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4 UNITED STATES DISTRICT COURT
5 EASTERN DISTRICT OF CALIFORNIA

6 HORACE A. BELL,

CASE NO. 1:12-cv-1925-MJS PC

7 Plaintiff,

ORDER DENYING PLAINTIFF'S MOTION
FOR LEAVE TO PROCEED IN FORMA
PAUPERIS AND DISMISSING ACTION,
WITHOUT PREJUDICE TO REFILING
WITH SUBMISSION OF \$350.00 FILING
FEE

8 v.

9 STILES, et al.,

10 Defendants.

(ECF No. 8)

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14 **I. 28 U.S.C. 1915(g)**

15 Plaintiff Horace A. Bell, a state prisoner proceeding pro se, filed this civil rights
16 action pursuant to 42 U.S.C. § 1983 on November 2, 2012. He seeks leave to proceed in
17 forma pauperis pursuant to 28 U.S.C. § 1915. (ECF No. 8.) Plaintiff has consented to
18 Magistrate Judge jurisdiction. (ECF No. 6.)

19 Plaintiff is subject to section 1915(g), which provides that "[i]n no event shall a
20 prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more prior
21 occasions, while incarcerated or detained in any facility, brought an action or appeal in a
22 court of the United States that was dismissed on the grounds that it is frivolous, malicious,
23 or fails to state a claim upon which relief may be granted, unless the prisoner is under
24 imminent danger of serious physical injury."¹ 28 U.S.C. § 1915(g).

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27 ¹ The Court takes judicial notice of case numbers : 2:09-cv-8808-UA-RC PC Bell v. Judge John
28 Reid (C.D. Cal.) (dismissed 12/23/2009 as frivolous, malicious, and/or failing to state a claim since
Plaintiff's action was barred by Heck v. Humphrey, 512 U.S. 477 (1994)); 1:10-cv-01762-SKO PC Bell v.
Lopez (E.D. Cal.) (dismissed 08/26/2011 for failure to state a claim); and 1:10-cv-0310-LJO-GSA (E.D.
Cal.) (dismissed 07/12/2012 for failure to state a claim).

1 The determination whether Plaintiff is under imminent danger of serious physical
2 injury is made based on the conditions at the time the complaint is filed, Andrews v.
3 Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007), and the allegation of imminent danger
4 must be plausible, id. at 1054.

5 **II. Plaintiff's Allegations**

6 Plaintiff is currently incarcerated at Kern Valley State Prison ("KVSP") and he
7 alleges claims for relief against Sargent Stiles, facility officer at KVSP, and Officer Ortiz,
8 an officer at KVSP. Plaintiff appears to allege Defendants violated his rights under the
9 First Amendment to the United States Constitution and Americans with Disabilities Act
10 ("ADA").

11 Plaintiff alleges that in September 2012 Defendant Ortiz threatened Plaintiff after
12 Plaintiff filed an administrative appeal. Defendant Ortiz retaliated against Plaintiff in
13 October 2012 by refusing to provide Plaintiff with an ADA shower. Also that month
14 Defendant Stiles laughed at the smell in Plaintiff's housing unit.

15 **III. Discussion**

16 In his complaint, Plaintiff alleges that he has been retaliated against because he
17 was not provided with an ADA shower after he filed administrative appeals. Plaintiff does
18 not allege that at the time he filed the suit he was facing imminent danger of serious
19 physical injury at KVSP, and his allegations do not indicate he was in imminent danger of
20 serious physical injury when he filed this suit.

21 **IV. Order**

22 For the reasons set forth herein, it is ORDERED that Plaintiff is denied leave to
23 proceed in forma pauperis in this action. The action is dismissed, without prejudice to
24 refiling along with submission of the \$350.00 filing fee.

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26 IT IS SO ORDERED.

27 Dated: January 29, 2013

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE