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8 **UNITED STATES DISTRICT COURT**

9 EASTERN DISTRICT OF CALIFORNIA

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11 EBONE LEROY EAST,

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

12 Plaintiff,

13 ORDER REVOKING PLAINTIFF'S IN  
14 FORMA PAUPERIS STATUS UNDER  
15 § 1915(g)

16 CHULYAK, et al.,

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

20 Defendants.

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

24 ORDER DISMISSING ACTION, WITHOUT  
25 PREJUDICE TO REFILING WITH  
26 SUBMISSION OF \$350.00 FILING FEE IN  
27 FULL

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

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30 **I. BACKGROUND**

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

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

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.” 28 U.S.C. § 1915(g). Plaintiff is subject to section 1915(g) and is precluded from proceeding in forma pauperis unless he was, at the time the complaint was filed, under imminent danger of serious physical injury.<sup>1</sup>

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).<sup>3</sup> Because Plaintiff alleges no facts supporting a finding that he was under imminent danger of serious physical injury at the time he filed the Complaint, Plaintiff is ineligible to proceed in forma pauperis in this action.<sup>4</sup>

### III. CONCLUSION

Based on the foregoing, it is HEREBY ORDERED that:

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

<sup>1</sup> Among the dismissals suffered by Plaintiff that count as strikes under 1915(g) are case numbers 5:09-cv-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-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).

<sup>2</sup>The Court expresses no opinion on the merits of Plaintiff's claims.

<sup>3</sup> Plaintiff alleges that defendants failed to provide adequate medical care and medications for Plaintiff's ear 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.*

<sup>4</sup> According to the Court's financial records, no payments have been received by the Court for payment of Plaintiff's filing fee for this action.

4. This action is DISMISSED, without prejudice to refiling 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