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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARVIN GLENN HOLLIS,
Plaintiff,
v.
P. SAHOTA, et al.,
Defendants.

No. 2:13-cv-1841-EFB P

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983.¹ He seeks leave to proceed in forma pauperis. See 28 U.S.C. § 1915(a). For the reasons explained below, the court finds that plaintiff has not demonstrated he is eligible to proceed in forma pauperis.

A prisoner may not proceed 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.

¹ This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1) and is before the undersigned pursuant to plaintiff’s consent. See E.D. Cal. Local Rules, Appx. A, at (k)(4).

1 28 U.S.C. § 1915(g). Court records reflect that on at least three prior occasions, plaintiff has
2 brought actions while incarcerated that were dismissed as frivolous, malicious, or for failure to
3 state a claim upon which relief may be granted. *See* (1) *Hollis v. Mazon-Alec*, 1:03-cv-6842-
4 REC-DLB P (E.D. Cal. Jan. 27, 2005) (order dismissing action for failure to state a claim); (2)
5 *Hollis v. Villanueus*, 3:07-cv-04538 (N.D. Cal. Feb. 2, 2009) (order dismissing action for failure
6 to state a claim); (3) *Hollis v. Villanueus*, 08-15523 (9th Cir. Aug 26, 2009) (order dismissing
7 appeal after district court found appeal to be frivolous), (*see Hollis v. Villanueus*, 3:07-cv-04538
8 (N.D. Cal.) (Apr. 7, 2009 order denying application to proceed in forma pauperis on appeal as
9 frivolous)); *see also Hollis v. Downing*, No. 2:09-cv-3431-MCE-KJN, 2010 U.S. Dist. LEXIS
10 130441 (E.D. Cal. Dec. 8, 2010), *adopted by* 2011 U.S. Dist. LEXIS 14078 (E.D. Cal. Feb. 10,
11 2011) (designating plaintiff a three-strike litigant).

12 Further, it does not appear that plaintiff was under imminent threat of serious physical
13 injury when he filed the complaint. *See* 28 U.S.C. § 1915(g); *Andrews v. Cervantes*, 493 F.3d
14 1047, 1055 (9th Cir. Cal. 2007) (section 1915(g) imminent danger exception applies where
15 complaint makes a “plausible” allegation that prisoner faced imminent danger of serious physical
16 injury at the time of filing). In the complaint, plaintiff states he “in imminent danger of serious
17 physical injury [because he] has lumbar degenerative disk disease with arthritic facets and lumbar
18 spinal stenosis which is becoming worse.” ECF No. 1 ¶ 23. He alleges he has a history of being
19 prescribed Tramadol to relieve his chronic back and shin pain, caused by his condition. A
20 medical record attached to the complaint notes that plaintiff’s disease is “probably what is
21 causing his pain.” *Id.* at 20. Plaintiff claims that for a two-week period of time, he felt “increased
22 extreme[e] pain” because defendants interfered with his Tramadol prescription. After plaintiff
23 complained, however, his Tramadol prescription was renewed. Now, however, plaintiff claims
24 that the medical treatment he is receiving, including the Tramadol, is not relieving “100%” of his
25 pain. ECF No. 1 ¶ 15. Thus, plaintiff is currently receiving tramadol, but still experiences some
26 pain. Plaintiff’s allegation that he is not entirely pain-free does not demonstrate that he was under
27 imminent threat of serious physical injury when he filed the complaint. Therefore, the imminent
28 danger exception does not apply. *See Oden v. Cambra*, C 97-3898-SI, 1999 U.S. Dist. LEXIS

1 4233, at *11 (N.D. Cal. Mar. 30, 1999) (“doctors (inside and outside of prisons) are not
2 guarantors of pain-free living for their patients. There may be conditions . . . that will result in
3 some pain regardless of what a doctor does”); *Villegas v. Cate*, 1:10-cv-1916-AWI-SKO, 2012
4 U.S. Dist. LEXIS 171, at *8 (E.D. Cal. Jan. 3, 2012) (“There are certain medical conditions with
5 no end-cure and for which it is impossible to achieve a pain-free or symptom-free status.”); *see*
6 *also Snipes v. DeTella*, 95 F.3d 586, 592 (7th Cir. 1996) (“It would be nice if after appropriate
7 medical attention pain would immediately cease, its purpose fulfilled; but life is not so
8 accommodating. Those recovering from even the best treatment can experience pain.”).

9 Because plaintiff has not paid the filing fee and is not eligible to proceed in forma
10 pauperis, this action must be dismissed.

11 Accordingly, it is hereby ORDERED that plaintiff’s request for leave to proceed in forma
12 pauperis is denied and this action is dismissed without prejudice to re-filing upon pre-payment of
13 the \$400 filing fee. *See* 28 U.S.C. §§ 1914(a), 1914 (District Court Miscellaneous Fee Schedule,
14 No. 14), 1915(g).

15 DATED: May 20, 2014.

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17 EDMUND F. BRENNAN
18 UNITED STATES MAGISTRATE JUDGE
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