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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

GUILLERMO TRUJILLO CRUZ,  
Plaintiff,  
v.  
BITER, et al.,  
Defendants.

Case No. 1:17-cv-0084-AWI-MJS (PC)

**ORDER DENYING PLAINTIFF'S  
MOTION FOR LEAVE TO PROCEED IN  
FORMA PAUPERIS AND REQUIRING  
PLAINTIFF TO PAY THE FILING FEE IN  
FULL**

**(ECF No. 3)**

**TWENTY-ONE (21) DAY DEADLINE**

Plaintiff is a state prisoner proceeding pro se in this civil rights action brought pursuant to 42 U.S.C. § 1983 on January 19, 2017. (ECF No. 1.) Plaintiff seeks leave to proceed in forma pauperis in this case. (ECF No. 3.)

**I. Motion to Proceed In Forma Pauperis**

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 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.”

1 Plaintiff has brought more than three actions that were dismissed for failing to  
2 state a claim.<sup>1</sup> The only question remaining is whether Plaintiff is under imminent  
3 danger of serious physical injury.

4 The imminent danger exception applies if “the complaint makes a plausible  
5 allegation that the prisoner faced ‘imminent danger of serious physical injury’ at the time  
6 of filing.” Andrews v. Cervantes, 493 F.3d 1047, 1055 (9th Cir. 2007). The Ninth Circuit  
7 interprets “imminent danger” to mean “ongoing danger,” meaning the prisoner must  
8 allege that prison officials have continued with a practice that has injured him or others  
9 similarly situated in the past. Id. at 1056-57. Allegations that are vague, speculative, or  
10 conclusory will not “plausibly” show “imminent danger.” See Reberger v. Baker, 657  
11 Fed. Appx. 681, 684 (9th Cir. 2016); Andrews, 493 F.3d at 1057 n.11.

12 Here, a review of Plaintiff’s complaint demonstrates that he is not at imminent  
13 risk of suffering “serious physical injury.” At the time Plaintiff filed this complaint, he was  
14 (and still is) incarcerated at Pelican Bay State Prison. However, the conspiracy,  
15 retaliation, and excessive force that are described in the Complaint all occurred at Kern  
16 Valley State Prison. Because Plaintiff is at a different facility and away from the  
17 Defendants and Kern Valley State Prison, he is not in imminent danger. See Palmer v.  
18 New York State Dept. of Corr., 342 Fed. Appx. 654, 656 (2d Cir. 2009) (finding no  
19 imminent danger when plaintiff’s complaint related to conditions at prisoner from which  
20 he had been transferred prior to filing the complaint); Flemings v. Gray, 2015 U.S. Dist.  
21 LEXIS 169052, \*6 (E.D. Cal. Dec. 16, 2015) (same); Gonzales-Turner v. Sandor, 2015  
22 U.S. Dist. LEXIS 86689, \*3 (E.D. Cal. July 2, 2015) (same).

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25 <sup>1</sup> A court may take judicial notice of court records. See MGIC Indem. Co. v. Weisman, 803 F.2d 500, 505  
26 (9th Cir. 1986); United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980). Plaintiff has filed numerous  
27 unsuccessful cases in the Eastern District of California under the names “Guillermo Trujillo Cruz,”  
28 “Guillermo Cruz Trujillo,” and “Guillermo Trujillo.” The Court takes judicial notice of the following four  
cases: Cruz v. Munoz, No. 1:14-cv-01215-SAB (PC) (E.D. Cal.) (dismissed for failure to state a claim on  
May 17, 2016); Cruz v. Munoz, No. 1:14-cv-00976-DLB (PC) (E.D. Cal.) (dismissed for failure to state a  
claim on May 11, 2016); Cruz v. Ruiz, No. 1:14-cv-00975-SAB (PC) (E.D. Cal.) (dismissed for failure  
to state a claim on January 6, 2016); Trujillo v. Sherman, No. 1:14-cv-01401-BAM (PC) (E.D. Cal.)  
(dismissed for failure to state a claim on April 24, 2015).

**ORDER**

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's motion for leave to proceed in forma pauperis in this action (ECF No. 3) is DENIED;
2. Plaintiff is directed to pay the \$400 filing fee in full within **twenty-one (21) days** of this order; and
3. The failure of Plaintiff to timely pay the filing fee will result in the dismissal of this case without further notice.

IT IS SO ORDERED.

Dated: March 6, 2017

  
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SENIOR DISTRICT JUDGE