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

10 TAHEE A' RASHEED,

11 Plaintiff,

No. CIV S-10-1805 GGH P

12 vs.

13 TIM VIRGA, et al.,

14 Defendants.

ORDER

15 _____/
16 Plaintiff, a state prisoner proceeding pro se, has filed the instant action. While
17 plaintiff has brought this action as a writ of habeas corpus it is apparent that plaintiff has
18 intended to bring a civil rights action pursuant to 42 U.S.C. § 1983. However, plaintiff has not
19 submitted an application to proceed in forma pauperis or paid the \$350 filing fee.

20 Ordinarily, when a prisoner has filed a lawsuit pro se but has not paid the filing
21 fee or submitted an application to proceed in forma pauperis status, the court directs the Clerk of
22 Court to forward an application to the prisoner and allows time for the application to be returned.
23 Here, however, plaintiff is barred from proceeding in forma pauperis under the "Three Strikes"
24 provision of the Prison Litigation Reform Act, 28 U.S.C. § 1915(g). That statute empowers a
25 court to deny in forma pauperis status to a litigant who has had three actions "dismissed on the
26 grounds that [they are] frivolous, malicious, or fail[] to state a claim upon which relief may be

1 granted.” 28 U.S.C. § 1915(g). An action meets this standard if it is “based on an indisputably
2 meritless legal theory” or its “factual contentions are clearly baseless. Examples of the former
3 class are claims against which it is clear that the defendants are immune from suit and claims of
4 infringement of a legal interest which clearly does not exist.” Neitzke v. Williams, 490 U.S. 319,
5 327 (1989) (internal citation omitted).

6 In an order entered September 11, 2009, in a case filed by plaintiff in the Fresno
7 Division, Chief District Judge Anthony Ishii found that plaintiff had previously filed three or
8 more actions that had been dismissed as frivolous, malicious or as failing to state a claim. See
9 Civil Action No. 1:09cv1490, Docket No. 3 at 1. Pursuant to 28 U.S.C. § 1915(g), Judge Ishii
10 ruled that plaintiff was ineligible to proceed in forma pauperis in that action. Id. at 2.

11 Judge Ishii stated:

12 Among the dismissals suffered by plaintiff that count as strikes under 1915(g) are
13 case numbers 3:06-cv- 05992-SI Smith v. Holm (N.D. Cal.) (dismissed
14 01/22/2007 for failure to state a claim); 1:07-cv-00509-LJO-SMS Smith v.
15 Scribner (E.D. Cal.) (dismissed 05/04/2007 for frivolousness, maliciousness, and
16 failure to state a claim); 1:06-cv-00310-AWI-NEW (DLB) [Smith v. Scribner] 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).

17 The undersigned has reviewed the above cases and they indeed qualify as strikes.
18 Plaintiff is therefore barred from proceeding in forma pauperis, “unless [plaintiff] is under
19 imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).¹ In the instant case, plaintiff
20 alleges that prison staff are taking his mail and not delivering it to him, which does not
21 demonstrate imminent danger of serious physical injury.

22 Therefore plaintiff may not proceed in forma pauperis and must pay the entire
23 filing fee of \$350.00. The court will allow plaintiff twenty-eight days in which to pay the fee.
24 Failure to pay the fee in full will result in a recommendation that this action be dismissed without
25

26 ¹ The court also notes that plaintiff has filed 64 actions in federal court since 2004.

1 prejudice.

2 In accordance with the above, IT IS HEREBY ORDERED that:

3 1. The Clerk of the Court is directed to redesignate this as a civil rights action;

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

6 3. Plaintiff shall pay the \$350.00 filing fee in full within twenty-eight days of
7 service of this order. Failure to pay the fee will result in a recommendation that this action be
8 dismissed without prejudice.

9 DATED: July 26, 2010

10 /s/ Gregory G. Hollows

11 _____
12 GREGORY G. HOLLOWS
13 UNITED STATES MAGISTRATE JUDGE

13 GGH: AB
14 rash1805.3 strikes