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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORY C. BONTEMPS,
Plaintiff,
v.
M. LAWAYA,
Defendant.

No. 2:16-cv-2424 CKD P

ORDER

Plaintiff is a California prisoner proceeding pro se. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1) and plaintiff has consented to have all matters in this case before a United States Magistrate Judge. See 28 U.S.C. § 636(c).

Plaintiff requests leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. However, on January 14, 2014 in 2:12-cv-2250 WBS AC P, plaintiff was deemed to have “struck out” pursuant to 28 U.S.C. § 1915(g).¹ Judgment was final in that case well before this case was

¹ 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.

1 filed. Furthermore, after 2:12-cv-2250 WBS AC P was commenced on August 30, 2012 and
2 before this action was commenced on October 11, 2016, plaintiff had at least four other cases
3 dismissed for failure to state a claim upon which relief can be granted,² and therefore those cases
4 count as “strikes” as well.

5 Since plaintiff has struck out, he may only be granted leave to proceed in forma pauperis
6 if the allegations in his complaint suggest he is “under imminent danger of serious physical
7 injury.” *Id.* There are no such allegations in plaintiff’s complaint. Plaintiff seeks damages for
8 past injuries, not injunctive relief based upon current danger.

9 In light of these facts, plaintiff’s motion to proceed in forma pauperis must be denied.
10 Plaintiff will be granted 14 days within which to submit the \$400 filing fee for this action. If
11 plaintiff does not submit the filing fee within 14 days, this action will be dismissed.

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. Plaintiff’s request for leave to proceed in forma pauperis (ECF No. 5) is denied.
- 14 2. Plaintiff must pay the \$400 filing fee for this action within 14 days. Failure to pay the
15 filing fee within 14 days will result in dismissal

16 Dated: April 10, 2017

17 
18 _____
19 CAROLYN K. DELANEY
20 UNITED STATES MAGISTRATE JUDGE

21 1/md
22 bont2424.3ks

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26 _____
27 ² See 2:12-cv-0771 KJN P; 2:12-cv-2406 EFB P; 2:12-cv-3053 JAM EFM P (dismissed because
28 the pleadings demonstrated plaintiff failed to exhaust administrative remedies prior to filing suit
which amounts to a dismissal for failure to state a claim upon which relief can be granted, see
Albino v. Baca, 747 F.3d 1162, 1169 (9th Cir. 2014)); 2:13-cv-00614 EFB P.