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

DAVID E. GIVENS,

Plaintiff,

No. 2:12-cv-0687 KJN P

vs.

L.D. ZAMORA, et al.,

Defendants.

ORDER

_____ /

On May 30, 2012, this court granted plaintiff’s application to proceed in forma pauperis. (Dkt. No. 6.) The court dismissed plaintiff’s complaint with leave to file an amended complaint. (Id.) On June 18, 2012, plaintiff filed a First Amended Complaint, ninety-five pages in length including exhibits, pursuant to which plaintiff challenges the medical care he is receiving at Mule Creek State Prison. (Dkt. No. 11.)

It recently came to the attention of this court that plaintiff is subject to the “three strikes rule” set forth in 28 U.S.C. § 1915(g).¹ This rule precludes a prisoner, who has been

¹ 28 U.S.C. § 1915(g) provides in full:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or

1 found on three or more occasions to have brought an action that was dismissed as frivolous,
2 malicious, or failing to state a claim, from proceeding in forma pauperis absent a showing that
3 plaintiff is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g). Pursuant to this
4 rule, plaintiff was found, in May 2000, barred from proceeding in forma pauperis in the federal
5 courts. See Givens v. Small et al., Case No. 00-0634-L (POR) (Southern District of California)
6 (Dkt. No. 3). That order sets forth the several cases previously filed by plaintiff that were
7 dismissed for failure to state a claim. (Id. at 4.) As a result, plaintiff is listed as three-strikes
8 barred in the National Pro Se Three-Strikes Database.²

9 For these reasons, the court must re-evaluate its order granting plaintiff in forma
10 pauperis status in this case, before undertaking a review of plaintiff's First Amended Complaint.
11 Therefore, plaintiff will be accorded the opportunity to show, if he can, that he should retain in
12 forma pauperis status in this action because he "is under imminent danger of serious physical
13 injury." 28 U.S.C. § 1915(g). If plaintiff is unable to make this showing, he will be required to
14 pay the filing fee in order to proceed in this action.

15 Accordingly, IT IS HEREBY ORDERED that, within fourteen (14) days after
16 service of this order, plaintiff shall file and serve a declaration that: (1) demonstrates that
17 plaintiff should retain in forma pauperis status in this action because he "is under imminent
18 danger of serious physical injury," 28 U.S.C. § 1915(g), or (2) concedes that plaintiff is unable to
19 make the required showing, and therefore that plaintiff: (a) chooses to pay the full filing fee

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24 appeal in a court of the United States that was dismissed on the grounds that it is
25 frivolous, malicious, or fails to state a claim upon which relief may be granted,
26 unless the prisoner is under imminent danger of serious physical injury.

² National Pro Se Three-Strikes Database, <http://nprose.circ9.dcn/Litigant.aspx>.

1 (\$350.00) in order to proceed in this action, or (b) chooses to have this action dismissed without
2 prejudice.

3 DATED: September 20, 2012

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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