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

ANTHONY R. TURNER,

Plaintiff,

No. CIV S-11-1744 CKD P

vs.

MATTHEW CATES, et al.,

Defendants.

ORDER

\_\_\_\_\_ /

Plaintiff is a California prisoner proceeding pro se with an action for violation of civil rights under 28 U.S.C. § 1983. Pursuant to 28 U.S.C. § 636(c), plaintiff has consented to all proceedings in this matter being held before a United States Magistrate Judge.

Plaintiff seeks leave to proceed in forma pauperis. Title 28 U.S.C. § 1915(g)

reads:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding [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.

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1 Court records reveal that there are thirty separate actions, including this one,  
2 where Mr. Turner is plaintiff.<sup>1</sup> After reviewing those cases, the court finds three 1915(g)  
3 “strikes” which were all entered before this action was brought by plaintiff on June 29, 2011.

4 The first is CIV-S-08-2087 EFB P which was dismissed on December 7, 2010 for  
5 failure to state a claim upon which relief could be granted. The second is the appeal of that case;  
6 Ninth Circuit Case No. 11-15044. On March 16, 2011, the Ninth Circuit summarily affirmed the  
7 district court’s dismissal for failure to state a claim. The mandate was issued on May 16, 2011.

8 Plaintiff’s third “strike” arises from CIV-S-09-3326 FCD DAD P which was  
9 dismissed on July 20, 2010 because the complaint filed therein is duplicative of a complaint filed  
10 in a separate action. See July 1, 2010 Findings And Recommendations. In Bailey v. Johnson,  
11 846 F.2d 1019, 1021 (5th Cir. 1988) the Fifth Circuit Court of Appeals characterized duplicative  
12 litigation as “malicious.” In Cato v. U.S., 70 F.3d 1103, 1105 n. 2, (9th Cir. 1995) the Ninth  
13 Circuit, citing Bailey, agreed that where a complaint repeats pending or previously litigated  
14 claims, it is subject to dismissal under the in forma pauperis statute as being frivolous or  
15 malicious.

16 Accordingly, plaintiff has “struck out” pursuant to 28 U.S.C. § 1915(g). Further,  
17 the court has reviewed plaintiff’s amended complaint<sup>2</sup> and finds there is no reasonable suggestion  
18 that plaintiff is in “imminent danger of serious physical injury.” Generally speaking, in his  
19 amended complaint, plaintiff seeks damages for past wrongs.

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23 <sup>1</sup> Plaintiff files cases under different names, e.g. Anthony R. Turner, Anthony R.G.  
24 Turner and Anthony Richardo Turner, but identifies himself in each of his cases with California  
25 Department of Corrections and Rehabilitation inmate number G-27511.

26 <sup>2</sup> Plaintiff amended his original complaint by filing an amended complaint on August 3,  
2011.

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

1. Plaintiff has “struck out” pursuant to 28 U.S.C. § 1915(g);
2. Plaintiff’s June 29, 2011 request to proceed in forma pauperis is denied;
3. Plaintiff is directed to pay the \$350 filing fee for this action within 21 days;

and

4. Failure to pay the filing fee will result in this action being dismissed.

Dated: August 19, 2011

  
CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

<sup>1</sup>  
turn1744.3ks