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

TAHEE ABD’RASHEED,

Plaintiff,

No. CIV S-09-3560 FCD DAD P

vs.

DEPARTMENT OF CORRECTIONS  
AND REHABILITATION, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. On April 28, 2010, the undersigned issued findings and recommendations, recommending that this action be dismissed due to plaintiff’s failure to file a properly completed application to proceed in forma pauperis. On May 19, 2010, plaintiff filed objections to the April 28, 2010 findings and recommendations, arguing therein that he has attempted to obtain a trust account statement from prison staff but has been denied on numerous occasions. Accordingly, plaintiff requests that the court reconsider its April 28, 2010 findings and recommendations and order prison staff to cooperate with his requests for trust account information.

Plaintiff’s inability to obtain trust account information for the purpose of filing an in forma pauperis application in this civil rights action may be explained by his status as a “three strikes” litigant. The federal in forma pauperis statute includes a limitation on the number of

1 actions in which a prisoner can proceed in forma pauperis. Known as the “three strikes” rule, 28  
2 U.S.C. § 1915(g) provides:

3           In no event shall a prisoner bring a civil action or appeal a  
4 judgment in a civil action or proceeding under [§ 1915] if the  
5 prisoner has, on 3 or more prior occasions, while incarcerated or  
6 detained in any facility, brought an action or appeal in a court of  
7 the United States that was dismissed on the grounds that it is  
8 frivolous, malicious, or fails to state a claim upon which relief may  
9 be granted, unless the prisoner is under imminent  
10 danger of serious physical injury.

11 The court has reviewed its own records and has determined that plaintiff has had three or more  
12 actions dismissed as frivolous, as malicious, or as failing to state a claim upon which relief may  
13 be granted.<sup>1</sup> Specifically, in Rasheed v. Harrington, No. 1:09-cv-1490-AWI-DLB PC, Chief U.S.  
14 District Judge Anthony Ishii of this court found that plaintiff suffered at least the following three  
15 strikes under § 1915(g): Smith v. Holm, No. 3:06-cv-5992-SI; Smith v. Scribner, No. 1:07-cv-  
16 0509-LJO-SMS; and Smith v. Social Sec. Admin. Office, Employees, No. 1:07-cv-0531-AWI-  
17 SMS. (See Doc. No. 3.) Therefore, plaintiff is precluded from proceeding in forma pauperis  
18 unless he can demonstrate that he is under imminent danger of serious physical harm. See 28  
19 U.S.C. § 1915(g).

20           After a careful review of plaintiff’s complaint, the court finds that plaintiff is not  
21 under imminent danger of serious physical harm. In his complaint, plaintiff alleges that he is  
22 being denied access to his trust account and to his business and legal mail. Plaintiff does not  
23 suggest that he is in any danger of being physically harmed. Thus, plaintiff may only proceed  
24 with this action if he pays the \$350.00 filing fee in full. See Andrews v. King, 398 F.3d 1113,  
25 1120 (9th Cir. 2005). Accordingly, the court will grant plaintiff a final thirty days leave to pay  
26 the \$350.00 filing fee. Plaintiff is cautioned that failure to pay the filing fee in full will result in  
the dismissal of this action.

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<sup>1</sup> A court may take judicial notice of court records. See MGIC Indem. Co. v. Weisman,  
803 F.2d 500, 505 (9th Cir. 1986); United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).

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For the reasons stated above, IT IS HEREBY ORDERED that:

1. The court's April 28, 2010 findings and recommendations (Doc. No. 9) are vacated; and

2. Plaintiff shall pay the \$350.00 filing fee in full within thirty days of the date of this order or this action will be dismissed without prejudice.

DATED: June 7, 2010.

  
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DALE A. DROZD  
UNITED STATES MAGISTRATE JUDGE

DAD:sj  
rash3560.vac+3B