

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

SILEONI,

Plaintiff,

v.

JPAY and JPAY DIRECTOR,

Defendants.

Case No. 1:22-cv-00079-BLW

**INITIAL REVIEW ORDER
BY SCREENING JUDGE**

The Complaint of Plaintiff Maximiliano Sileoni was conditionally filed by the Clerk of Court due to his status as a prisoner and pauper. Dkts. . A “conditional filing” means that Plaintiff must obtain authorization from the Court to proceed.

Plaintiff asserts that he bought two electronic tablets from the prison’s authorized electronics provider, J-Pay. Neither tablet worked. He asked for a replacement within the one-year warranty, but he was not provided with a replacement. Now that the warranty period is over, J-Pay “is forcing” him to buy a third tablet. Plaintiff asserts that he was using the tablets to access the courts and to access the prison legal resource center legal materials. He asserts that his rights under the First, Eighth, Eleventh, and Fourteenth Amendments have been violated, including his right to access the courts. He asserts that he lost all of the data, music, applications, photos, and emails stored on the nonfunctioning devices. He seeks damages of one thousand to five thousand dollars.

REVIEW OF COMPLAINT

To address the growing trend of frivolous civil rights actions filed by prison inmates, the Prison Litigation Reform Act of 1995 (PLRA), Pub. L. No. 104-134, 110 Stat. 1321 (1996), introduced a “three strikes” provision, which precludes a prisoner from filing lawsuits or appeals in forma pauperis if he has previously filed three other actions in federal court that were dismissed on the grounds of frivolousness, maliciousness, or failure to state a claim upon which relief can be granted. *See* 28 U.S.C. § 1915(g).

The only exception is that a prisoner with three strikes may be permitted to file an in forma pauperis action if he appears to be “under imminent danger of serious physical injury.” *Id.* If he is not in such danger, then he must pay the \$402 filing fee at the time of filing.

Plaintiff’s case history shows that, on June 3, 2021, he had accrued three strikes. That date is prior to the date he filed the Complaint in this action, February 18, 2022 (mailbox rule), he brought three or more civil actions that were dismissed for failure to state a claim or frivolousness. As a result, he is subject to the three strikes rule under 28 U.S.C. § 1915(g).

Plaintiff’s prior cases that fit within the § 1915(g) prohibition are as follows:

- Case No. 20-cv-00500-DCN, *Sileoni v. State of Idaho*, was dismissed as frivolous on December 7, 2020. Dkt. 7.
- The appeal from dismissal of Case No. 20-cv-00500-DCN was also determined to be frivolous on October 14, 2021. Dkt. 15.
- Case No. 20-cv-00508-BLW, *Sileoni v. IDOC Staff*, was dismissed as frivolous on January 1, 2021. Dkt. 15.

- Case No. 20-cv-00501-BLW, *Sileoni v. ISCI Paralegal*, was dismissed for failure to state a claim on April 20, 2021. Dkt. 9.
- Case No. 20-cv-00502-DCN, *Sileoni v. Thomson*, was dismissed for failure to state a claim on June 3, 2021. Dkt. 18.
- Case No. 20-cv-00557-DCN, *Sileoni v. Idaho Parole Board*, was dismissed for failure to state a claim on September 1, 2021. Dkt. 14.
- Case No. 21-cv-00006-BLW, *Sileoni v. Shelby*, was dismissed for failure to state a claim on November 5, 2021. Dkt. 12.

Plaintiff's allegations about his electronic tablet troubles do not show that he is under imminent danger of serious physical harm. Therefore, he must pay the filing fee in full in advance if he desires to proceed.

ORDER

IT IS ORDERED:

1. The Order granting in Forma Pauperis Status and Requiring Withdrawal of Filing Fee from Inmate Account (Dkt. 5) is VACATED. The Clerk of Court shall send a copy of this Order to Josh Tewalt, Director, as noted on that Order.
2. The Clerk of Court shall refund any amount collected from Plaintiff on this case to Plaintiff.
3. Plaintiff's in Forma Pauperis Application (Dkt. 1) is DENIED without prejudice.
4. Plaintiff must pay the \$402 filing fee within 30 days, or his case will be dismissed without prejudice without further notice.



DATED: November 8, 2022

B. Lynn Winmill

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U.S. District Court Judge