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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER SCOTT RIDER,

 Plaintiff,

 v.

SHERMAN, et al.,

 Defendants.

Case No. 1:18-cv-00208-SKO (PC)

**ORDER TO SHOW CAUSE WHY IN
FORMA PAUPERIS STATUS SHOULD
NOT DENIED**

(Docs. 1, 2, 8)

TWENTY-ONE (21) DAY DEADLINE

Plaintiff, Christopher Scott Rider, is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint in this action on February 9, 2018. On February 26, 2018, Plaintiff filed an application to proceed *in forma pauperis*, which is before the Court.¹ (Doc. 8.)

A. THREE-STRIKES PROVISION OF 28 U.S.C. § 1915

28 U.S.C. § 1915 governs proceedings *in forma pauperis*. “In 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.” 28 U.S.C. § 1915(g).

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¹ Plaintiff also filed an application to proceed *in forma pauperis* when he filed the Complaint. (See Doc. 2.) However, it was not signed and could not be considered. (See Docs. 2, 5.)

1 **B. DISCUSSION**

2 The Court may take judicial notice of court records. *United States v. Howard*, 381 F.3d
3 873, 876 n.1 (9th Cir. 2004). Here, judicial notice is taken of Plaintiff's four prior lawsuits: (1)
4 *Rider v. Hernandez, et al.*, CAED No. 1:07-cv-01862-LJO-SMS, dismissed for failure to state a
5 claim on February 22, 2008; (2) *Rider v. Storey*, CASD No. 3:09-cv-01979-JM-POR, dismissed
6 for failure to state a claim on October 22, 2009; (3) *Rider v. Carter, et al.*, CASD No. 3:09-cv-
7 02316-L-WMC, dismissed for failure to state a claim on December 4, 2009; and (4) *Rider v.*
8 *Yates, et al.*, CAED No. 1:08-cv-01432-SKO, dismissed for failure to state a claim on May 31,
9 2011. All of these actions were dismissed years before Plaintiff filed the present action on
10 February 9, 2018. Thus, Plaintiff is subject to 28 U.S.C. § 1915(g) and is precluded from
11 proceeding *in forma pauperis* in this action unless, at the time the Complaint was filed, he was
12 under imminent danger of serious physical injury.

13 The Court has reviewed Plaintiff's Complaint in this action and finds that he does not
14 meet the imminent danger exception. *See Andrews v. Cervantes*, 493 F.3d 1047, 1053 (9th Cir.
15 2007). In this action, Plaintiff alleges that on March 12, 2017, he was served food from carts that
16 were smeared with fecal matter. Plaintiff alleges the fecal matter was of human origin. (Doc. 1,
17 p. 4.) However, the exhibits to the Complaint reveal that an investigation found it was aviary
18 fecal matter from birds sitting on the sprinkler pipe and beams of the awning where the food was
19 staged before being loaded into trucks for delivery to Building 4. (*Id.*, pp. 9-10.) This matter was
20 resolved by installation of "Bird Spikes" along the sprinkler pipe, lights, and beams to prevent
21 birds from landing and nesting under the awning. (*Id.*) The procedures were also changed to
22 maintain the food carts inside the kitchen until such time as the food is loaded in the cart for
23 delivery. (*Id.*) Although the circumstances alleged by Plaintiff are not desirable, Plaintiff's
24 allegations do not show that they caused him to be in imminent danger of serious physical injury
25 when he filed this action on February 9, 2018. Thus, Plaintiff is precluded from proceeding *in*
26 *forma pauperis* in this action. *Andrews*, 493 F.3d at 1056-57.

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C. ORDER

Accordingly, it is HEREBY ORDERED to that **within twenty-one (21) days** of the date of service of this order, Plaintiff must show cause why a recommendation should not issue to deny Plaintiff's *in forma pauperis* application and to dismiss this action without prejudice to refiling with prepayment of the full filing fee.

IT IS SO ORDERED.

Dated: **February 28, 2018**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE