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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GREGORY McCLELLAN,

1:10-cv-01470-OWW-GSA-PC

Plaintiff,

ORDER DENYING PLAINTIFF’S MOTION
TO PROCEED IN FORMA PAUPERIS
(Doc. 2.)

vs.

PAT HEARD, et al.,

ORDER FINDING PLAINTIFF INELIGIBLE
TO PROCEED IN FORMA PAUPERIS IN
THIS ACTION, AND REQUIRING PLAINTIFF
TO PAY \$350.00 FILING FEE IN FULL
WITHIN THIRTY DAYS OR THIS ACTION
WILL BE DISMISSED

Defendants.

_____ /

Plaintiff, Gregory McClellan (“Plaintiff”), is a prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on August 16, 2010, together with a motion to proceed in forma pauperis. (Docs. 1, 2.)

Section 1915 of Title 28 of the United States Code 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 has had three or more actions dismissed as frivolous, as malicious, or for failing to state a claim upon which relief may be granted.¹

¹ The court takes judicial notice of 1:09-cv-00256-LJO-GSA-PC McClellan v. Mountain, (E.D. Cal.) (dismissed for failure to state a claim on 03/05/2009), 1:08-cv-01326-YNP-PC McClellan v. Fink (E.D. Cal.) (dismissed for failure to state a claim on 04/01/2009), and 1:07-cv-01607-OWW-SMS-PC McClellan v. Haviland (E.D. Cal.) (dismissed for failure to state a claim on 10/19/2009).

1 Thus, Plaintiff is subject to 28 U.S.C. § 1915(g) and is precluded from proceeding in forma pauperis
2 unless Plaintiff is, at the time the complaint is filed, under “imminent danger” of serious physical
3 injury.

4 Plaintiff claims he was under “imminent danger” at the time the complaint was filed on
5 August 16, 2010, because he was incarcerated at Kern County Jail with inmates who are HIV-
6 positive and carry other communicable diseases. However, Plaintiff’s “imminent danger” is entirely
7 unrelated to the allegations in the complaint. In the complaint, Plaintiff names five parole agents as
8 defendants, alleging they used unconstitutional parole procedures and improperly imposed residency
9 restrictions upon him while he was on parole in 2007, 2008, and 2009. Because the “imminent
10 danger” of communicable diseases while in jail does not apply to any part of Plaintiff’s allegations
11 against the parole agents, it does not make practical sense, under § 1915(g), to allow Plaintiff to
12 proceed in forma pauperis with this lawsuit. See Andrews v. Cervantes, 493 F.3d 1047, 1054 (9th
13 Cir. 2007). Therefore, Plaintiff’s motion to proceed in forma pauperis shall be denied, and Plaintiff
14 must submit the appropriate filing fee in order to proceed with this action.

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

- 16 1. Pursuant to 28 U.S.C. § 1915(g), Plaintiff is ineligible to proceed in forma pauperis
17 in this action;
- 18 2. Plaintiff’s motion to proceed in forma pauperis, filed August 16, 2010, is DENIED;
- 19 3. Plaintiff shall submit the \$350.00 filing fee in full within **thirty (30) days**; and
- 20 4. If Plaintiff fails to pay the \$350.00 filing fee in full within thirty days, this action will
21 be dismissed, without prejudice.

22 IT IS SO ORDERED.

23 **Dated: August 26, 2010**

24 /s/ Oliver W. Wanger
25 UNITED STATES DISTRICT JUDGE
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