(PC) Tonie Elmore	v. Castro et al	Doc.	
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7	UNITED ST	TATES DISTRICT COURT	
8	EASTERN DISTRICT OF CALIFORNIA		
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10	TONIE ELMORE,	) 1:11-cv-02143-GSA-PC	
11	Plaintiff,	ORDER REVOKING IN FORMA PAUPERIS STATUS	
12	VS.	) ) ORDER VACATING ORDER	
13	J. CASTRO, et al.,	) GRANTING APPLICATION TO ) PROCEED IN FORMA PAUPERIS	
14		) (Doc. 9.)	
15	Defendants.	) ORDER VACATING ORDER ) DIRECTING CDC TO COLLECT FILING	
16		) FEE PAYMENTS FOR THIS ACTION (Doc. 9.)	
17 18		ORDER FOR PLAINTIFF TO PAY S350.00 FILING FEE WITHIN THIRTY	
19		) DAYS, OR CASE WILL BE DISMISSED	
20	I. BACKGROUND		
21	Tonie Elmore ("Plaintiff"), is a state prisoner proceeding pro se and in forma pauperis in this		
22	civil rights action pursuant to 42 U.S.C. § 1983.		
23	Plaintiff filed this action on December 28, 2011. (Doc. 1.) On January 17, 2012, Plaintiff		
24	consented to Magistrate Judge jurisdiction in this action, and no other parties have made an appearance.		
25	(Doc. 5.) Therefore, pursuant to Appendix A(k)(4) of the Local Rules of the Eastern District of		
26	California, the undersigned shall conduct any and all proceedings in the case until such time as		
27	reassignment to a District Judge is required. Local Rule Appendix A(k)(3).		
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Doc. 11

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On February 15, 2012, the Court granted Plaintiff leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 and directed the California Department of Corrections to withdraw funds from Plaintiff's prison trust account to pay the filing fee for this action. (Doc. 4.)

## THREE STRIKES PROVISION II.

The Prison Litigation Reform Act governs proceedings in forma pauperis. 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 section 1915(g) on November 2, 2000, 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.<sup>1</sup>

The Court has reviewed Plaintiff's complaint and finds that Plaintiff does not meet the imminent danger exception.<sup>2</sup> Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007). Because Plaintiff was not under imminent danger of serious physical injury at the time he filed the complaint, he is ineligible to proceed in forma pauperis in this action and must submit the appropriate filing fee in order to proceed with this action.<sup>3</sup>

## **CONCLUSION** III.

Based on the foregoing, it is HEREBY ORDERED that:

1. Pursuant to 28 U.S.C. § 1915(g), Plaintiff is ineligible to proceed in forma pauperis in this action, and Plaintiff's in forma pauperis status is REVOKED;

<sup>&</sup>lt;sup>1</sup>The Court takes judicial notice of case numbers: 3:00-cv-01275-CRB Elmore v. Clark, et al. (N.D. Cal.) (dismissed 08/25/2000 for failure to state a claim); 3:00-cv-02269-CRB Elmore v. Lamarque. (N.D. Cal.) (dismissed 11/02/2000 for failure to state a claim); and 3:00-cv-02929-CRB Elmore v. Salinas Valley State Prison (N.D. Cal.) (dismissed 08/25/2000 for failure to state a claim):

<sup>&</sup>lt;sup>2</sup>Plaintiff's claim in this action arises from allegations that prison officials have not located and returned a \$500 check written by his mother. The Court expresses no opinion on the merits of Plaintiff's claims.

<sup>&</sup>lt;sup>3</sup>To date, no payment for the filing fee has been received in this action.

1	2.	The court's order of February 15, 2012, which granted Plaintiff's application to pro	ceed
2		in forma pauperis, is VACATED;	
3	3.	The court's order of February 15, 2012, which directed the California Department	nt of
4		Corrections to make payments to the Court from Plaintiff's prison trust accoun	t for
5		payment of the filing fee for this action is VACATED;	
6	4.	Plaintiff shall submit the \$350.00 filing fee in full within thirty (30) days;	
7	5.	The Clerk of Court is directed to serve a copy of this order on:	
8		(1) the Director of the California Department of Corrections, and	
9		(2) the Financial Department, U.S. District Court, Eastern District of Califo	rnia,
10		Fresno Division; and	
11	6.	If Plaintiff fails to pay the \$350.00 filing fee in full within thirty days, this action wi	ill be
12		dismissed, without prejudice.	
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14	IT IS	S SO ORDERED.	
15	Dated	d: August 23, 2012 /s/ Gary S. Austin UNITED STATES MAGISTRATE JUDGE	
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