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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ALPHEOUS E. GORDON,

Plaintiff,

v.

FRESNO COUNTY JAIL, et al.,

Defendants.

CASE NO. 1:11-cv-00216-SKO PC

ORDER TO SHOW CAUSE WHY
PLAINTIFF’S APPLICATION TO PROCEED
IN FORMA PAUPERIS SHOULD NOT BE
DENIED

SHOW CAUSE RESPONSE DUE WITHIN 30
DAYS

Plaintiff Alpheous E. Gordon (“Plaintiff”) is a prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. On February 8, 2011, Plaintiff filed a motion requesting permission to proceed in forma pauperis in this action. (Doc. #2.) For the reasons set forth below, the Court will order Plaintiff to show cause why his application to proceed in forma pauperis should not be denied.

"Plaintiffs normally must pay \$350 to file a civil complaint in federal district court . . . but 28 U.S.C. § 1915(a)(1) allows the district court to waive the fee, for most individuals unable to afford it, by granting [in forma pauperis] status." Andrews v. Cervantes, 493 F.3d 1047, 1051 (9th Cir. 2007). Under Section 1915(a)(1):

any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor.

28 U.S.C. § 1915(a)(1).

1 However, a prisoner may not proceed in forma pauperis:

2 if the prisoner has, on 3 or more occasions, while incarcerated or
3 detained in any facility, brought an action or appeal in a court of the
4 United States that was dismissed on the grounds that it is frivolous,
5 malicious, or fails to state a claim upon which relief may be granted,
6 unless the prisoner is under imminent danger of serious physical
7 injury.

8 28 U.S.C. § 1915(g). This limitation is commonly known as the “three strikes” rule. See Andrews
9 v. King, 398 F.3d 1113, 1116 n.1 (9th Cir. 2005).

10 “The PLRA does not define the terms ‘frivolous,’ or ‘malicious,’ nor does it define
11 dismissals for failure to ‘state a claim upon which relief could be granted.’” Id. at 1121. However,
12 “the phrase ‘fails to state a claim on which relief may be granted,’ as used elsewhere in § 1915,
13 ‘parallels the language of Federal Rule of Civil Procedure 12(b)(6).’” Id.

14 A court “may take [judicial] notice of proceedings in other courts, both within and without
15 the federal judicial system, if those proceedings have a direct relation to matters at issue.” U.S. ex
16 rel. Robinson Rancheria Citizens Counsel v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992)
17 (internal citations and quotations omitted). The Court takes judicial notice of the following civil
18 actions filed by Plaintiff in this district and dismissed on the grounds that they were frivolous or
19 failed to state a claim upon which relief may be granted: (1) Gordon v. Fresno County Jail, No. 1:07-
20 cv-01480-OWW-MJS (dismissed on September 23, 2009 for failure to state a claim);
21 (2) Owen¹ v. Fresno County Jail, No. 1:07-cv-01555-LJO-GSA (dismissed on June 9, 2009 for
22 failure to state a claim); and (3) Gordon v. P.S.I., No. 1:09-cv-00228-OWW (dismissed on February
23 11, 2009, as frivolous).

24 Further, the Court finds that Plaintiff does not qualify for the imminent danger exception
25 under 28 U.S.C. § 1915(g). “Prisoners qualify for the [imminent danger] exception based on the
26 alleged conditions at the time the complaint was filed. And qualifying prisoners can file their entire
27 complaint IFP; the exception does not operate on a claim-by-claim basis or apply to only certain
28 types of relief.” Andrews v. Cervantes, 493 F.3d at 1052. “[T]he exception applies if the complaint
 makes a plausible allegation that the prisoner faced ‘imminent danger of serious physical injury’ at

¹Plaintiff’s filings with the Court indicate that the is also known as Orville Owen.

1 the time of filing.” Id. at 1055. “[A] prisoner who alleges that prison officials continue with a
2 practice that has injured him or others similarly situated in the past will satisfy the ‘ongoing danger’
3 standard and meet the imminence prong of the three-strikes exception.” Id. at 1056-57.

4 Plaintiff’s complaint does not indicate that Plaintiff was in imminent danger of serious
5 physical injury at the time he filed his complaint. Plaintiff’s claims are raised against officials at
6 Fresno County Jail, whereas Plaintiff is currently incarcerated at the U.S. Penitentiary in Florence,
7 Colorado. Plaintiff claims that certain officials destroyed his documents and property. Plaintiff has
8 not described any imminent danger of serious physical injury.

9 The Court has identified three cases filed in this district that may count as strikes pursuant
10 to Section 1915(g). Plaintiff’s complaint does not allege that Plaintiff was in imminent danger of
11 serious physical injury at the time he filed his complaint. The Court will order Plaintiff to show
12 cause why these cases should not count as strikes.

13 Based on the foregoing, Plaintiff is HEREBY ORDERED to SHOW CAUSE within thirty
14 (30) days of the date of service of this order why his application to proceed in forma pauperis should
15 not be denied.

16
17 IT IS SO ORDERED.

18 **Dated:** February 15, 2011

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE