

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

WALTER SHANE LANGSTON,  
Plaintiff,  
v.  
LOPEZ, et al.,  
Defendants.

No. 2:16-cv-2359 MCE CKD P

ORDER

Plaintiff is a California prisoner proceeding pro se with an action for violation of civil rights under 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff has filed a request to proceed in forma pauperis. Title 28 U.S.C. § 1915(g) reads:

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.

The court has reviewed relevant court records and has determined the following actions amount to “strikes” under 28 U.S.C. § 1915(g):

1. Langston v. Finn, No. 2:08-cv-2475 EFS, dismissed for failure to state a claim upon which relief can be granted on May 1, 2013.

1           2. Langston v. CDCR, No. 2:10-cv-3191 KJN, dismissed for failure to state a claim upon  
2 which relief can be granted on May 24, 2013.

3           3. Langston v. Shiaishi, No. 2:11-cv-1624 DAD, claims dismissed as frivolous and not  
4 cognizable on May 13, 2013.

5 Judgment was final in all three cases before plaintiff commenced this action.<sup>1</sup>

6           Plaintiff's claims do not suggest imminent danger of serious physical injury. Most  
7 notably, plaintiff's claims concern conditions of confinement while plaintiff was housed at the  
8 California Health Care Facility. When plaintiff filed his complaint, however, he was housed at  
9 California State Prison Corcoran.

10           For these reasons, plaintiff's motion to proceed in forma pauperis must be denied.  
11 Plaintiff will be granted 14 days within which to submit the \$400 filing fee for this action. If  
12 plaintiff does not submit the filing fee within 14 days, the court will recommend that this action  
13 be dismissed.

14           Accordingly, IT IS HEREBY ORDERED that:

15           1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 6) is denied.

16           2. Plaintiff shall submit the \$400 filing fee for this action within 14 days. Failure to  
17 submit the filing fee within 14 days will result in a recommendation that this action be dismissed.

18 Dated: February 15, 2017

19   
20 \_\_\_\_\_  
21 CAROLYN K. DELANEY  
22 UNITED STATES MAGISTRATE JUDGE

23 1/mp  
24 lang2359.cdc

25  
26  
27 <sup>1</sup> Recently, the same conclusion was reached with respect to the three cases identified above in  
28 2:15-cv-1437 GEB KJN P.