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

MARVIN HARRIS

Plaintiff,

No. CIV S-11-3322 CKD P

vs.

TOM VIRGA, et al.

Defendants.

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action under 42 U.S.C. § 1983. He has not filed an application to proceed in forma pauperis (IFP), nor has he paid the filing fee of \$350.00. The court’s usual practice is to allow prisoners proceeding pro se additional time to submit a completed application to proceed IFP. However, in this case, it appears plaintiff is barred from receiving IFP status under 28 U.S.C. § 1915(g).

The “three strikes” provision of the Prison Litigation Reform Act (PLRA) empowers a court to deny IFP status to a litigant who has had three actions “dismissed on the grounds that [they are] frivolous, malicious, or fail[] to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(g). An action meets this standard if it is “based on an indisputably meritless legal theory” or its “factual contentions are clearly baseless. Examples of the former class are claims against which it is clear that the defendants are immune from suit and claims of infringement of a legal interest which clearly does not exist.” Neitzke v. Williams, 490 U.S. 319,

1 327 (1989) (internal citation omitted). The bar does not apply if a plaintiff can demonstrate that
2 he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).¹

3 The court’s review of its records shows that plaintiff had already run afoul of the
4 “three strikes” provision before he filed this case.² In Harris v. Reynolds, the court cited three
5 previous dismissals against plaintiff for failure to state a claim and ordered plaintiff to show
6 cause why his application to proceed IFP should not be denied under § 1915(g) of the PLRA.
7 See Harris v. Reynolds, Civil Action No. 2:09-cv-1817 JAM DAD (Docket No. 7). “Show
8 cause” in that context could only mean plaintiff showing he was under imminent danger of
9 serious physical injury and thus exempt from the bar of § 1915(g). Plaintiff failed to make that
10 showing, his IFP application was denied, and he was required to pay the fee for filing a civil
11 lawsuit in order to proceed. See id. (Docket No. 9). When he failed to pay the fee, his case was
12 dismissed. See id. (Docket No. 17).

13 Plaintiff’s status in this court is that of a “three strikes” violator under the PLRA.
14 The court will therefore order him to show cause why he is not barred from proceeding IFP under
15 28 U.S.C. § 1915(g) – to show, in other words, that he is under imminent danger of serious
16 physical injury and therefore exempt from the “three strikes” bar in this case.

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23 ¹ “The statute contemplates that the ‘imminent danger’ will exist contemporaneously with
24 the bringing of the action.” Abdul-Akbar v. McKelvie, 239 F.3d 307, 313 (3d Cir.), cert. denied,
25 533 U.S. 953 (2001). “Imminent” means “about to occur at any moment or [] impending.” Id. at
26 315; see also Oxford English Dictionary, available at <http://dictionary.oed.com> (“close at hand in
its incidence; coming on shortly”).

² The court may take judicial notice of court records. See MGIC Indem. Co. v. Weisman,
803 F.2d 500, 505 (9th Cir. 1986).

