-GSA PC, Smith v. Chrones, et al., (E.D. Cal.) (dismissed for failure to state a
claim on 11/20/2008); 1:06-cv-01219-SMS-PC, Smith v. Knowles, (E.D. Cal.) (dismissed for failure to state a claim
on 01/27/2009).

² The Court expresses no opinion on the merits of Plaintiff's claim.