1

2   IN THE UNITED STATES DISTRICT COURT

3   FOR THE NORTHERN DISTRICT OF CALIFORNIA

4

5   MARVELLOUS AMIR WARRIOR GREENE,   No. C 11-06287 SBA (PR)

6   Plaintiff,   **ORDER TO SHOW CAUSE**

7   v.

8   PELICAN BAY STATE PRISON R&R LINE
     STAFF, et al.,
9
               Defendants.
10   _____/

11

12   Plaintiff, Marvellous Amir Warrior Greene, a.k.a. Marcellus Alexander Greene, a state

     prisoner and frequent litigant in federal court, has filed a pro se civil rights complaint pursuant to 42
13
     U.S.C. § 1983. He also seeks to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 (docket no.
14
     5).
15
           The Prison Litigation Reform Act of 1995 (PLRA) was enacted, and became effective, on
16
     April 26, 1996. It provides that a prisoner may not bring a civil action in forma pauperis under 28
17
     U.S.C. § 1915 "if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in
18
     any facility, brought an action or appeal in a court of the United States that was dismissed on the
19
     grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted,
20
     unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).
21
           For purposes of a dismissal that may be counted under § 1915(g), the phrase "fails to state a
22
     claim on which relief may be granted" parallels the language of Federal Rule of Civil Procedure
23
     12(b)(6) and carries the same interpretation, the word "frivolous" refers to a case that is "of little
24
     weight or importance: having no basis in law or fact," and the word "malicious" refers to a case
25
     "filed with the 'intention or desire to harm another.'" Andrews v. King, 398 F.3d 1113, 1121 (9th
26
     Cir. 2005) (citation omitted). Only cases within one of these three categories can be counted as
27
     strikes for § 1915(g) purposes. See id. Dismissal of an action under § 1915(g) should only occur
28
     when, "after careful evaluation of the order dismissing an [earlier] action, and other relevant

1   information, the district court determines that the action was dismissed because it was frivolous,

2   malicious or failed to state a claim." Id.

3   Andrews requires that the prisoner be given notice of the potential applicability of § 1915(g),

4   by either the district court or the defendants, but also requires the prisoner to bear the ultimate

5   burden of persuasion that § 1915(g) does not bar pauper status for him. Id. Andrews implicitly

6   allows the Court to raise the § 1915(g) problem sua sponte, but requires the Court to notify the

7   prisoner of the earlier dismissals it considers to support a § 1915(g) dismissal and allow the prisoner

8   an opportunity to be heard on the matter before dismissing the action. See id. at 1120. A dismissal

9   under § 1915(g) means that a prisoner cannot proceed with his action as a pauper under § 1915(g),

10 but he still may pursue his claims if he pays the full filing fee at the outset of the action.

11 A review of the dismissal orders in Plaintiff's prior prisoner actions in federal court reveals

12 that Plaintiff has had three or more such cases dismissed on the ground that they were frivolous,

13 malicious, or failed to state a claim upon which relief may be granted. Plaintiff is now given notice

14 that the Court believes the following dismissals may be counted as dismissals for purposes of

15 § 1915(g): Greene v. State of California, No. CIV S-02-2398 FCD KJM P (E.D. Cal. July 11, 2003)

16 (civil rights action dismissed as frivolous); Greene v. Reyes, et al., No. CIV S-00-0196 LKK DAD P

17 (E.D. Cal. June 6, 2000) (civil rights action dismissed for failure to state a claim upon which relief

18 may be granted); Greene v. Pontarolo, et al., No. CIV S-04-2383 FCD DAD P (E.D. Cal. Jan. 23,

19 2006) (same); and Greene v. Jones, et al., No. C 08-00677 CRB (PR) (E.D. Cal. Feb. 12, 2009)

20 (same). Plaintiff therefore may proceed in forma pauperis only if he is seeking relief from a danger

21 of serious physical injury which is "imminent" at the time of filing. See Abdul-Akbar v. McKelvie,

22 239 F.3d 307, 312 (3d Cir. 2001) (en banc); Medberry v. Butler, 185 F.3d 1189, 1192-93 (11th Cir.

23 1999); Ashley v. Dilworth, 147 F.3d 715, 717 (8th Cir. 1998); Banos v. O'Guin, 144 F.3d 883, 885

24 (5th Cir. 1998). He is not.

25 In light of these dismissals, and because Plaintiff does not appear to be under imminent

26 danger of serious physical injury, he is ORDERED TO SHOW CAUSE in writing no later than

27 **twenty-eight (28) days** from the date of this Order why in forma pauperis should not be denied and

28 this action should not be dismissed pursuant to 28 U.S.C. § 1915(g). If Plaintiff is so inclined, he

may avoid dismissal by paying the $350.00 filing fee. In any event, the Court will continue to review under § 1915(g) all future actions filed by Plaintiff while he is incarcerated in which he seeks in forma pauperis status.

Failure to either file a timely response or to pay the full filing fee will result in the dismissal of this action without further notice to Plaintiff.

IT IS SO ORDERED.

DATED: 7/8/12

_____
SAUNDRA BROWN ARMSTRONG
United States District Judge

1 UNITED STATES DISTRICT COURT

2 FOR THE

3 NORTHERN DISTRICT OF CALIFORNIA

4

5

6 MARVELLOUS AMIR WARRIOR GREENE,   Case Number: CV11-06287 SBA

7   Plaintiff,   **CERTIFICATE OF SERVICE**

8   v.

9 PELICAN BAY STATE PRISON et al,

10   Defendant.
                          /

11

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
Court, Northern District of California.

13 That on July 10, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
15 located in the Clerk's office.

16

17
Marvellous Amir Warrior Greene K29392
18 Corcoran State Prison
P.O. Box 3481
19 Corcoran, CA 93212

20 Dated: July 10, 2012
                              Richard W. Wieking, Clerk
21   By: Lisa Clark, Deputy Clerk

22

23

24

25

26

27

28

G:\PRO-SE\SBA\CR.11\Greene.6287.OSC1915(g).wpd   4