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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JIMMIE STEPHEN,
Plaintiff,
v.
R. W. FOX, et al.,
Defendants.

No. 2:16-cv-2574 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). Stephen v. Zhang, No. 2:12-cv-630 GGH P (E.D. Cal.), ECF No. 5. The court
3 takes judicial notice of the six cases identified therein as § 1915(g) strikes, all of which were
4 dismissed for frivolousness or failure to state a claim. See also Stephen v. Hernandez, No. 08-cv-
5 0750 BEN (BLM) (identifying plaintiff as three-strikes litigant).

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

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

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. Plaintiff’s motion to amend (ECF No. 5) is granted;
- 15 2. Plaintiff’s motion to proceed in forma pauperis (ECF No. 2) is denied; and
- 16 3. Plaintiff shall pay the \$400 filing fee no later than fourteen days from the date of this
17 order. Failure to comply with this order will result in dismissal of this action.

18 Dated: January 26, 2017

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21 CAROLYN K. DELANEY
22 UNITED STATES MAGISTRATE JUDGE