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GARRISON S. JOHNSON,

MATTHEW CATE, et al.,

Defendants.

v.

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

1:10-CV-01918-OWW-DLB PC

Plaintiff, ORDER DENYING MOTION TO PROCEED

IN FORMA PAUPERIS

(DOC. 2)

FILING FEE DUE WITHIN TWENTY-ONE

DAYS

Plaintiff Garrison S. Johnson ("Plaintiff") is a prisoner in the custody of the California Department of Corrections and Rehabilitation, proceeding pro se. On October 14, 2010, Plaintiff filed a motion requesting to proceed in forma pauperis in this action.

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 April 5, 2010, 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. 1

The Court has reviewed Plaintiff's <u>complaint</u> and finds that Plaintiff does not meet the imminent danger exception.² 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.

Accordingly, it is HEREBY ORDERED that Plaintiff's motion to proceed in forma pauperis, filed October 14, 2010, is DENIED.

Plaintiff is required to pay the \$350.00 filing fee in full within twenty-one (21) days from the date of service of this order. Failure to timely pay the filing fee will result in dismissal of this action without prejudice.

IT IS SO ORDERED.

Dated: October 21, 2010 /s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

The Court takes judicial notice of the qualifying cases: Johnson v. William L. MicKinney, et al., 2:04-cv-4080-UA-CW (C.D. Cal.) (dismissed June 21, 2004 for failure to state a claim); Johnson v. William L. McKinney, et al., 2:07-cv-8018-UA-CW (C.D. Cal.) (dismissed January 30, 2008 for failure to state a claim and as frivolous); Johnson v. Cannon, et al., 1:08-cv-0046-AWI-GSA (E.D. Cal.) (dismissed April 5, 2010 for failure to state a claim).

Plaintiff also has dismissals for two other actions: Johnson, et al. v. Brown & Williamson, et al., 2:97-cv-5335-DT-BQR (C.D. Cal.) (dismissed December 5, 1997), and Johnson v. Rocha, et al., 4:02-cv-00384-SBA (N.D. Cal.) (dismissed December 22, 2003). It is unclear why these two cases were dismissed. They were thus not counted strikes pursuant to 28 U.S.C. § 1915(g).

 $^{^2}$ Plaintiff's claims in this action arise from an alleged violation of the Equal Protection Clause of the Fourteenth Amendment. The Court expresses no opinion on the merits of Plaintiff's claims.