

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

PHILLIP T. RICKER,  
Plaintiff,  
vs.  
SGT. A. NADAL, et al.,  
Defendants.

1:14-cv-01172-LJO-GSA-PC  
ORDER DENYING REQUEST TO  
PROCEED IN FORMA PAUPERIS  
AND DISMISSING ACTION,  
WITHOUT PREJUDICE TO REFILEING  
WITH SUBMISSION OF \$400.00  
FILING FEE IN FULL  
(Docs. 1, 3.)  
  
ORDER FOR CLERK TO CLOSE  
CASE

**I. BACKGROUND**

Phillip T. Ricker ("Plaintiff") is a state prisoner proceeding pro se with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on July 28, 2014, together with an application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. (Docs. 1, 3.)

**II. THREE-STRIKES PROVISION OF 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  
2 under imminent danger of serious physical injury.”

3 **III. ANALYSIS**

4 A review of the actions filed by Plaintiff reveals that Plaintiff is subject to 28 U.S.C. §  
5 1915(g) and is precluded from proceeding in forma pauperis unless Plaintiff was, at the time  
6 the Complaint was filed, under imminent danger of serious physical injury. The court has  
7 found evidence on the court record of three 1915(g) “strikes” against Plaintiff, which were all  
8 entered before this action was brought by Plaintiff on July 28, 2014.<sup>1</sup> The first is case 2:10-cv-  
9 8857-UA-JCG (Ricker v. CDCR, et al.) (CDCA), which was dismissed on December 1, 2010,  
10 for failure to state a claim. The second is case 1:09-cv-01415-OWW-GBC-PC (Ricker v.  
11 California Dept. of Corrections, et al.) (EDCA), which was dismissed on December 1, 2010, for  
12 failure to state a claim. The third is case 2:09-cv-09417-JVS-JCG (Ricker v. CDCR) (CDCA),  
13 which was dismissed on January 18, 2011, for failure to state a claim.

14 The Court has reviewed Plaintiff’s Complaint and finds that Plaintiff does not meet the  
15 imminent danger exception. See Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007).<sup>2</sup>  
16 Therefore, Plaintiff may not proceed in forma pauperis in this action, and must submit the  
17 appropriate filing fee in order to proceed with this action. Accordingly, Plaintiff’s application  
18 to proceed in forma pauperis shall be denied, and this action shall be dismissed, without  
19 prejudice to refile with the submission of the \$400.00 filing fee in full.

20 **IV. CONCLUSION**

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

- 22 1. Pursuant to 28 U.S.C. § 1915(g), Plaintiff’s application to proceed in forma  
23 pauperis in this action is DENIED;

---

24  
25 <sup>1</sup> The court has examined the orders dismissing the three cases and finds that they constitute “strikes”  
26 within the meaning of § 1915(g).

27 <sup>2</sup> The Complaint is devoid of any showing that Plaintiff was under imminent danger of serious physical  
28 injury at the time he filed the Complaint. Id. Plaintiff alleges in the Complaint that he was subject to excessive  
force and threats, that his personal property was taken, that he was provided with inadequate medical care, that  
officers falsified RVRs against him, and that he was pepper-sprayed. The court expresses no opinion on the merits  
of Plaintiff’s claims.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 2. This action is DISMISSED, without prejudice to refileing with the submission of the \$400.00 filing fee in full; and
- 3. The Clerk is directed to CLOSE this case.

IT IS SO ORDERED.

Dated: July 30, 2014

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