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

ERNEST MILLER,,

Plaintiff,

No. CIV S-10-1605 DAD P

vs.

B. STOWELL, et al.,

Defendants.

ORDER

_____ /

Plaintiff, a state prisoner proceeding pro se, has filed a civil action pursuant to 42 U.S.C. § 1983. Plaintiff has not paid the filing fee of \$350.00 or submitted an application requesting leave to proceed in forma pauperis. However, a review of the court’s own records reveals that on numerous occasions prior to the filing of this action, plaintiff has filed lawsuits that were dismissed on the grounds that they were frivolous or failed to state a claim upon which relief may be granted.¹ A prisoner may not bring a civil action or appeal a civil judgment under the in forma pauperis statute

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

¹ 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).

1 frivolous, malicious, or fails to state a claim upon which relief may
2 be granted, unless the prisoner is under imminent danger of serious
physical injury.

3 28 U.S.C. § 1915(g).

4 In Miller v. McGrath, Case No. 2:08-0070 HWG-KSC, the assigned District
5 Judge found that plaintiff had previously filed three or more actions that had been dismissed as
6 frivolous, malicious or as failing to state a claim. See Miller v. McGrath, Case No. 2:08-0070
7 HWG-KSC, Doc. No. 21. Pursuant to 28 U.S.C. § 1915(g), the District Judge ruled that plaintiff
8 was ineligible to proceed in forma pauperis in that action. Id. at 3. Adopting that prior
9 determination in this case, the court finds that plaintiff may not proceed in forma pauperis in this
10 action unless he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

11 In the complaint filed in this action, plaintiff contends that he has been
12 erroneously identified as a gang member and placed in prison housing for gang members.
13 Plaintiff contends that this was done to make him ineligible to earn good time credits and to
14 place him in a more dangerous living environment. Plaintiff names three correctional counselors
15 as defendants. In his prayer for relief, plaintiff seeks only monetary damages in the amount of
16 \$300,000,000.00. Although plaintiff makes an allegation about “undercover correctional
17 officers” dressing as inmates to murder gang members, this bare allegation is unsupported by any
18 specific factual allegations. Plaintiff’s complaint appears to be focused instead on a rule
19 violation for which he was cited and on administrative appeals to change his classification back
20 to “A1A Work group/Privilege Group half time credit earning status[.]” Therefore, plaintiff has
21 made no showing that he is in imminent danger of serious physical injury, and the court will
22 order plaintiff to pay the \$350.00 filing fee. Failure to pay the fee in full will result in the
23 dismissal of this action without prejudice.

24 Accordingly, IT IS HEREBY ORDERED that:

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

1 2. Within thirty days from the service of this order, plaintiff shall pay the \$350.00
2 filing fee. Failure to pay the filing fee will result in the dismissal of this action without prejudice.

3 DATED: July 7, 2010.

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6 _____
7 DALE A. DROZD
8 UNITED STATES MAGISTRATE JUDGE

6 DAD:4
7 mill1605.1915g

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