

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT J. ELLIS,

No. 2:14-cv-1949 CKD P

Plaintiff,

V.

ORDER

HARPER, et al.,

Defendants.

Plaintiff, a California prisoner proceeding pro se, has filed an action for violation of civil rights under 42 U.S.C. § 1983. While he is proceeding in forma pauperis, a recent review of court records and controlling law reveals that he is precluded from doing so.

Title 28 U.S.C. § 1915(g) reads as follows:

In no event shall a prisoner bring a civil action . . . [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.

Plaintiff has had at least four actions dismissed for failure to state a claim in this court: 2:06-cv-0040 FCD EFB P; 2:11-cv-0363 GEB CKD P; 2:13-cv-2197 CKD P; and 2:14-cv-0705 EFB P. Plaintiff was incarcerated when he brought these actions and these actions were all dismissed before plaintiff's original complaint and request to proceed in forma pauperis were

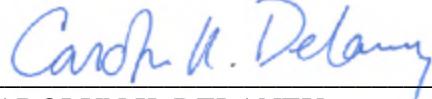
1 filed in this action.¹ Also, the court has reviewed plaintiff's original complaint and first amended
2 complaint in this action and there is no allegation that plaintiff is under imminent danger of
3 serious physical injury.

4 For the foregoing reasons, plaintiff has "struck out" under 28 U.S.C. § 1915(g) and may
5 not proceed in forma pauperis in this action. His in forma pauperis status will be revoked and
6 plaintiff will be given 14 days within which to pay the \$400 filing fee for this action.² If plaintiff
7 does not pay the filing fee within 14 days, this action will be dismissed.³

8 Accordingly, IT IS HEREBY ORDERED that:

9 1. Plaintiff's in forma pauperis status is revoked; and
10 2. Plaintiff shall pay the \$400 filing fee for this action within 14 days. Failure to pay the
11 filing fee within 14 days will result in dismissal.

12 Dated: June 8, 2015



13 CAROLYN K. DELANEY
14 UNITED STATES MAGISTRATE JUDGE

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21 ¹ Direct review had not concluded with respect to the latter two cases identified above when this
22 action was filed. However, the United States Supreme Court has recently clarified that a case
23 dismissed by a district court may amount to a "strike" under 28 U.S.C. § 1915(g) after it has been
24 dismissed, but before the conclusion of direct review. Coleman v. Tollefson, 135 S. Ct. 1759,
1763-64 (2015).

25 ² If money has already been deducted from plaintiff's trust account by prison officials and
26 forwarded to the court to satisfy the filing fee, plaintiff may deduct that amount from the \$400 he
owes.

27 ³ Plaintiff has consented to have all matters in this action before a United States Magistrate
28 Judge. See 28 U.S.C. 636(c).