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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID W. WILSON,
Plaintiff,
v.
MICHAEL C. SMITH, et al.,
Defendants.

No. 2:16-cv-2091 MCE 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).

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.

28 U.S.C. § 1915(g).

1 Court records indicate that plaintiff has been deemed a “Three Strikes” inmate under 28
2 U.S.C. § 1915(g). Wilson v. Marin, et al., No. 2:14-cv-1829 WBS EFB P (October 7, 2014
3 findings and recommendations denying in forma pauperis status and recommending dismissal
4 without prejudice to re-filing upon pre-payment of filing fee), adopted by district judge on
5 November 11, 2014; see also Wilson v. Hubbard, No. 2:07-cv-1558 WBS GGH (Oct. 16, 2009
6 order designating plaintiff a Three Strikes litigant). The court takes judicial notice of the three
7 cases identified in Wilson v. Marin as § 1915(g) strikes against plaintiff, all of which were
8 dismissed for failure to state a claim.¹

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

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

16 Accordingly, IT IS HEREBY ORDERED that:

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

21 Dated: October 7, 2016

22 
23 CAROLYN K. DELANEY
24 UNITED STATES MAGISTRATE JUDGE

25 2 / wils2091.threestrikes

26 _____
27 ¹ Wilson v. Schwartz, No. 2:05-cv-1649 GEB CMK (October 31, 2006 order dismissing action
28 for failure to state a claim); Wilson v. Dovey, No. 2:06-cv-1032 FCD EBF (March 8, 2007 order
dismissing action for failure to state a claim); and Wilson v. Dovey, No. 2:06-cv-2553 JKS EFB
(March 11, 2008 order dismissing action for failure to state a claim).