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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LATWAHN McELROY,
Plaintiff,
v.
CDCR, et al.,
Defendants.

No. 2:17-cv-0485 WBS 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). See McElroy v. Asad, 2:15-cv-0904 JAM EFB (E.D. Cal.) (order identifying
3 plaintiff as three-strikes litigant on September 24, 2015).¹ The court takes judicial notice of the
4 four cases identified therein as § 1915(g) strikes, all of which were dismissed for failure to state a
5 claim. All were dismissed well prior to the filing of the instant action and constitute strikes under
6 § 1915(g).

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

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

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. Plaintiff’s motion to proceed in forma pauperis is denied; and
- 16 2. 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: April 27, 2017

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20 _____
21 CAROLYN K. DELANEY
22 UNITED STATES MAGISTRATE JUDGE

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28 ¹ See also McElroy v. Turner, No. 2:12-cv-1182 CMK (E.D. Cal.) (order designating plaintiff as a
three strikes litigant on June 28, 2012).