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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GREGORY McCLELLAN,

CASE NO. 1:10-cv-208-MJS (PC)

Plaintiff,

ORDER REVOKING PLAINTIFF'S IN
FORMA PAUPERIS STATUS AND
DIRECTING PLAINTIFF TO PAY THE
\$350.000 FILING FEE WITHIN THIRTY
DAYS

v.

JOE FINK, et al.,

Defendants.

(Doc. 4)

_____ /

Plaintiff Gregory McClellan ("Plaintiff") is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has consented to a Magistrate Judge handling all matters in this case. (ECF No. 6.)

Plaintiff is currently detained at Kern County Jail. On February 9, 2010, Plaintiff filed a motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. (ECF No. 2.) The Court granted this motion on February 18, 2010. (ECF No. 4.) The Court now finds that Plaintiff was granted in forma pauperis status in error.

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

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

4 The Court has reviewed Plaintiff's Amended Complaint and finds that Plaintiff does
5 not meet the imminent danger exception. Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th
6 Cir. 2007). Plaintiff alleges that his rights under the Fourteenth Amended have been
7 violated, because he is being unlawfully incarcerated due to his parole violations. The only
8 part of Plaintiff's Amended Complaint that could imply that Plaintiff is subject to imminent
9 danger is a single sentence, unconnected with his cause of action, in which Plaintiff alleges
10 he suffers from "severe hypertension, anxiety, paranoia, emotional 'distress,' and fears
11 further harassment will follow." (Am. Compl., ECF No. 8 at 7.) This does not amount to
12 "imminent danger of serious physical injury at the time of filing." See id. at 1055 (citing 28
13 U.S.C. § 1915(g)).

14 The Court has reviewed Plaintiff's Amended Complaint and finds that it alleges no
15 additional facts to support a finding that he is, at this time, under imminent danger of serious
16 physical injury. Thus Plaintiff may not proceed in forma pauperis and must submit the
17 appropriate filing fee in order to proceed with this action. Because the Court previously
18 granted Plaintiff leave to proceed in forma pauperis status in this action, the Court revokes
19 Plaintiff's in forma pauperis status and Plaintiff is ordered to submit the filing fee in full within
20 thirty days.

21 Accordingly, based on the foregoing, the Court HEREBY ORDERS that:

- 22 1. Pursuant to 28 U.S.C. § 1915(g), Plaintiff's in forma pauperis status in this
23 action is revoked;
- 24 2. Plaintiff is directed to submit the \$350.00 filing fee in full within thirty (30)
25 days; and

26
27 ¹ The Court takes judicial notice of the following cases: McClellan v. Mountain, 1:08-cv-256-LJO-
28 GSA (PC) (dismissed for failure to state a claim on 3/5/2009); McClellan v. Fink, 1:08-cv-1326-YNP (PC)
(dismissed for failure to state a claim on 4/1/2009); and McClellan v. Haviland, 1:07-cv-1607-OWW-SMS
(PC) (dismissed for failure to state a claim on 10/19/2009).

1 3. If Plaintiff fails to pay the \$350.00 filing fee in full within thirty (30) days, this
2 action will be dismissed, without prejudice.

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5 IT IS SO ORDERED.

6 Dated: November 28, 2011

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE