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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

ERIC JOHNSON,

Plaintiff,

v.

RAUL LOPEZ, et al.,

Defendants.

CASE NO. 1:10-cv-02237-SMS PC

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

(Doc. 1)

Plaintiff Eric Johnson, a state prisoner proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983 on December 2, 2010. Plaintiff neither paid the \$350.00 filing fee in full nor filed an application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Because Plaintiff is ineligible to proceed in forma pauperis in this action, it shall be dismissed, without prejudice to refileing if accompanied by the filing fee.

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 section

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1 1915(g) on September 8, 2005, and he is precluded from proceeding in forma pauperis unless he is,  
2 at the time the complaint is filed, under imminent danger of serious physical injury.<sup>1</sup>

3 The Court has reviewed Plaintiff's complaint and finds that Plaintiff does not meet the  
4 imminent danger exception.<sup>2</sup> Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007).  
5 Therefore, Plaintiff is ineligible to proceed in forma pauperis in this action and he must submit the  
6 filing fee to proceed.

7 Accordingly, this action is HEREBY DISMISSED, without prejudice to refiling with the  
8 submission of the \$350.00 filing fee.

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10 IT IS SO ORDERED.

11 **Dated: December 15, 2010**

**/s/ Sandra M. Snyder**  
**UNITED STATES MAGISTRATE JUDGE**

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25 <sup>1</sup> The Court takes judicial notice of case numbers 2:94-cv-01616-DFL-GGH PC Johnson v. State of  
26 California, et al. (E.D. Cal.) (dismissed 07/26/1995 for failure to state a claim); 2:94-cv-01146-EJG-GGH PC  
27 Johnson v. Briscoe, et al. (E.D. Cal.) (dismissed 08/17/1995 for failure to state a claim). and 2:94-cv-01925-WBS-  
28 GGH PC Johnson v. Bonaccorso, et al. (E.D. Cal.) (dismissed 09/08/1995 for failure to state a claim).

<sup>2</sup> This action involves the claim that prison officials conspired to take Plaintiff off CCCMS status in  
retaliation for the grievance Plaintiff filed against Dr. Jordan for failing to comply with the court-ordered mental  
health assessment criteria.