

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TAHEE ABD RASHEED,

Plaintiff,

No. CIV S-09-3430 EFB P

vs.

J WALKER, et al.

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. This proceeding was referred by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1) and is before the undersigned pursuant to plaintiff’s consent. See E.D. Cal. Local Rules, Appx. A, at (k)(4).

28 U.S.C. § 1915(g) 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 had three or more actions dismissed as frivolous, as malicious, or for failing to state
2 a claim upon which relief may be granted.¹

3 Plaintiff does not claim that he is under imminent danger of serious physical injury, and
4 therefore he may not proceed in forma pauperis in this action. *Andrews v. Cervantes*, 493 F.3d
5 1047, 1053 (9th Cir. 2007). Plaintiff has thirty days to pay the \$350.00 filing fee in full or this
6 action will be dismissed.

7 Accordingly, it is ORDERED that:

8 1. Pursuant to 28 U.S.C. § 1915(g), plaintiff is ineligible to proceed in forma pauperis in
9 this action; and

10 2. Within 30 days of the date of this order, plaintiff shall pay the \$350.00 filing fee in
11 full or this action will be dismissed without prejudice.

12 Dated: January 7, 2011.

13 
14 EDMUND F. BRENNAN
15 UNITED STATES MAGISTRATE JUDGE

16
17
18
19
20
21
22
23

¹ Among the dismissals that count as strikes under 1915(g) are case numbers 3:06-cv-
24 05992-SI Smith v. Holm (N.D. Cal.) (dismissed 01/22/2007 for failure to state a claim);
25 1:07-cv-00509-LJO-SMS Smith v. Scribner (E.D. Cal.) (dismissed 05/04/2007 for frivolousness,
26 maliciousness, and failure to state a claim); 1:06-cv-00310-AWI-NEW (DLB) PC (E.D. Cal.)
(dismissed 05/09/2007 for failure to state a claim); and 1:07-cv-00531-AWI-SMS Smith v.
Social Sec. Admin. Office, Employees (E.D. Cal.) (dismissed 05/09/2007 for failure to
state a claim).