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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD JOSE DUPREE, JR.,
Plaintiff,
v.
U. S. POSTAL SERVICE, et al.,
Defendants.

No. 2:16-cv-1268 CKD P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983 along with an application to proceed in forma pauperis. See 28 U.S.C. §§ 1914(a), 1915(a). Plaintiff alleges that the United States Postal Service has violated his federal civil rights by returning his properly addressed mail. (ECF No. 1.)

28 U.S.C. § 1915 permits any court of the United States to authorize the commencement and prosecution of any suit without prepayment of fees by a person who submits an affidavit indicating that the person is unable to pay such fees. However,

[i]n no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section 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 28 U.S.C. § 1915(g).

2 Court records indicate that plaintiff has been deemed a “Three Strikes” inmate under 28
3 U.S.C. § 1915(g). Dupree v. U. S. Copyright Office, No. 2:11-cv-1700 WBS KJN, Order dated
4 July 28, 2011 (adopting June 30, 2011 findings and recommendations and deeming dismissal for
5 frivolousness plaintiff’s third strike). The court takes judicial notice of the two other cases
6 identified therein as § 1915(g) strikes against plaintiff, which were dismissed as frivolous or for
7 failure to state a claim.¹

8 The imminent danger applies only if it is clear that the danger existed when the complaint
9 was filed. Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007). Allegations of imminent
10 danger that are overly speculative or fanciful may be rejected. Id. at 1057, n.11. Having
11 reviewed the complaint, the undersigned finds that plaintiff has not credibly alleged “imminent
12 danger of serious physical injury” under § 1915(g).

13 In light of the above, plaintiff will be granted fourteen days to pay the filing fee in this
14 action; otherwise, it will be dismissed.

15 Accordingly, IT IS HEREBY ORDERED that:

- 16 1. Plaintiff’s motion to proceed in forma pauperis (ECF No. 2) is denied; and
17 2. Plaintiff shall pay the \$400 filing fee no later than fourteen days from the date of this
18 order. Failure to comply with this order will result in dismissal of this action.

19 Dated: June 28, 2016

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21 CAROLYN K. DELANEY
22 UNITED STATES MAGISTRATE JUDGE

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25 2 / dupr1269.threestrikes

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28 ¹ Dupree v. United States District Court, No. 2:11-cv-0263 DAD (ECF No. 10); Dupree v. Santiago, et al., No. 2:11-cv-0309 EFB (ECF No. 7).