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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RICHARD JOSE DUPREE, JR.,

Plaintiff,

v.

CALIFORNIA DEPARTMENT
OF CORRECTIONS, et al.,

Defendants.

Case No. 1:13-cv-02053-AWI-SKO PC

ORDER (1) DENYING MOTION FOR
LEAVE TO PROCEED IN FORMA
PAUPERIS, (2) DISMISSING ACTION,
WITHOUT PREJUDICE, PURSUANT TO 28
U.S.C. § 1915(G), AND (3) DIRECTING
CLERK OF COURT TO ENTER
JUDGMENT

(Docs. 1 and 2)

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Plaintiff Richard Jose Dupree, Jr., a state prisoner proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983 on December 11, 2013. Plaintiff seeks leave to proceed in forma pauperis in this case.

However, Plaintiff is subject to 28 U.S.C. 1915(g), which 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.”¹ The Court has reviewed Plaintiff’s complaint and it does not involve imminent

¹ The Court takes judicial notice of the following United States District Court cases: *Dupree v. Santiago, et al.*, case number 2:11-cv-00309-EFC (E.D. Cal.) (dismissed on Feb. 22, 2011, for failure to state a claim; affirmed on appeal, mandate issued Jul. 28, 2011); *Dupree v. U.S. Court’s of the Eastern Dist. Of Cal.*, case number 2:11-cv-00263-DAD (E.D. Cal.) (dismissed on Mar. 24, 2011, as frivolous; no appeal filed); and *Dupree v. U.S. Copyright Off.*, case

1 danger of serious physical injury to Plaintiff. *Andrews v. Cervantes*, 493 F.3d 1047, 1055-56 (9th
2 Cir. 2007). Plaintiff's claims arise out of building searches conducted on November 27, 2013, and
3 November 29, 2013, during which time he was forced to wait outdoors for hours in cold weather
4 while clad only in boxer shorts, a t-short, socks, and thongs. As a result, Plaintiff alleges he
5 contracted the influenza.

6 Plaintiff is not in imminent danger of serious physical injury and therefore, he is not
7 entitled to proceed in forma pauperis.

8 Accordingly, the Court HEREBY ORDERS as follows:

- 9 1. Plaintiff's motion for leave to proceed in forma pauperis in this action is DENIED;
- 10 2. This action is DISMISSED, without prejudice to re-filing accompanied by the
11 \$400.00 filing fee; and
- 12 3. The Clerk of the Court shall enter judgment.

13 IT IS SO ORDERED.

14 Dated: January 2, 2014


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16 SENIOR DISTRICT JUDGE

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27 number 2:11-cv-01700-WBS-KJN (E.D. Cal.) (dismissed on Jul. 28, 2011, as frivolous and for failure to state a claim;
28 appeal dismissed on Dec. 22, 2011, for failure to pay filing fee). These strikes were final prior to the date Plaintiff
filed this action. *Silva v. Di Vittorio*, 658 F.3d 1090, 1098-1100 (9th Cir. 2011).