

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

MARVIN HARRIS,

Plaintiff, No. CIV S-10-0541 EFB P

VS.

BRADFORD, et al.,

Defendants. ORDER

Plaintiff is a prisoner without counsel seeking relief for civil rights violations. *See* 42 U.S.C. § 1983. He seeks leave to proceed *in forma pauperis*. *See* 28 U.S.C. § 1915(a). This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1) and is being decided by the undersigned pursuant to plaintiff's consent. *See* 28 U.S.C. § 636; *see also* E.D. Cal. Rules, Appx. A, at (k)(4).

For the reasons explained below, the court finds that plaintiff has not demonstrated he is eligible to proceed *in forma pauperis*. A prisoner may not proceed *in forma pauperis*,

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 28 U.S.C. § 1915(g). This court's records demonstrate that on at least three prior occasions,
2 plaintiff brought actions while incarcerated that were dismissed as frivolous, malicious, or for
3 failure to state a claim upon which relief may be granted.¹ See Order filed November 27, 2000,
4 in *Harris v. Edmonds*, No. CIV F-00-5857 OWW LJO (E.D. Cal.); Order filed May 24, 2002, in
5 *Harris v. Edmonds*, No. CIV F-00-7160 REC SMS (E.D. Cal.); Order filed March 15, 2002, in
6 *Harris v. Pliler*, No. CIV S-01-1125 WBS DAD (E.D. Cal.). Plaintiff has not alleged facts
7 suggesting that he is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).
8 “[I]t is the circumstances at the time of the filing of the complaint that matters for purposes of
9 the “imminent danger” exception to § 1915(g). *Andrews v. Cervantes*, 493 F.3d 1047, 1053 (9th
10 Cir. Cal. 2007). Therefore, the court will deny plaintiff’s request for leave to proceed *in forma
11 pauperis* and direct plaintiff to pay the filing fee for this action.

12 Accordingly, it is hereby ORDERED that:

13 1. Plaintiff’s March 23, 2010 and April 16, 2010 applications to proceed *in forma
14 pauperis* are denied; and

15 2. Plaintiff shall pay the \$350 filing fee within 30 days. See 28 U.S.C. § 1914(a).

16 Failure to comply with this order will result in dismissal.

17 Dated: April 20, 2010.

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19 EDMUND F. BRENNAN
20 UNITED STATES MAGISTRATE JUDGE
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26 ¹ A court may take judicial notice of court records. See *MGIC Indem. Co. v. Weisman*,
27 803 F.2d 500, 505 (9th Cir. 1986); *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980).