

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JONATHAN LEE RICHES,

Plaintiff,

v.

No. CIV-07-0843 BB/RHS

DON IMUS,

Defendant.

MEMORANDUM OPINION AND ORDER

This matter is before the Court, *sua sponte* under 28 U.S.C. § 1915(a), (g), to review Plaintiff's application to proceed without prepayment of fees ("IFP") (Doc. 2). Plaintiff is incarcerated and appears pro se. The required filing fee for Plaintiff's complaint is \$350.00. The IFP application will be denied, and Plaintiff will be required to pay the full amount of the filing fee.

Plaintiff has filed numerous federal lawsuits. *See, e.g., Riches v. Vick*, No. 1:07-CV-1858-WBH, slip ord. at 1 (N.D. Ga. Aug. 16, 2007). According to the referenced order in *Riches v. Vick*, many of these actions were filed while Plaintiff was incarcerated and at least three have been dismissed as frivolous or for failure to state a claim. *See Riches v. Vick*, No. 1:07-CV-1858-WBH, slip ord. at 2. These recently dismissed actions are *Riches v. Guantanamo Bay*, No. 2:07-CV-13041-VAR, slip ord. (E.D. Mich. Aug. 8, 2007); *Riches v. Bureau of Prisons*, No. 6:06-CV-00194-MBS, slip ord. (D.S.C. Mar. 17, 2006); *Riches v. Doe*, No. 1:-07-CV-20042, slip ord. (S.D. Fla. Jan. 24, 2007). "We take judicial notice that [Plaintiff] has had three actions or appeals in courts of the United States dismissed as frivolous or malicious." *Green v. Nottingham*, 90 F.3d 415, 418 (10th Cir. 1996) (citing *St. Louis Baptist Temple, Inc. v. F.D.I.C.*, 605 F.2d 1169, 1172 (10th Cir.1979)).

Certain provisions of 28 U.S.C. § 1915 prohibit a prisoner from proceeding in forma pauperis if three or more previous complaints by the prisoner have been dismissed as frivolous or for failure to state a claim. The pertinent subsection reads:

In no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action . . . that was dismissed on the grounds that it is frivolous . . . or fails to state a claim . . . , unless the prisoner is under imminent danger of serious physical injury.

§ 1915(g). Plaintiff's complaint has been preceded by the requisite number of dismissals and does not allege imminent danger of serious physical injury. Under the factors specified in § 1915(g), the application for leave to proceed pursuant to § 1915 must be denied and the filing fee paid. *See Pigg v. FBI*, 106 F.3d 1497 (10th Cir. 1997). The Court will not review the merits of the complaint or issue summons until the filing fee is paid; failure to timely submit the required filing fee may result in dismissal of this action without prejudice without further notice.

IT IS THEREFORE ORDERED that Plaintiff's application to proceed without prepayment of fees (Doc. #2), filed September 17, 2007, is DENIED;

IT IS FURTHER ORDERED that, within fifteen (15) days from entry of this order, Plaintiff shall submit the required filing fee of \$350.00.


UNITED STATES DISTRICT JUDGE