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3 **UNITED STATES DISTRICT COURT**

4 EASTERN DISTRICT OF CALIFORNIA

5  
6 TONY BLACKMAN,

7 Plaintiff,

8 v.

9 S. MARSH, et al.,

10 Defendants.

Case No. 1:16-cv-01852-AWI-BAM (PC)

ORDER DENYING PLAINTIFF’S MOTION  
FOR LEAVE TO PROCEED IN FORMA  
PAUPERIS

(ECF No. 2)

11  
12 Plaintiff Tony Blackman (“Plaintiff”) is a state prisoner proceeding pro se in this civil  
13 rights action under 42 U.S.C. § 1983. Currently before the Court is Plaintiff’s motion for leave to  
14 proceed *in forma pauperis*, filed on November 21, 2016. (ECF No. 2.)

15 Plaintiff is subject to 28 U.S.C. § 1915(g), which provides that “[i]n no event shall a  
16 prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more prior  
17 occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of  
18 the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state  
19 a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious  
20 physical injury.”<sup>1</sup> Plaintiff has been informed in prior cases that he is subject to § 1915(g).<sup>2</sup>

21 The Court has reviewed Plaintiff’s complaint and finds that his allegations do not satisfy  
22 the imminent danger exception to section 1915(g). Andrews v. Cervantes, 493 F.3d 1047, 1053-

23  
24 <sup>1</sup> The Court takes judicial notice of the following United States District Court Cases: (1) *Blackman v. Hartwell*, Case  
25 No. 1:99-cv-05822-REC-HGB (E.D. Cal.) (dismissed on March 12, 2001, for failure to state a claim); (2) *Blackman*  
26 *v. Taxdhal*, Case No. 1:04-cv-06389-AWI-LJO (E.D. Cal.) (dismissed on May 18, 2007, for failure to state a claim);  
27 (3) *Blackman v. Medina*, Case No. C 05-05390-SI (PR) (N.D. Cal.) (dismissed on March 13, 2006 for failure to state  
28 a claim); (4) *Blackman v. Variz*, Case No. C 06-06398-SI (pr) (N.D. Cal.) (dismissed on December 18, 2006 for  
failure to state a claim); and (5) *Blackman v. Evans*, Case No. 1:06-cv-00081-GSA (E.D. Cal.) (dismissed on  
February 3, 2009, for failure to state a claim).

<sup>2</sup> The Court takes judicial notice of Documents 8 and 14 in *Blackman v. Clark*, 1:16-cv-00797 LJO MJS (E.D. Cal.),  
and Document 4 in *Blackman v. Hedgpath*, 1:10-cv-1393 LJO MJS (E.D. Cal.).

1 55 (9th Cir. 2007). Plaintiff initiated this action while at R.J. Donovan Correctional Facility in  
2 San Diego, California, where he currently is housed. However, the allegations in the complaint  
3 concern events that occurred while Plaintiff was housed at California Substance Abuse and  
4 Treatment Facility in Corcoran, California. Plaintiff alleges that Defendants K. Clark, J. Zamora  
5 and S. Morelock failed to provide him with a written decision on his application to proceed *in*  
6 *forma pauperis* and a copy of his trust account statement for the past six months. Plaintiff also  
7 alleges that Defendants K. Clark, J. Zamora, S. Morelock, DeLaTorre, K. Curtiss and S. Marsh  
8 failed to provide a signed and dated written decision on his reasonable accommodation request  
9 for wheelchair law library access and services. Plaintiff further alleges that he was denied law  
10 library access and services. Plaintiff believes these actions were done to stop his civil complaint  
11 from being processed in federal court without payment of the filing fees in order to cover-up his  
12 alleged false imprisonment by the state court. (ECF No. 1.)

13 Plaintiff's complaint concerns past events at an institution where he was no longer housed  
14 by the time he filed his complaint. Thus, Plaintiff has not alleged any imminent danger of serious  
15 physical injury at the time of filing and has not satisfied the exception from the three strikes bar  
16 under 28 U.S.C. § 1915(g). Plaintiff must pay the \$400.00 filing fee if he wishes to litigate this  
17 action.

18 Accordingly, the Court HEREBY ORDERS that:

- 19 1. Plaintiff's application to proceed in forma pauperis (ECF No. 2) is DENIED;
- 20 2. This action is DISMISSED without prejudice to refiling accompanied by the \$400.00  
21 filing fee; and
- 22 3. The Clerk of the Court is directed close this case.

23 IT IS SO ORDERED.

24 Dated: February 22, 2017

25   
26 SENIOR DISTRICT JUDGE