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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

WALTER SHANE LANGSTON, ) Case No.: 1:16-cv-01819-BAM  
 )  
 Plaintiff, ) ORDER DENYING PLAINTIFF’S MOTION FOR  
 ) LEAVE TO PROCEED IN FORMA PAUPERIS  
 v. )  
 ) (ECF No. 6)  
 MIMS, )  
 ) ORDER DISMISSING ACTION WITHOUT  
 Defendant. ) PREJUDICE TO REFILE WITH SUBMISSION  
 ) OF \$400.00 FILING FEE  
 )  
 )

Plaintiff Walter Shane Langston (“Plaintiff”), a state prisoner proceeding pro se, filed this civil action on November 21, 2016, in the Sacramento Division of this district court. (ECF No. 1.) On December 2, 2016, the action was transferred from the Sacramento Division to the Fresno Division. (ECF No. 3.)

Following the transfer, on December 6, 2016, Plaintiff was ordered to submit an application to proceed in forma pauperis or to pay the filing fee within forty-five days of the date of service of that order. (ECF No. 5.) Plaintiff filed the instant motion for leave to proceed in forma pauperis, on December 21, 2016. (ECF No. 6). Plaintiff also consented to the jurisdiction of a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c). (ECF No. 8.)

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

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

4 The Court has reviewed Plaintiff’s complaint and his allegations do not satisfy the imminent  
5 danger exception to section 1915(g). Andrews v. Cervantes, 493 F.3d 1047, 1055-56 (9th Cir. 2007).  
6 Plaintiff alleges that in May or June 2016, Defendant Mims, a psychologist at California State Prison,  
7 Corcoran (“CSP-Corcoran”), indicated that she would subject Plaintiff to a disciplinary report for  
8 manipulating staff, because he was seeking treatment for suicide ideations. Plaintiff further alleges that  
9 he was discharged from the crisis unit, and could no longer seek treatment for suicide ideations.  
10 Plaintiff indicates that he filed a 602 appeal on June 3, 2016, complaining that he could not be  
11 punished for seeking treatment for suicide ideation. Plaintiff’s complaint was filed about five months  
12 after he filed his 602 appeal, on November 17, 2016. Plaintiff alleges that at the time of filing his  
13 complaint, he had been transferred away from CSP-Cocoran, and was housed at Valley State Prison, in  
14 Chowchilla, California.

15 Plaintiff’s complaint concerns allegations against a psychologist at an institution where he was  
16 no longer housed by the time his complaint was filed. Thus, Plaintiff has not sufficiently alleged any  
17 imminent danger of serious physical injury at the time of that filing. Plaintiff’s unsupported statement  
18 that he is in imminent danger because of an “ongoing conspiracy against his life” by prison officials is  
19 vague and conclusory, and therefore also fails to adequately allege any imminent danger of serious  
20 physical injury at the time he filed his complaint. Thus, Plaintiff has not satisfied the exception from  
21 the three strikes bar under 28 U.S.C. § 1915(g), and must pay the \$400.00 filing fee if he wishes to  
22 litigate this claim.

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26 <sup>1</sup> The Court takes judicial notice of the following United States District Court cases: 2:10-cv-02196-EFB  
27 Langston v. Finn, et al. (E.D. Cal) (dismissed on March 2, 2011, for failure to state a claim); (2) 2:10-cv-02715-  
28 GGH Langston v. Enkojii, et al. (E.D. Cal.) (dismissed on April 26, 2011, for failure to state a claim); (3) 2:08-  
cv-02475-EFS Langston v. Finn, et al. (E.D. Cal.) (dismissed on May 1, 2013, for failure to state a claim); and  
(4) 2:10-cv-03191-KJN Langston v. Hartley, et al. (E.D. Cal.) (dismissed on May 24, 2013, for failure to state a claim).

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Accordingly, the Court HEREBY ORDERS as follows:

1. Plaintiff's motion for leave to proceed in forma pauperis (ECF No. 6) is DENIED; and,
2. This action is DISMISSED without prejudice to re-filing accompanied by the \$400.00 filing fee.

IT IS SO ORDERED.

Dated: February 7, 2017

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE