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

MARVIN HARRIS,

Plaintiff,

No. 2: 12-cv-0838 GEB DAD P

vs.

TIM VIRGA, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983, and an application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

A review of the court’s records reveals that on numerous occasions prior to the filing of this action, plaintiff 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 The most recent dismissals of this nature were in Harris v. Edmonds, Civ. No. 00-5857 OWW LJO (E.D. Cal. Nov. 27, 2000) (order dismissing action for failure to state a claim upon which relief may be granted); Harris v. Edmonds, Civ. No. 00-7160 REC SMS (E.D. Cal. May 24, 2002) (order dismissing action for failure to state a claim); and Harris v. Pliler, Civ. No. 01-1125 WBS DAD (E.D. Cal.

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 March 15, 2002) (order dismissing action for failure to state a claim). All of those actions were
2 filed when plaintiff was incarcerated in state prison and in each he was granted leave to proceed
3 in forma pauperis.

4 A prisoner may not bring a civil action or appeal a civil judgment under the in
5 forma pauperis statute

6 if the prisoner has, on three or more occasions, while incarcerated
7 or detained in any facility, brought an action or appeal in a court of
8 the United States that was dismissed on the ground that it is
9 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.

10 28 U.S.C. § 1915(g). Because plaintiff has on three or more occasions brought an action that was
11 dismissed for failure to state a claim upon which relief may be granted, he will be ordered to
12 show cause why his application for leave to proceed in forma pauperis should not be denied
13 pursuant to 28 U.S.C. § 1915(g), or to pay the filing fee of \$350.00.

14 Accordingly, IT IS HEREBY ORDERED that within thirty (30) days from the
15 date of this order, plaintiff shall show cause why his application to proceed in forma pauperis
16 should not be denied pursuant to 28 U.S.C. § 1915(g), or in the alternative, plaintiff shall pay the
17 \$350.00 filing fee. Plaintiff's failure to comply with this order will result in a recommended
18 dismissal of this action.

19 DATED: October 2, 2012.

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22 _____
23 DALE A. DROZD
24 UNITED STATES MAGISTRATE JUDGE
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DAD:dpw
harr0838.osc