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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT BENYAMINI,
Plaintiff,
v.
S. VANCE,
Defendants.

No. 2:13-cv-00910 TLN DAD P

ORDER

Plaintiff, a former state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

On March 18, 2014, the court ordered plaintiff to either pay the required filing fee of \$350.00 or file an application to proceed in forma pauperis. (ECF No. 5.) On April 14, 2014, plaintiff filed a motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

Review of court records reveals that, on at least three occasions, lawsuits filed by the plaintiff have been dismissed on the grounds that they were frivolous or malicious or failed to state a claim upon which relief may be granted:

1. Benyamini v. Anderson, No. 1:07-cv-1596 OWW GS (E.D. Cal.). On May 13, 2009, the action was dismissed for failure to state a claim.

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1 2. Benyamini v. Simpson, No. 2:08-cv-1552 GEB DAD (E.D. Cal.). On June 8, 2009,
2 findings and recommendations issued, recommending that the action be dismissed for
3 failure to state a claim. On July 8, 2009, the findings and recommendations were adopted
4 in full.

5 3. Benyamini v. Johnson, No. 11-16971 (9th Cir.). On November 15, 2011, plaintiff was
6 denied leave to proceed in forma pauperis because his appeal was deemed frivolous.

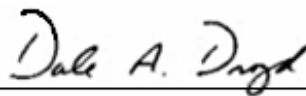
7 4. Benyamini v. Byrd, No. 11-17218 (9th Cir.). On December 8, 2011, plaintiff was
8 denied leave to proceed in forma pauperis because his appeal was deemed frivolous. The
9 appellate court also found that plaintiff had three or more prior actions or appeals which
10 had been dismissed as frivolous or for failure to state a claim.

11 5. Benyamini v. Mendoza, No. 13-15026 (9th Cir.). On August 20, 2014, the appellate
12 court upheld the district court's determination, in case no. 2:09-cv-02602-LKK-AC, that
13 three of plaintiff's prior § 1983 actions had been dismissed for failure to state a claim.

14 In light of this history, plaintiff is precluded from proceeding in forma pauperis in this
15 action unless he is "under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).
16 Plaintiff has not alleged any facts in his complaint which suggest that he is under imminent
17 danger of serious physical injury. Indeed, plaintiff is no longer in state custody. Thus, plaintiff
18 must submit the appropriate filing fee in order to proceed with this action.

19 In accordance with the foregoing, IT IS HEREBY ORDERED that plaintiff shall submit,
20 within twenty-one days from the date of this order, the appropriate filing fee. Plaintiff's failure to
21 comply with this order will result in a recommendation that this action be dismissed.

22 Dated: January 16, 2015

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24 _____
25 DALE A. DROZD
26 UNITED STATES MAGISTRATE JUDGE

25 DAD:10
26 beny0910.1915g.ifp