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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FRANK LEE DEARWESTER,
Plaintiff,
v.
CDCR, et al.,
Defendants.

CASE No. 1:15-cv-00694-MJS

**ORDER DENYING MOTION TO
PROCEED *IN FORMA PAUPERIS* AND
REQUIRING PAYMENT OF FILING FEE
IN FULL WITHIN TWENTY-ONE DAYS
(ECF No. 2)**

Plaintiff is a state prisoner proceeding *pro se* in this civil rights action filed pursuant to 42 U.S.C. § 1983. (ECF No. 1.) He has consented to Magistrate Judge jurisdiction. (ECF No. 5.) On May 6, 2015, Plaintiff filed a motion to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (ECF No. 2.)

The Prison Litigation Reform Act provides that “[i]n no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more 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.” 28 U.S.C. § 1915(g). Plaintiff has had three or more actions dismissed as frivolous, as malicious, or for failing to state a claim upon which

1 relief maybe granted.¹

2 To meet the imminent danger exception, the complaint must plausibly allege “that
3 the prisoner faced ‘imminent danger of serious physical injury’ at the time of filing.”
4 *Andrews v. Cervantes*, 493 F.3d 1047, 1053-55 (9th Cir. 2007).

5 Plaintiff’s complaint nowhere states that he faces any danger, imminent or
6 otherwise. Instead, he attempts to challenge CDCR’s religious meals program on
7 constitutional and RLUIPA grounds.

8 The Court concludes that Plaintiff’s *in forma pauperis* application should be
9 denied because he has accrued three or more strikes and was not under imminent
10 danger of serious physical harm at the time this action was initiated. 28 U.S.C. §
11 1915(g). Plaintiff will be provided with the opportunity to pay the filing fee in full.

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

- 13 1. Plaintiff's *in forma pauperis* application (ECF No. 2) is DENIED,
- 14 2. Plaintiff must pay the \$400 filing fee in full within twenty-one days of
15 service of this order, and
- 16 3. If Plaintiff fails to pay the \$400 filing fee in full within twenty-one days of
17 service of this order, all pending motions will be terminated and this action dismissed
18 without prejudice.

19 IT IS SO ORDERED.

20
21 Dated: May 27, 2015

22 /s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

23
24 ¹ The Court takes judicial notice of the following United States District Court cases: *Dearwester v.*
25 *Ramirez, et al.*, 2:13-cv-02065-KJN (E.D. Cal.) (dismissed December 20, 2013 for failure to state a claim;
26 no appeal taken); *Dearwester v. United States, et al.*, 2:13-cv-02536 (E.D. Cal.) (dismissed February 13,
27 2014 for failure to file amended complaint after original complaint failed to state a claim; no appeal taken);
28 and *Dearwester v. Sacramento Cty. Sheriff’s Dept.*, 2:13-cv-02062-AC (E.D. Cal.) (dismissed April 28,
2014 for failure to file amended complaint after original complaint failed to state a claim; motion for leave to
file amended complaint denied January 5, 2015 because amended complaint also failed to state a claim;
no appeal taken); and *Dearwester v. Parkhurst, et al.*, 2:13-cv-02530-CKD (E.D. Cal.) (dismissed January
2, 2014 for failure to state a claim; no appeal taken). A strike accrues as soon the trial court dismisses on
statutorily enumerated grounds, even if the dismissal is the subject of an appeal. *Coleman v. Tollefson*,
135 S.Ct. 1759, at *4 (2015).