

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

EBONE LEROY EAST,

1:10-cv-01807-AWI-GSA-PC

Plaintiff,

ORDER REVOKING PLAINTIFF’S IN
FORMA PAUPERIS STATUS UNDER
§ 1915(g)

v.

CHULYAK, et al.,

ORDER VACATING ORDER GRANTING
APPLICATION TO PROCEED IN FORMA
PAUPERIS
(Doc. 4.)

Defendants.

ORDER VACATING ORDER DIRECTING
CDCR TO COLLECT FILING FEE
PAYMENTS FOR THIS ACTION
(Doc. 4.)

ORDER DISMISSING ACTION, WITHOUT
PREJUDICE TO REILING WITH
SUBMISSION OF \$350.00 FILING FEE IN
FULL

ORDER FOR CLERK TO CLOSE CASE AND
SERVE COPY OF THIS ORDER ON CDCR
AND COURT FINANCIAL DEPARTMENT

I. BACKGROUND

Plaintiff Ebone Leroy East, a state prisoner proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983 on September 30, 2010, together with an application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. (Docs. 1, 2.) On October 5, 2010, the Court granted Plaintiff’s application, allowing him to proceed in forma pauperis. (Doc. 4.)

1 **II. 28 U.S.C. § 1915(g) - IN FORMA PAUPERIS STATUS**

2 Section 1915(g) provides that “[i]n no event shall a prisoner bring a civil action . . . under
3 this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any
4 facility, brought an action or appeal in a court of the United States that was dismissed on the grounds
5 that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the
6 prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). Plaintiff is
7 subject to section 1915(g) and is precluded from proceeding in forma pauperis unless he was, at the
8 time the complaint was filed, under imminent danger of serious physical injury.¹

9 The Court has reviewed Plaintiff’s Complaint and finds that Plaintiff does not meet the
10 imminent danger exception.² Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007).³
11 Because Plaintiff alleges no facts supporting a finding that he was under imminent danger of serious
12 physical injury at the time he filed the Complaint, Plaintiff is ineligible to proceed in forma pauperis
13 in this action.⁴

14 **III. CONCLUSION**

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

- 16 1. Plaintiff’s in forma pauperis status in this action is REVOKED;
- 17 2. The Court’s order granting Plaintiff’s application to proceed in forma pauperis,
18 entered on March 23 9, 2010, is VACATED;
- 19 3. The Court’s order directing payment of the inmate filing fee by the CDCR, entered
20 on March 23, 2010, is VACATED;

22 ¹Among the dismissals suffered by Plaintiff that count as strikes under 1915(g) are case numbers 5:09-cv-
23 01105-UA-E (CD Cal.) East v. S. Gidcumb, et al. (dismissed on 06/17/2009 for failure to state a claim); 5:09-cv-
24 01810-UA-E (CD Cal.) East v. Pace, et al. (dismissed on 10/01/2009 for failure to state a claim); and 5:09-cv-
02224-UA-E (CD Cal.) East v. San Bernardino County (dismissed on 12/11/2009 for failure to state a claim).

25 ²The Court expresses no opinion on the merits of Plaintiff’s claims.

26 ³ Plaintiff alleges that defendants failed to provide adequate medical care and medications for Plaintiff’s ear
27 and shoulder problems. Doc. 1, court record, pp. 43-68. The Complaint is devoid of any showing that Plaintiff was
under imminent danger of serious physical injury at the time he filed the Complaint. Id.

28 ⁴According to the Court’s financial records, no payments have been received by the Court for payment of
Plaintiff’s filing fee for this action.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 4. This action is DISMISSED, without prejudice to refile with the submission of the \$350.00 filing fee in full;
- 5. The Clerk is directed to CLOSE this case; and
- 6. The Clerk is directed to SERVE a copy of this order on the Director of the CDCR, via the Court's electronic case filing system, and the Court's financial department.

IT IS SO ORDERED.

Dated: December 23, 2011



CHIEF UNITED STATES DISTRICT JUDGE