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## UNITED STATES DISTRICT COURT

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## DISTRICT OF NEVADA

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ARTURO T. OCHOA,

Case No. 3:14-cv-00136-MMD-WGC

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Plaintiff,

SCREENING ORDER

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v.

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A. SUNDAY, *et al.*,

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Defendants.

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14 **I. DISCUSSION**

15 Plaintiff is a prisoner proceeding *pro se*. Plaintiff has submitted a civil rights  
16 complaint pursuant to 42 U.S.C. § 1983 and a motion to file a complaint without filing an  
17 application to proceed *in forma pauperis*. (Dkt. no. 1-1, 1-2.) On at least three (3)  
18 occasions, the Court has dismissed civil actions commenced by Plaintiff while in  
19 detention as frivolous or for failure to state a claim upon which any relief may be  
20 granted.<sup>1</sup>

21 Pursuant to 28 U.S.C. § 1915(g), "if [a] prisoner has, on 3 or more prior  
22 occasions, while incarcerated or detained in any facility, brought an action or appeal in a  
23 court of the United States that was dismissed on the grounds that it is frivolous,  
24 malicious, or fails to state a claim upon which relief may be granted," he may not

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26 <sup>1</sup>See *Ochoa v. Cook et al.*, 3:02-cv-450-LRH-VPC; *Ochoa v. Willis et al.*, 3:02-cv-  
27 545-ECR-VPC (both dismissed for failure to state a claim upon which relief may be  
28 granted); *Ochoa v. Putter et al.*, 3:10-cv-364-HDM-RAM (dismissed as delusional and  
factually frivolous). The Court takes judicial notice of its prior records in the above  
matters.

1 proceed *in forma pauperis* and, instead, must pay the full \$400.00 filing fee in advance  
2 unless he is "under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

3 In his complaint, Plaintiff appears to allege his dissatisfaction with the prison  
4 food. (See generally dkt. no. 1-1.) The Court finds that these allegations fail to plausibly  
5 allege that Plaintiff is in imminent danger of serious physical injury. See *Andrews v.*  
6 *Cervantes*, 493 F.3d 1047, 1055 (9th Cir. 2007) (holding that the exception to § 1915(g)  
7 applies if the complaint makes a plausible allegation that the prisoner faced imminent  
8 danger of serious physical injury at the time of filing). To the extent that Plaintiff is  
9 alleging that prison officials are poisoning his food, the Court notes that Plaintiff has filed  
10 several complaints in the past making those same allegations and that the Court finds  
11 that such allegations are delusional and factually frivolous. As such, Plaintiff must pre-  
12 pay the \$400.00 filing fee in full.

## 13 II. CONCLUSION


14 For the foregoing reasons, it is ordered that Plaintiff's motion to file a complaint  
15 without filing an application to proceed *in forma pauperis* (dkt. no. 1-2) is denied.

16 It is further ordered that this action will be dismissed without prejudice unless  
17 Plaintiff pays the \$400.00 filing fee in full within thirty (30) days of entry of this order.

18 It is further ordered that the Clerk of the Court shall send Plaintiff two (2) copies  
19 of this order. Plaintiff shall make the necessary arrangements to have one (1) copy of  
20 this order attached to the check paying the filing fee.

21 It is further ordered that the Clerk of the Court shall retain the complaint (dkt. no.  
22 1-1).

23 DATED THIS 26<sup>th</sup> day of March 2014.

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26 MIRANDA M. DU  
27 UNITED STATES DISTRICT JUDGE  
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