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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

ANTHONY RECARDO G. TURNER,	)	1:13-cv-01611-LJO-BAM (PC)
	)	
Plaintiff,	)	ORDER DENYING APPLICATIONS TO
	)	PROCEED IN FORMA PAUPERIS AND
v.	)	DISMISSING ACTION WITHOUT
	)	PREJUDICE TO REILING WITH
J. McCALL, et al.,	)	SUBMISSION OF \$400.00 FILING FEE IN
	)	FULL
Defendants.	)	
	)	(ECF Nos. 1, 2, 17)
	)	
	)	ORDER FOR CLERK TO CLOSE CASE
	)	
	)	

**I. BACKGROUND**

Plaintiff Anthony Recardo G. Turner (“Plaintiff”), inmate number G-27511, is a state prisoner proceeding pro se. Plaintiff filed this civil rights action pursuant to 42 U.S.C. § 1983 on July 23, 2013, in the United States District Court for the Northern District of California. On October 1, 2013, the action was transferred to the Fresno Division of the Eastern District of California. Plaintiff has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

**II. 28 U.S.C. § 1915(g)**

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,

1 malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under  
2 imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

### 3 **III. DISCUSSION**

4 A review of the actions filed by Plaintiff reveals that he was subject to 28 U.S.C. §  
5 1915(g) at the time he filed this case on July 23, 2013. The Court takes judicial notice of Turner  
6 v. Cates, et al., 2:11-cv-01744-CKD, in which Plaintiff was found to be subject to 1915(g) prior  
7 to June 29, 2011. In that action, the court found Plaintiff had at least three cases that qualified as  
8 strikes: CIV-S-08-2087 EFB P; Ninth Circuit Case No. 11-15044; and CIV-S-09-3326 FCD  
9 DAD P. The Court also takes judicial notice of three additional cases filed in this district that  
10 qualify as strikes and that were all entered before Plaintiff filed this action: (1) Turner v.  
11 Thomas, et al., 2:10-cv-02369-MCE-EFB (dismissing action with prejudice for failure to  
12 prosecute and failure to state a claim on July 9, 2012); (2) Turner v. Gibson, et al., 1:11-cv-  
13 01395-GBC (dismissing action with prejudice for failure to state a claim on April 13, 2012); and  
14 (3) Turner v. Hubbard, et al., 1:11-cv-01670-DLB (dismissing action for failure to obey court  
15 order and failure to state a claim on November 21, 2012).

16 Plaintiff therefore is precluded from proceeding in forma pauperis in this action unless he  
17 was, at the time the complaint was filed, under imminent danger of serious physical injury. The  
18 determination of whether Plaintiff is under imminent danger of serious physical injury is made  
19 based on the conditions at the time the complaint is filed, and the allegation of imminent danger  
20 must be plausible. Andrews v. Cervantes, 493 F.3d 1047, 1053-55 (9th Cir. 2007).

21 The Court has reviewed Plaintiff’s complaint and finds that he does not meet the  
22 imminent danger exception. Plaintiff has alleged past incidents of alleged harm, but has not  
23 plausibly alleged that he was under imminent danger of serious physical injury at the time he  
24 filed his complaint. Plaintiff’s general assertions that he continues to “suffer serious physical  
25 injuries” is not sufficient. (ECF No. 1, pp. 8, 17.) Further, Plaintiff’s allegations that his mere  
26 placement in the Security Housing Unit (“SHU”) with violent prisoners jeopardizes his life,  
27 safety and security and he can be “set up and killed” are nothing more than speculation. (ECF  
28 No. 1, pp. 11, 16.) Plaintiff has not alleged any facts identifying a specific, present threat to his

1 life or safety at the time of filing his complaint. Accordingly, Plaintiff may not proceed in forma  
2 pauperis, and must submit the appropriate filing fee in order to proceed with this action.

3 **IV. CONCLUSION AND ORDER**

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

- 5 1. Pursuant to 28 U.S.C. § 1915(g), Plaintiff's application to proceed in forma pauperis  
6 in this action is DENIED;
- 7 2. This action is DISMISSED without prejudice to refile with the submission of the  
8 \$400.00 filing fee in full; and
- 9 3. The Clerk of the Court is directed to CLOSE this case.

10  
11  
12 IT IS SO ORDERED.

13 Dated: October 29, 2013

/s/ Lawrence J. O'Neill  
14 UNITED STATES DISTRICT JUDGE