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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD JOSE DUPREE, Jr.,  
Plaintiff,  
v.  
BARACK OBAMA,  
Defendant.

No. 2:14-cv-2866-EFB P

ORDER AND FINDINGS AND  
RECOMMENDATIONS<sup>1</sup>

Plaintiff Richard Dupree is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. He seeks leave to proceed in forma pauperis. See 28 U.S.C. § 1915(a). However, as explained below, he has not demonstrated that 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.

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<sup>1</sup> Plaintiff did not respond to the court’s order directing him to complete and return the form indicating either his consent to jurisdiction of the magistrate judge or request for reassignment to a district judge. Accordingly, the clerk will be directed to randomly assign this case to a district judge.

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) *Dupree v. United States District Court*,  
4 No. 2:11-cv- 0263-DAD (E.D. Cal. Mar. 24, 2011) (order dismissing action as frivolous); (2)  
5 *Dupree v. Santiago*, No. 2:11-cv-309-EFB (E.D. Cal. Feb. 22, 2011) (order dismissing action for  
6 failure to state a claim); (3) *Dupree v. Mills*, 2:11-cv-01619-JAM-DAD (E.D. Cal. Mar. 29, 2012)  
7 (order dismissing action for failure to state a claim); and (4) *Dupree v. U.S. Copyright Office*,  
8 2:11-cv-01700-WBS-KJN (E.D. Cal. July 28, 2011) (order dismissing action as frivolous and for  
9 failure to state a claim; also designating plaintiff as a three strikes litigant for purposes of §  
10 1915(g)).

11 The section 1915(g) exception applies if the complaint makes a plausible allegation that  
12 the prisoner faced “imminent danger of serious physical injury” at the time of filing. 28 U.S.C.  
13 § 1915(g); *Andrews v. Cervantes*, 493 F.3d 1047, 1055 (9th Cir. 2007). Here, plaintiff’s  
14 allegations do not demonstrate that he suffered from imminent danger of serious physical injury  
15 at the time he filed his complaint. Thus, the imminent danger exception does not apply. Because  
16 plaintiff has not paid the filing fee and is not eligible to proceed *in forma pauperis*, this action  
17 must be dismissed.

18 Accordingly, it is hereby ORDERED that this action be randomly assigned to a United  
19 States District Judge.

20 Further, it is hereby RECOMMENDED that

- 21 1. Plaintiff’s application to proceed in forma pauperis (ECF No. 2) be denied; and
- 22 2. This action be dismissed without prejudice to re-filing upon pre-payment of the \$400  
23 filing fee.

24 These findings and recommendations are submitted to the United States District Judge  
25 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
26 after being served with these findings and recommendations, any party may file written  
27 objections with the court and serve a copy on all parties. Such a document should be captioned  
28 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections

1 within the specified time may waive the right to appeal the District Court's order. *Turner v.*  
2 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

3 Dated: April 23, 2015.

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5 EDMUND F. BRENNAN  
6 UNITED STATES MAGISTRATE JUDGE

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