

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

STEVEN RAMON TUGGLE,
Plaintiff,
vs.
E. NORIEGA, et al.,
Defendants.

1:13-cv-00506-LJO-GSA-PC

ORDER DISMISSING ACTION UNDER
28 U.S.C. § 1915(g), WITHOUT
PREJUDICE TO REFILE WITH
SUBMISSION OF \$350.00 FILING FEE
IN FULL
(Doc. 1.)

ORDER FOR CLERK TO CLOSE CASE

Steven Ramon Tuggle ("Plaintiff") is a state prisoner proceeding pro se with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on April 8, 2013. (Doc. 1.) Plaintiff has not paid the filing fee or submitted an application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

28 U.S.C. § 1915 governs proceedings in forma pauperis. Section 1915(g) provides that "[i]n 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 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." A review of the actions filed by Plaintiff reveals that Plaintiff is subject to 28 U.S.C. § 1915(g) and is precluded from proceeding in forma pauperis

1 unless Plaintiff was, at the time the complaint was filed, under imminent danger of serious
2 physical injury.¹

3 The Court has reviewed Plaintiff's Complaint and finds that Plaintiff does not meet the
4 imminent danger exception.² Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007).
5 Plaintiff alleges in the Complaint that someone forged documents in Plaintiff's name refusing
6 x-rays and physical therapy, and he waited eleven weeks for x-rays.³ Plaintiff may not proceed
7 in forma pauperis in this action, and must submit the appropriate filing fee in order to proceed
8 with this action. Therefore, this action shall be dismissed, without prejudice to refile with the
9 submission of the \$350.00 filing fee in full.

10 Based on the foregoing, it is HEREBY ORDERED that:

- 11 1. Pursuant to 28 U.S.C. § 1915(g), Plaintiff is precluded from proceeding in forma
12 pauperis in this action;
 - 13 2. This action is DISMISSED, without prejudice to refile with the submission of
14 the \$350.00 filing fee in full; and
 - 15 3. The Clerk is directed to CLOSE this case.
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19 IT IS SO ORDERED.

20 Dated: April 10, 2013

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE

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23 ¹Among the dismissals suffered by Plaintiff that count as strikes under § 1915(g) are case numbers 3:06-
24 cv-05830-MHP (N.D.Cal.) Tuggle v. Mailroom Supervisor, et al. (dismissed on 03/29/2007 for failure to state a
25 claim); 1:09-cv-01562-AWI-SMS-PC (E.D. Cal.) Tuggle v. Cano, et al. (dismissed on 07/12/2010 for failure to
state a claim); and 1:10-cv-01420-LJO-BAM-PC (E.D. Cal.) Tuggle v. Olsen, et al. (dismissed on 03/16/2012 for
failure to state a claim).

26 ²The Court expresses no opinion on the merits of Plaintiff's claims.

27 ³The Complaint is devoid of any showing that Plaintiff was under imminent danger of serious physical
28 injury at the time he filed the Complaint. Id.