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6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF CALIFORNIA  
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9 MATTHEW F. HOLGERSON,

10 Plaintiff,

11 vs.

12 DAVID DAVIES, et al.,

13 Defendants.

1:16-cv-00334-AWI-EPG-PC

ORDER REVOKING PLAINTIFF'S IN  
IN FORMA PAUPERIS STATUS  
UNDER 28 U.S.C. § 1915(g)

ORDER VACATING COURT'S  
ORDER ISSUED ON MARCH 11, 2016  
(ECF No. 4.)

ORDER FOR PLAINTIFF TO PAY  
THE \$400.00 FILING FEE IN FULL  
WITHIN THIRTY DAYS

ORDER DIRECTING CLERK TO  
SERVE THIS ORDER ON CDCR,  
AND COURT'S FINANCIAL  
DEPARTMENT

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19 **I. BACKGROUND**

20 Matthew F. Holgerson ("Plaintiff") is a state prisoner proceeding *pro se* with this civil  
21 rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this  
22 action on March 10, 2016, together with an application to proceed *in forma pauperis* pursuant  
23 to 28 U.S.C. § 1915. (ECF Nos. 1, 2.) On March 11, 2016, the Court granted Plaintiff's  
24 application to proceed *in forma pauperis*. (ECF No. 4.)

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

26 28 U.S.C. § 1915 governs proceedings *in forma pauperis*. Section 1915(g) provides  
27 that "[i]n no event shall a prisoner bring a civil action . . . under this section if the prisoner has,  
28 on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action

1 or appeal in a court of the United States that was dismissed on the grounds that it is frivolous,  
2 malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is  
3 under imminent danger of serious physical injury.”

### 4 **III. ANALYSIS**

5 A review of the actions filed by Plaintiff reveals that Plaintiff is subject to 28 U.S.C. §  
6 1915(g) and is precluded from proceeding *in forma pauperis* unless Plaintiff was, at the time  
7 the Complaint was filed, under imminent danger of serious physical injury. The Court has  
8 found evidence on the Court record of three 1915(g) “strikes” against Plaintiff, which were all  
9 entered before this action was brought by Plaintiff on March 10, 2016.<sup>1</sup> The Court takes  
10 judicial notice of these cases: (1) 2:02-cv-00036-GEG-GGH-P Holgerson v. Knowles, et al.  
11 (E.D.Cal.) (dismissed on November 27, 2002, as frivolous); (2) 2:06-cv-00144-GEB-CMK-P  
12 Holgerson v. Knowles (E.D.Cal.) (dismissed on December 12, 2006, for failure to state a  
13 claim); and (3) 2:14-cv-01767-EFB-P Holgerson v. Lizarraga, et al. (E.D.Cal.) (dismissed on  
14 April 28, 2015, as frivolous).

15 The Court has reviewed Plaintiff’s Complaint for this action and finds that Plaintiff does  
16 not meet the imminent danger exception. See Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th  
17 Cir. 2007). The Complaint is devoid of any showing that Plaintiff was under imminent danger  
18 of serious physical injury at the time he filed the Complaint. Plaintiff alleges in the Complaint  
19 that he was implanted with a mind control mechanism in his left eye and is the subject of  
20 government studies to monitor how he reacts to different chemicals placed in his food.  
21 Therefore, Plaintiff may not proceed *in forma pauperis* in this action, and must submit the  
22 appropriate filing fee in order to proceed with this action. Accordingly, Plaintiff’s *in forma*  
23 *pauperis* status shall be revoked and Plaintiff is required to submit the \$400.00 filing fee<sup>2</sup> for  
24 this action within thirty days, or this case will be dismissed.

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

28 <sup>2</sup> According to the Court’s financial records, none of the filing fee has been paid for this case to date.  
Therefore, Plaintiff owes the entire \$400.00 filing fee.

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 *in forma pauperis* status in this  
4 action is REVOKED;
- 5 2. The Court's order granting Plaintiff's application to proceed *in forma pauperis*,  
6 issued on March 11, 2016, is VACATED;
- 7 3. Within thirty days from the date of service of this order, Plaintiff shall pay the  
8 \$400.00 filing fee for this action in full;
- 9 4. If Plaintiff does not pay the \$400.00 filing fee for this case within thirty days,  
10 this case shall be dismissed under 28 U.S.C. § 1915(g); and
- 11 5. The Clerk is directed to serve a copy of this order on:
- 12 (1) the California Department of Corrections and Rehabilitation (CDCR)  
13 department overseeing prisoner payment orders; and
- 14 (2) the Court's financial department.

15 IT IS SO ORDERED.

16 Dated: August 19, 2016

17 /s/ Eric P. Gray  
18 UNITED STATES MAGISTRATE JUDGE