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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DANNY JAMES COHEA, et al.,  
Plaintiffs,  
v.  
A. PACILLAS, et al.,  
Defendants.

**CASE No. 1:16-cv-0949-AWI-MJS (PC)**  
**ORDER REVOKING IN FORMA**  
**PAUPERIS STATUS AND DIRECTING**  
**PLAINTIFF TO PAY FILING FEE IN FULL**  
**(ECF NO. 9)**  
**FOURTEEN DAY DEADLINE**

This civil rights action is brought by three Plaintiffs—Danny James Cohea, Raymond George Glass, and R.J. Dupree—pursuant to 42 U.S.C. §1983, though only Plaintiff Cohea has signed the complaint. See ECF No. 1 at 75; Fed. R. Civ. P. 11(a). Additionally, only Plaintiff Cohea moved to proceed in forma pauperis, and his motion was granted on September 8, 2016. (See ECF Nos. 6, 9.) The Court has subsequently determined, for the reasons discussed below, that Plaintiff Cohea is not entitled to in forma pauperis status and therefore must pay the filing fee before this case may proceed further.

Plaintiff Cohea is subject to 28 U.S.C. 1915(g), which 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

1 frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the  
2 prisoner is under imminent danger of serious physical injury.”

3 The Court takes judicial notice of the following cases filed by Plaintiff Cohea:  
4 Cohea v. Bray, 2:97-cv-0366-FCD-DAD (E.D. Cal.) (dismissed on March 24, 1998, for  
5 failure to state a claim); Cohea v. Access Secure Pak, 3:09-cv-0679-RCJ-RAM (D. Nev.)  
6 (dismissed on August 3, 2010, for failure to state a claim); and Cohea v. Patzloff, 3:10-  
7 cv-0437-IEG-RBB (S.D. Cal.) (dismissed on March 2, 2011, for failure to state a claim  
8 and for failure to comply with the Court’s orders). Plaintiff is thus a “three-striker” within  
9 the meaning of Section 1915(g), and the only question remaining is whether Plaintiff  
10 Cohea is under imminent danger of serious physical injury.

11 The imminent danger exception applies if “the complaint makes a plausible  
12 allegation that the prisoner faced ‘imminent danger of serious physical injury’ at the time  
13 of filing.” Andrews v. Cervantes, 493 F.3d 1047, 1055 (9th Cir. 2007). The Ninth Circuit  
14 interprets “imminent danger” to mean “ongoing danger,” meaning the prisoner must  
15 allege that prison officials have continued with a practice that has injured him or others  
16 similarly situated in the past. Id. at 1056-57.

17 A prisoner seeking to invoke the imminent danger exception in § 1915(g) must  
18 make specific, credible allegations of imminent danger of serious physical harm. McNeil  
19 v. U.S., 2006 WL 581081 (W.D. Wash. Mar. 8, 2006) (citing Kinnell v. Graves, 265 F.3d  
20 1125, 1127-28 (10th Cir. 2001), and White v. Colorado, 157 F.3d 1226, 1232 (10th Cir.  
21 1998)). Vague, speculative, and non-specific allegations are insufficient. See Pauline v.  
22 Mishner, 2009 WL 1505672 (D. Haw. May 28, 2009) (plaintiff’s vague and conclusory  
23 allegations of possible future harm to himself or others are insufficient to trigger the  
24 “imminent danger of serious physical injury” exception to dismissal under § 1915(g));  
25 Cooper v. Bush, 2006 WL 2054090 (M.D. Fla. July 21, 2006) (plaintiff’s allegations that  
26 he will commit suicide, or that he has already attempted suicide and will do so again, are  
27 insufficient to show imminent danger); Luedtke v. Bertrand, 32 F.Supp.2d 1074, 1077  
28 (E.D. Wis. 1999) (“[p]laintiff’s vague allegation of a conspiracy among the defendants to

1 beat, assault, injure, harass and retaliate against him are not enough. These allegations  
2 are insufficient and lack the specificity necessary to show an imminent threat of serious  
3 physical injury.”).

4 The complaint identifies 23 Defendants and asserts numerous violations of  
5 Plaintiff Cohea’s First and Fourteenth Amendment rights. He alleges that the Defendants  
6 issued false rule violation reports against him in retaliation for having exercised his First  
7 Amendment right to file inmate grievances and petition the courts. Those rule violation  
8 reports were then used by various Defendants, who knew them to be false, to justify a  
9 series of disciplinary housing transfers into the Administrative Housing Unit and  
10 eventually the Security Housing Unit. The transfers were retaliation against Plaintiff for  
11 engaging in First Amendment protected activity and were conducted in a manner that  
12 deprived Plaintiff of procedural due process rights. Defendants also conducted improper  
13 cell searches and colluded to violate Plaintiff’s rights.

14 Plaintiff’s complaint does not allege a basis for an imminent danger exception.  
15 Plaintiff alleges that the Defendants have affixed “R” (rape) and “IEX” (indecent  
16 exposure) suffixes to his inmate records without administrative hearings. Plaintiff  
17 maintains that the disciplinary reports supporting these designations are falsified and  
18 that the Defendants are aware that either label can spur violence at the hands of other  
19 prisoners. Plaintiff has been forced to take a cell-mate. A fellow inmate was murdered  
20 in-cell under similar conditions and there have been multiple physical assaults.

21 Plaintiff’s abstract fear of assault does not constitute an imminent danger.  
22 Imminent danger of serious physical injury must be a real, present threat, not merely  
23 speculative or hypothetical. Plaintiff’s allegations do not identify a specific threat; instead  
24 he argues that he is at risk of harm from any potential cell-mate. “Plaintiff’s generalized  
25 apprehension that he might be a target of attack does not constitute an imminent danger  
26 at the time of filing the Complaint.” Ellington v. Clark, 2012 WL 466730, \*2 (E.D. Cal.  
27 Feb. 13, 2012) (“child molester” label causing a generalized fear of attack from inmates  
28 and prison staff did not satisfy the imminent danger requirement).

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Accordingly, IT IS HEREBY ORDERED:

1. Plaintiff's in forma pauperis status (ECF No. 9) is REVOKED;
2. Plaintiff shall pay the \$400 filing fee within fourteen (14) days of this Order;  
and
3. Failure to pay the filing fee or otherwise respond to this Order will result in a recommendation to dismiss this action.

IT IS SO ORDERED.

Dated: October 24, 2016

*/s/ Michael J. Seng*  
UNITED STATES MAGISTRATE JUDGE