

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

4 **II. THREE STRIKES PROVISION**

5 The Prison Litigation Reform Act governs proceedings in forma pauperis. 28 U.S.C. 1915.
6 Section 1915(g) provides that "[i]n no event shall a prisoner bring a civil action . . . under this section
7 if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought
8 an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous,
9 malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under
10 imminent danger of serious physical injury." Plaintiff became subject to section 1915(g) on November
11 2, 2000, and is precluded from proceeding in forma pauperis unless he is, at the time the complaint is
12 filed, under imminent danger of serious physical injury.¹

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

18 **III. CONCLUSION**

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

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

22
23 ¹The Court takes judicial notice of case numbers: 3:00-cv-01275-CRB Elmore v. Clark, et al. (N.D. Cal.) (dismissed
24 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
25 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);

26 ²Plaintiff'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.

27 ³To date, no payment for the filing fee has been received in this action.

