

## 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.<sup>1</sup>

<sup>1</sup> 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).

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

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

IT IS SO ORDERED.

Dated: July 11, 2010

*W. H. Blum*  
CHIEF UNITED STATES DISTRICT JUDGE

<sup>2</sup> Plaintiff's claims in this action arises from a prison disciplinary action. The Court expresses no opinion on the merits of Plaintiff's claims.