

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

THOMAS D. BRALEY,

Plaintiff,

v.

CDCR, et al.,

Defendants.

CASE NO. 1:10-CV-02338-DLB PC

ORDER DENYING PLAINTIFF'S MOTIONS
FOR LEAVE TO PROCEED IN FORMA
PAUPERIS (DOCS. 5, 16)ORDER DISMISSING ACTION WITHOUT
PREJUDICE FOR FAILURE TO PAY
\$350.00 FILING FEE

Plaintiff Thomas D. Braley ("Plaintiff") is a prisoner in the custody of the California Department of Corrections and Rehabilitation ("CDCR"). Plaintiff is proceeding pro se in this civil rights action. Plaintiff initiated this action by filing his complaint on September 20, 2010 in the Northern District of California. Doc. 1. The action was transferred to this Court on December 15, 2010. Plaintiff filed a motion to proceed in forma pauperis on October 22, 2010 and May 18, 2011. Docs. 5, 16. The Court had yet to adjudicate Plaintiff's in forma pauperis status in this action.

An examination of court records reveals that Plaintiff is ineligible 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,

1 unless the prisoner is under imminent danger of serious physical injury.” Plaintiff became
2 subject to § 1915(g) on March 12, 2009, and is precluded from proceeding in forma pauperis
3 unless he is, at the time the complaint is filed, under imminent danger of serious physical injury.
4 The Court takes judicial notice of the following cases qualifying as strikes: *Braley v. Bledsoe*,
5 Case No. 2:01-cv-03867-GAF-Mc (C.D. Cal.) (dismissed October 31, 2001 for failure to state a
6 claim); *Braley v. Rafael Mejia*, Case No. 2:03-cv-04583-UA-SH (C.D. Cal.) (dismissed July 16,
7 2003 as frivolous); *Braley v. Los Angeles County Jail, et al.*, Case No. 1:07-cv-01166-OWW-
8 GSA PC (E.D. Cal.) (dismissed March 12, 2009 for failure to state a claim).

9 A review of the complaint indicates that Plaintiff is not in imminent danger of serious
10 physical injury at the time of the filing of the complaint. Plaintiff complains of deliberate
11 indifference while being transported. This does not rise to the level of an imminent danger of
12 serious physical injury.

13 Accordingly, it is HEREBY ORDERED that

- 14 1. Plaintiff’s motions to proceed in forma pauperis, filed October 22, 2010 and May
15 18, 2011, are DENIED; and
- 16 2. This action is dismissed for failure to pay the filing fee, without prejudice to
17 refiling as a new action if accompanied with the full \$350.00 filing fee.

18 IT IS SO ORDERED.

19 **Dated: May 19, 2011**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE