

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RICHARD BURTON,

CASE NO. 1:10-cv-00135-AWI-DLB PC

Plaintiff,

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

v.

MCMANUS, et al.,

(ECF NO. [3](#))

Defendants.

Plaintiff Richard Burton, a California state prisoner proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983 on January 28, 2010. Plaintiff was ordered to pay the \$350.00 filing fee on March 18, 2010 within thirty days. (ECF No. 3.) Plaintiff has failed to respond.

Proceedings in forma pauperis are governed by 28 U.S.C. § 1915. 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 § 1915(g) on August 26, 1999, and is precluded from proceeding in forma pauperis unless he is, at the time the complaint is filed, under imminent danger of serious physical injury.¹

¹ The Court takes judicial notice of the qualifying cases: *Burton v. Jacoby, et al.*, 1:98-cv-6088-REC-HGB (E.D. Cal.) (dismissed March 2, 1999 for failure to state a claim); *Burton v. Sheriff's Dept. Of Fresno County, et al.*, 1:98-cv-6100-OWW-DLB (E.D. Cal.) (dismissed March 17, 1999 for failure to state a claim); *Burton v. Fresno County, et al.*, 1:98-cv-6142-AWI-SMS (E.D. Cal.) (dismissed August 26, 1999 for failure to state a claim).

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

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

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9 IT IS SO ORDERED.

10 Dated: July 11, 2010

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12 CHIEF UNITED STATES DISTRICT JUDGE
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28 ² Plaintiff's claims in this action arises from a prison disciplinary action. The Court expresses no opinion on the merits of Plaintiff's claims.