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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 JOAQUIN JAY II,

12 Plaintiff,

13 vs.

14 TRINITY FOOD SERVICES, et al.,

15 Defendants.
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1:14-cv-01817-AWI-GSA-PC

ORDER DENYING APPLICATION TO
PROCEED IN FORMA PAUPERIS
AND DISMISSING ACTION,
WITHOUT PREJUDICE TO REFILEING
WITH SUBMISSION OF \$400.00
FILING FEE IN FULL
(Docs. 1, 2.)

ORDER FOR CLERK TO CLOSE
CASE

21 **I. BACKGROUND**

22 Joaquin Jay II ("Plaintiff") is a Fresno County Jail inmate proceeding pro se with this
23 civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this
24 action on November 20, 2014, together with an application to proceed in forma pauperis
25 pursuant to 28 U.S.C. § 1915. (Docs. 1, 2.)

26 **II. THREE-STRIKES PROVISION OF 28 U.S.C. § 1915(g)**

27 28 U.S.C. § 1915 governs proceedings in forma pauperis. Section 1915(g) provides that
28 "[i]n no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3

1 or more prior occasions, while incarcerated or detained in any facility, brought an action or
2 appeal in a court of the United States that was dismissed on the grounds that it is frivolous,
3 malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is
4 under imminent danger of serious physical injury.”

5 **III. ANALYSIS**

6 A review of the actions filed by Plaintiff reveals that Plaintiff is subject to 28 U.S.C. §
7 1915(g) and is precluded from proceeding in forma pauperis unless Plaintiff was, at the time
8 the Complaint was filed, under imminent danger of serious physical injury. The court has
9 found evidence on the court record of more than three 1915(g) “strikes” against Plaintiff, which
10 were all entered before this action was brought by Plaintiff on November 20, 2014.¹ The first
11 is case 1:10-cv-00213-GSA-PC (Jay v. Fresno County Jail) (EDCA), which was dismissed on
12 December 15, 2010, for failure to state a claim. The second is case 1:10-cv-00343-GSA-PC
13 (Jay v. Vang, et al.) (EDCA), which was dismissed on December 15, 2010, for failure to state a
14 claim. The third is case 1:10-cv-00072-SKO-PC (Jay v. Fresno County Jail, et al.) (EDCA),
15 which was dismissed on May 6, 2011, for failure to state a claim. The fourth is case 1:10-cv-
16 00947-SMS-PC (Jay v. Lara, et al.) (EDCA), which was dismissed on May 10, 2011, for failure
17 to state a claim.

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

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

27 ² 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 between August 31, 2014 and
November 4, 2014, he was fed an inadequate diet which caused him to suffer hunger pangs and lose weight. The
court expresses no opinion on the merits of Plaintiff’s claims.

1 **IV. CONCLUSION**

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

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

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9 IT IS SO ORDERED.

10 Dated: November 25, 2014


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SENIOR DISTRICT JUDGE