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2 **UNITED STATES DISTRICT COURT**

3 EASTERN DISTRICT OF CALIFORNIA

4
5 FREE LAZOR,) 1:13-cv-00801-AWI-BAM (PC)
6 Plaintiff,)
7 v.) ORDER REQUIRING PLAINTIFF TO PAY
8 E. CASTELLANDS, et al.,) FILING FEE IN FULL WITHIN TWENTY-
9 Defendants.) ONE DAYS
10) (ECF Nos. 1, 2)
11) TWENTY-ONE-DAY DEADLINE

12 Plaintiff Free Lazor (“Plaintiff”), inmate number C-73842, is a state prisoner proceeding
13 pro se. Plaintiff filed this civil rights action pursuant to [42 U.S.C. § 1983](#) on May 28, 2013.
14 Plaintiff has failed to pay the required filing fee for this case and, for the reasons discussed
15 below, may not proceed in forma pauperis pursuant to [28 U.S.C. § 1915](#).

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

21 A review of the actions filed by Plaintiff in this district reveals that he is subject to 28
22 U.S.C. § 1915(g) and is precluded from proceeding in forma pauperis unless Plaintiff is, at the
23 time the complaint is filed, under imminent danger of serious physical injury.¹ The
24 determination of whether Plaintiff is under imminent danger of serious physical injury is made
25 based on the conditions at the time the complaint is filed, and the allegation of imminent danger
26 must be plausible. [Andrews v. Cervantes, 493 F.3d 1047, 1053-55 \(9th Cir. 2007\)](#).

27 ¹ The Court takes judicial notice of [Lazor v. Hedgpeth](#), 1:07-cv-00410-OWW-SMS PC, and [Lazor v.](#)
28 [McCluskey](#), 1:97-cv-06007-REC-DLB PC, in which Plaintiff was found to be subject to 1915(g). In these actions,
the Court noted that Plaintiff had eleven district court cases that qualified as strikes. Three such cases were: (1)
[Lazor v. Jakobosky](#), 2:94-cv-00421-LKK-GGH PC; (2) [Lazor v. White](#), 2:94-cv-00476-LKK-JFM PC; and (3)
[Lazor v. Church](#), 2:94-cv-00629-GEB-GGH PC.

1 Here, Plaintiff claims that he is under imminent danger of physical harm. (ECF No. 1.)
2 In particular, Plaintiff asserts that certain defendants, who are characterized as employees at
3 Kern Valley State Prison, attempted to have Plaintiff murdered by his cellmate. Plaintiff asserts
4 that the attempt is part of a pattern by defendants spanning over 25 years in which they almost
5 always use or involve a cellmate to commit the planned murder. Plaintiff admits that he
6 currently is celled alone, but that this could change at any moment because he is “double cell
7 cleared.” (ECF No. 1, p. 2.) Plaintiff argues that his double cell status meets the exception for
8 imminent physical danger because he could be assigned a cellmate at any time.

9 The Court has considered Plaintiff’s allegations, but finds no basis to conclude that
10 Plaintiff was under imminent danger of serious physical injury at the time he filed his complaint.
11 First, Plaintiff admits that at the time the complaint was filed he did not have a cellmate. (ECF
12 No. 1, p. 2.) Absent a cellmate, Plaintiff’s allegation of imminent danger of an attempted murder
13 by his cellmate is not plausible. Second, Plaintiff’s complaint concerns the alleged actions (or
14 inaction) of defendants at Kern Valley State Prison. (ECF No. 1, pp. 4, 9.) However, at the time
15 Plaintiff filed his complaint, he was no longer housed at Kern Valley State Prison. Rather, he
16 initiated this action while housed at Corcoran State Prison. (ECF No. 1, p. 1.) For these reasons,
17 Plaintiff does not meet the imminent danger exception. Accordingly, Plaintiff may not proceed
18 in forma pauperis, and must submit the appropriate filing fee in order to proceed with this action.

19 Based on the foregoing, it is **HEREBY ORDERED** as follows:

- 20 1. Pursuant to 28 U.S.C. § 1915(g), Plaintiff is denied leave to proceed in forma
21 pauperis in this action;
- 22 2. Plaintiff shall pay the \$350.00 filing fee in full within **twenty-one (21) days** from the
23 date of service of this order; and
- 24 3. If Plaintiff fails to pay the \$350.00 filing fee in full within fourteen days, this action
25 shall be dismissed without prejudice.

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IT IS SO ORDERED.

Dated: May 31, 2013



SENIOR DISTRICT JUDGE