

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

GREGORY C. BONTEMPS,
Plaintiff,
v.
P. SAHOTA, et al.,
Defendants.

No. 2:17-cv-1685 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).

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 filed on August 14, 2017. Furthermore, after 2:12-cv-2250 WBS AC P was commenced on

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 August 30, 2012 and before this action was commenced, plaintiff had at least four other cases
2 dismissed for failure to state a claim upon which relief can be granted,² and therefore those cases
3 count as “strikes” as well.

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

8 In light of these facts, plaintiff will be granted 14 days within which to submit the \$400
9 filing fee for this action. If plaintiff does not submit the filing fee within 14 days, this action will
10 be dismissed.

11 Accordingly, IT IS HEREBY ORDERED that:

12 1. The court’s August 17, 2017 order granting plaintiff leave to file a motion to proceed
13 in forma pauperis is vacated.

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: September 1, 2017



17 CAROLYN K. DELANEY
18 UNITED STATES MAGISTRATE JUDGE

19
20
21 1
22 bont1685.3ks

23
24
25
26 ² See 2:12-cv-0771 KJN P; 2:12-cv-2406 EFB P; 2:12-cv-3053 JAM EFM P (dismissed because
27 the pleadings demonstrated plaintiff failed to exhaust administrative remedies prior to filing suit
28 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.