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7 UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA
9

10 WILLIE WEAVER,

No. 2:17-cv-1557 AC P

11 Plaintiff,

12 v.

ORDER

13 WILLIAM,

14 Defendant.
15

16 Plaintiff is a state prisoner proceeding pro se with a civil rights complaint filed pursuant to
17 42 U.S.C. § 1983. This action is referred to the undersigned United States Magistrate Judge
18 pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302(c).

19 Plaintiff has not paid the filing fee or requested leave to proceed in forma pauperis
20 pursuant to 28 U.S.C. § 1915. Review of court records¹ reveals that plaintiff has been designated
21 a “three-strikes litigant” under 28 U.S.C. § 1915(g). See e.g. Weaver v. Attorney General, Case
22 No. 2:14-cv-01132 JAM DAD P, ECF Nos. 5 & 7. This designation reflects that three or more of
23 plaintiff’s prior federal lawsuits were dismissed on the grounds that they were frivolous,
24 malicious, or failed to state a claim upon which relief may be granted.

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26 ¹ This court may take judicial notice of its own records and the records of other courts. See
27 United States v. Howard, 381 F.3d 873, 876 n.1 (9th Cir. 2004); United States v. Wilson, 631
28 F.2d 118, 119 (9th Cir. 1980); see also Fed. R. Evid. 201 (court may take judicial notice of facts
that are capable of accurate determination by sources whose accuracy cannot reasonably be
questioned).


1 As a result, plaintiff is precluded from proceeding in forma pauperis in this action unless
2 he demonstrates that he was “under imminent danger of serious physical injury” at the time he
3 filed his complaint. See 28 U.S.C. § 1915(g); Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th
4 Cir. 2007). The danger must be real and proximate, Ciarpaglini v. Saini, 352 F.3d 328, 330 (7th
5 Cir. 2003), and ongoing, Andrews, 493 F.3d at 1056. Allegations that are overly speculative or
6 fanciful may be rejected. Id. at 1057 n.11. Absent a showing that plaintiff was under imminent
7 danger of serious physical injury at the time he filed his complaint, he may proceed in this action
8 only if he first pays the full filing fee (\$400.00).

9 Plaintiff is currently incarcerated at California State Prison Sacramento (CSP-SAC). In
10 the instant complaint, signed and submitted by plaintiff on July 23, 2017, plaintiff alleges that
11 CSP-SAC Correctional Officer William “continues to harass plaintiff using the N-word [sic].”
12 ECF No. 1 at 3. Plaintiff contends that defendant William “show[s] deliberate indifference” and
13 that plaintiff “faces a substantial risk of serious harm and injury here which is imminent at the
14 time of filing [sic].” Id. Plaintiff seeks \$3 million compensatory damages and \$2 million
15 punitive damages. Id.

16 These allegations fail to demonstrate that plaintiff was under imminent danger of serious
17 physical injury when defendant William made the alleged statement. Plaintiff is informed that
18 “verbal harassment or abuse . . . [alone] is insufficient to state a constitutional deprivation under
19 42 U.S.C. 1983.” Oltarzewski v. Ruggiero, 830 F.2d 136, 139 (9th Cir. 1987) (citation and
20 internal quotation omitted). Therefore, plaintiff must submit the full filing fee in order to proceed
21 with this action.

22 Accordingly, IT IS HEREBY ORDERED that plaintiff shall, within fourteen (14) days
23 after service of this order, submit the full filing fee of \$400.00. No extensions of time will be
24 granted. Plaintiff’s failure to comply with this order will result in a recommendation that this
25 action be dismissed.

26 DATED: August 16, 2017

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28 ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE