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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GARY CASTERLOW-BEY,
Plaintiff,

v.

BARNES AND NOBLES,
Defendant.

CASE NO. 3:17-cv-05871-RJB

ORDER DISMISSING CASE AND
COUNTING DISMISSAL AS A
STRIKE UNDER 28 U.S.C. §
1915(G)

This matter comes before the Court on the November 1, 2017 order that the Plaintiff, if he wished to proceed with this case, pay the full amount of the \$400.00 filing fee by November 17, 2017. Dkt. 4. The Court has considered the record and is fully advised.

The facts and procedural history are in the November 1, 2017 order denying Plaintiff's application for *in forma pauperis* ("IFP") and are adopted here. Dkt. 4. Plaintiff, a pro se prisoner, has filed several repetitive cases against the publisher and several other entities he alleged were improperly selling his books. *Id.* Further, since June of 2017 he has filed fourteen more cases in this district. *Id.* He moved for IFP in each case. *Id.*

On November 1, 2017, Plaintiff's motion for IFP in this case was denied because the

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1 proposed complaint was repetitive and unnecessary. Dkt. 4. This case is a repetition of two
2 cases he filed less than two weeks before against the same Defendant (and others) alleging the
3 same or similar facts and claims. *Casterlow-Bey v. Barnes and Nobles*, U.S. District Court for
4 the Western District of Washington case number 17-5834 and *Casterlow-Bey v. Amazon.com, et*
5 *al.*, Western District of Washington case number 17-5833 RJB. Plaintiff was informed that if he
6 wishes to proceed with this case, he should pay the full amount of the \$400.00 filing fee by
7 November 17, 2017. *Id.* He was warned that failure to do so may result in dismissal of this case.
8 *Id.*

9 **Dismissal.** Plaintiff has failed to pay the filing fee. Accordingly, this case should be
10 dismissed.

11 **Strike.** Further, the dismissal should count as a strike for the purposes of 28 U.S.C. §
12 1915 (g). Section 1915 (g) provides:

13 In no event shall a prisoner bring a civil action or appeal a judgment in a civil
14 action or proceeding under this section if the prisoner has, on 3 or more prior
15 occasions, while incarcerated or detained in any facility, brought an action or
16 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.

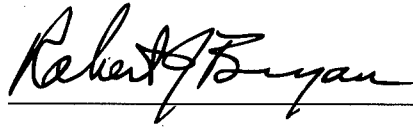
17 “A case is malicious if it was filed with the ‘intention or desire to harm another.’” *Andrews v.*
18 *King*, 398 F.3d 1113, 1121 (9th Cir. 2005). Considering that three cases were filed against
19 Defendant within a few weeks, asserting the same or similar claims, the Court can only conclude
20 that this case was filed with the “intention or desire to harm” and harass Defendant. The
21 dismissal here should count as a strike.

ORDER

- This case **IS DISMISSED** for failure to pay the filing fee; and
- This dismissal **COUNTS AS A STRIKE** for purposes of 28 U.S.C. § 1915 (g).

The Clerk is further directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Dated this 21st day of November, 2017.



ROBERT J. BRYAN
United States District Judge

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GARY CASTERLOW-BEY,

Plaintiff,

v.

BARNES AND NOBLES,

Defendant.

CASE NO. 3:17-cv-05871-RJB

ORDER DENYING
APPLICATION TO PROCEED IN
FORMA PAUPERIS

This matter comes before the Court on Plaintiff's Application for Leave to Proceed in Forma Pauperis ("IFP"). Dkt. 1. The Court has considered the application and the remainder of the record herein.

On October 13, 2017, Plaintiff, a *pro se* prisoner, filed a case against "Barnes and Nobles," moved for IFP, and provided a proposed complaint asserting that Defendant "Barnes and Nobles" committed copyright infringement, breached a contract, and committed fraud when it sold Plaintiff's books. *Casterlow-Bey v. Barnes and Nobles*, U.S. District Court for the Western District of Washington case number 17-5834, Dkts. 1 and 1-1. Plaintiff also makes reference to the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962,

1 (“RICO”). *Casterlow-Bey v. Barnes and Nobles*, U.S. District Court for the Western District of
2 Washington case number 17-5834, Dkt. 1. Plaintiff seeks several million dollars in damages.
3 *Casterlow-Bey v. Barnes and Nobles*, U.S. District Court for the Western District of Washington
4 case number 17-5834, Dkt. 1. His application for IFP was granted.

5 That same day, October 13, 2017, Plaintiff filed another case against “Barnes and
6 Nobles,” Amazon, Google, Ebay, and Trafford, moved for IFP and asserted claims under RICO
7 regarding the sale and distribution of his books. *Casterlow-Bey v. Amazon.com, et al.*, Western
8 District of Washington case number 17-5833 RJB, Dkts. 1 and 1-1. His application for IFP was
9 granted.

10 On October 25, 2017, Plaintiff filed this case against “Barnes and Nobles,” moved for
11 IFP, and provided a proposed complaint again asserting that Defendant “Barnes and Nobles”
12 committed copyright infringement, breached a contract, and committed fraud when it sold
13 Plaintiff’s books. Dkts. 1 and 1-1. Plaintiff also again makes reference to RICO violations.
14 Plaintiff seeks injunctive relief and several million dollars in damages. Dkt. 1.

15 In addition to these three cases (for a total of six), Plaintiff filed similar actions regarding
16 the sale and distribution of his books against:

17 (1) Trafford Publishing Company, *Casterlow-Bey v. Trafford Publishing Company*,
18 Western District of Washington case number 17-5459 RJB;

19 (2) Google.com and Amazon.com, *Casterlow-Bey v. Google.com, et al.*, Western District
20 of Washington case number 17-5686 RJB,

21 (3) Ebay.com, *Casterlow-Bey v. Ebay.com*, Western District of Washington case number
22 17-5687 RJB.

23 Plaintiff moved for IFP in each of those cases as well. *Id.*

24

1 Moreover since June 14, 2017, Plaintiff has filed an additional 14 cases in this Court.

2 (1) *Casterlow-Bey v. Tacoma News Tribune*, U.S. District Court for the Western District
3 of Washington case number 17-5560 BHS;

4 (2) *Casterlow-Bey v. Keisler*, U.S. District Court for the Western District of Washington
5 case number 17-5561 BHS-TLF;

6 (3) *Casterlow-Bey v. Pierce County Sheriff*, U.S. District Court for the Western District
7 of Washington case number 17-5587 BHS-TLF;

8 (4) *Casterlow-Bey v. Caruso*, U.S. District Court for the Western District of Washington
9 case number 17-5605 RJB-JRC;

10 (5) *Casterlow-Bey v. Google Internet Search Engine Company*, U.S. District Court for
11 the Western District of Washington case number 17-5621 RBL-JRC;

12 (6) *Casterlow-Bey v. Jarmon*, U.S. District Court for the Western District of Washington
13 case number 17-5647 BHS-TLF;

14 (7) *Casterlow-Bey v. Tacoma News Tribune*, U.S. District Court for the Western District
15 of Washington case number 17-5649 BHS;

16 (8) *Casterlow-Bey v. City of Tacoma*, U.S. District Court for the Western District of
17 Washington case number 17-5676 BHS-DWC;

18 (9) *Casterlow-Bey v. United States of America*, U.S. District Court for the Western
19 District of Washington case number 17-5696 BHS-TLF;

20 (10) *Casterlow-Bey v. United States of America*, U.S. District Court for the Western
21 District of Washington case number 17-5710 BHS-TLF;

22 (11) *Casterlow-Bey v. National Park Service*, U.S. District Court for the Western District
23 of Washington case number 17-5711 RBL-TLF;

1 (12) *Casterlow-Bey v. Pierce County Sheriff*, U.S. District Court for the Western District
2 of Washington case number 17-5723 BHS-TLF

3 (13) *Casterlow-Bey v. Google.com, Inc.*, U.S. District Court for the Western District of
4 Washington case number 17-5764 RBL-TLF;

5 (14) *Casterlow-Bey v. Garcia*, U.S. District Court for the Western District of Washington
6 case number 17-5856 BHS-TLF.

7 Plaintiff filed IFP applications in each case. *Id.*

8 **IFP APPLICATION.** As he has in each of his prior IFP applications, Plaintiff states
9 that he is not employed, is totally disabled, and receives Social Security Disability Income of
10 \$738.00/month. Dkt. 1. He reports he has expenses of \$625. *Id.* Plaintiff indicates that he has
11 no assets or dependents. *Id.* He is incarcerated. *Id.*

12 **STANDARD ON IFP APPLICATION.** The district court may permit indigent litigants
13 to proceed in forma pauperis upon completion of a proper affidavit of indigency. *See* 28 U.S.C. §
14 1915 (a). However, the court has broad discretion in denying an application to proceed in forma
15 pauperis. *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963), *cert. denied* 375 U.S. 845 (1963).

16 **IFP SHOULD BE DENIED.** Plaintiff's motion for IFP should be denied as repetitive
17 and unnecessary. This case is a repetition of two cases he filed less than two weeks ago against
18 the same Defendant alleging the same actions and claims. Under § 1915 (b)(1), as a prisoner,
19 each time Plaintiff files a case, he has "to pay the full amount of the filing fee," albeit over time
20 even if he is granted IFP status.

21 Further, the Court is becoming concerned with the repetitive, abusive and sometimes
22 frivolous nature of Plaintiff's filings with this Court. Rather than moving to amend a complaint
23 in a case already filed, he simply files a new case (and moves for IFP), and maybe adds a claim
24

1 or party. Moreover, his attempts at subpoenaing non-parties in a case to gain information (even
2 though those entities are parties in other cases regarding the sale and distribution of his books),
3 demonstrates an attempt to avoid following the Federal Rules of Civil Procedure and Western
4 District of Washington Rules of Civil Procedure regarding discovery. *Casterlow-Bey v. Trafford*
5 *Publishing Company*, Western District of Washington case number 17-5459 RJB, Dkt. 44. His
6 repetitive and sometimes frivolous filings are burdensome on the Court's resources. "Every
7 paper filed with the Clerk of this Court, no matter how repetitious or frivolous, requires some
8 portion of the institution's limited resources. A part of the Court's responsibility is to see that
9 these resources are allocated in a way that promotes the interests of justice." *Martin v. D.C.*
10 *Court of Appeals*, 506 U.S. 1, 3 (1992). Plaintiff is cautioned that he should be only filing
11 necessary pleadings.

12 If Plaintiff wishes to proceed with this case, he should pay the full amount of the \$400.00
13 filing fee by November 17, 2017. Failure to do so may result in dismissal of this case.


14 **ORDER**

- 15 • Plaintiff's Motion for Leave to Proceed in Forma Pauperis (Dkt. 1) **IS DENIED;**
16 and
17 • If Plaintiff wishes to proceed with this case, he should pay the full amount of the
18 \$400.00 filing fee by **November 17, 2017**. Failure to do so may result in
19 dismissal of this case.

20 The Clerk is further directed to send uncertified copies of this Order to all counsel of
21 record and to any party appearing *pro se* at said party's last known address.

22 Dated this 1 day of November, 2017.
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ROBERT J. BRYAN
United States District Judge