

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD JOSE DUPREE, JR., ) 1:11-cv-01416-GSA-PC  
Plaintiff, ) ORDER DENYING MOTION TO  
vs. ) PROCEED IN FORMA PAUPERIS  
MISTY MILLS, et al., ) AND DISMISSING ACTION, WITHOUT  
Defendants. ) PREJUDICE TO REFILE WITH  
 ) SUBMISSION OF \$350.00 FILING FEE  
 ) IN FULL  
 ) (Doc. 2.)  
 ) ORDER FOR CLERK TO CLOSE CASE

Richard Jose Dupree, Jr. ("Plaintiff") is a state prisoner proceeding pro se with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on July 22, 2011, together with an application to proceed in forma pauperis. (Docs. 1, 2.)

28 U.S.C. § 1915 governs proceedings in forma pauperis. 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.” A review of the actions filed by Plaintiff reveals that Plaintiff is subject to 28 U.S.C. § 1915(g).

1 and is precluded from proceeding in forma pauperis unless Plaintiff is, at the time the complaint is filed,  
2 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 imminent  
4 danger exception.<sup>2</sup> Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007). Plaintiff alleges in the  
5 Complaint that his identity has been stolen by Misty Mills, a woman who claims to be Plaintiff's wife  
6 and the mother of his child.<sup>3</sup> Plaintiff may not proceed in forma pauperis in this action, and must submit  
7 the appropriate filing fee in order to proceed with this action. Therefore, Plaintiff's application to  
8 proceed in forma pauperis shall be denied, and this action shall be dismissed, without prejudice to  
9 refiling with the submission of the \$350.00 filing fee in full.

10 Based on the foregoing, it is HEREBY ORDERED that:

11 1. Pursuant to 28 U.S.C. § 1915(g), Plaintiff's application to proceed in forma pauperis in  
12 this action is denied;

13 2. This action is DISMISSED, without prejudice to refiling with the submission of the  
14 \$350.00 filing fee in full; and

15 3. The Clerk is directed to CLOSE this case.

16  
17 IT IS SO ORDERED.

18 Dated: September 2, 2011

19 /s/ Gary S. Austin  
20 UNITED STATES MAGISTRATE JUDGE

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23 <sup>1</sup> Among the dismissals suffered by Plaintiff that count as strikes under 1915(g) are case numbers 2:11-cv-00309-EFB (ED Cal.)  
24 Dupree, Jr. vs. Santiago (dismissed on 02/22/2011 for failure to state a claim); 2:11-cv-00263-DAD (ED Cal.) Dupree, Jr. vs. U.S. Courts  
25 of the Eastern Dist. of CA (dismissed on 03/24/2011 as frivolous); and 1:11-cv-00565-OWW-DLB (ED Cal.) Dupree, Jr. vs. Scott  
(dismissed on 07/12/2011 for failure to state a claim).

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

27 <sup>3</sup>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.