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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
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9 LAMONT SHEPARD,

10 Plaintiff,

11 v.

12 M. BORUM and J. ACEBEDO,

13 Defendants.
14

1:17-cv-00603-EPG (PC)

ORDER DENYING MOTION TO
PROCEED IN FORMA PAUPERIS AND
DISMISSING CASE WITHOUT
PREJUDICE

ORDER TO CLOSE CASE

(ECF No. 5)

15 Lamont Shepard (“Plaintiff”) is a state prisoner proceeding *pro se* with this civil rights
16 action pursuant to 42 U.S.C. § 1983. Plaintiff filed the complaint commencing this action on
17 May 3, 2017.¹ (ECF No. 1). Plaintiff then filed application to proceed *in forma pauperis* on
18 June 5, 2017, which is presently pending before the Court. (ECF No. 5).

19 Title 28, United States Code, Section 1915 governs proceedings *in forma pauperis*.
20 Section 1915, provides that “[i]n no event shall a prisoner bring a civil action . . . under this
21 section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any
22 facility, brought an action or appeal in a court of the United States that was dismissed on the
23 grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be
24 granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. §
25 1915(g).
26

27 ¹ On May 12, 2017, Plaintiff consented to Magistrate Judge jurisdiction in this action pursuant to 28 U.S.C. §
28 636(c), and no other parties have made an appearance. (ECF No. 4). Therefore, pursuant to Appendix A(k)(4) of
the Local Rules of the Eastern District of California, the undersigned shall conduct any and all proceedings in the
case until such time as reassignment to a District Judge is required.

1 **I. ANALYSIS**

2 To begin, it does not appear that Plaintiff is in imminent danger. The availability of the
3 imminent danger exception “turns on the conditions a prisoner faced at the time the complaint
4 was filed, not at some earlier or later time.” Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th
5 Cir. 2007). “Imminent danger of serious physical injury must be a real, present threat, not
6 merely speculative or hypothetical.” Blackman v. Mjening, No. 116CV01421LJOGSAPC,
7 2016 WL 5815905, at *1 (E.D. Cal. Oct. 4, 2016). To meet his burden under § 1915(g),
8 Plaintiff must provide “specific fact allegations of ongoing serious physical injury, or a pattern
9 of misconduct evidencing the likelihood of imminent serious physical injury.” Martin v.
10 Shelton, 319 F.3d 1048, 1050 (8th Cir. 2003). “[V]ague and utterly conclusory assertions” of
11 harm are insufficient. White v. Colorado, 157 F.3d 1226, 1231–32 (10th Cir. 1998). The
12 “imminent danger” exception is available “for genuine emergencies,” where “time is pressing”
13 and “a threat... is real and proximate....” Lewis v. Sullivan, 279 F.3d 526, 531 (7th Cir. 2002).

14 Based on the facts alleged in the Complaint (ECF No. 1), it does not appear that
15 Plaintiff is in imminent danger. Plaintiff alleges that the defendants retaliated against him for
16 filing administrative complaints and/or lawsuits. There are no allegations that would suggest
17 Plaintiff is at risk of being seriously physically injured. Accordingly, the Court finds that
18 Plaintiff is not in imminent danger.

19 Therefore, the Court must determine whether Plaintiff “has, on 3 or more prior
20 occasions... brought an action or appeal in a court of the United States that was dismissed on
21 the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be
22 granted....” 28 U.S.C. § 1915(g). The Court takes judicial notice of the following cases:

- 23 1. Shepard v. Connolly, No. 2:11-cv-01262 (C.D.Cal. Feb. 17, 2011) (order
24 finding plaintiff’s claim as frivolous, malicious, and failing to state a claim);
- 25 2. Shepard v. Johnson, No. 1:11-cv-01726 (E.D.Cal. Aug. 7, 2012) (order
26 dismissing case with prejudice for failure to state a claim upon which relief
27 may be granted); and
- 28 3. Shepard v. Munoz, No. 1:12-cv-01470 (E.D.Cal. Oct. 8, 2013) (order
dismissing case with prejudice for failure to state a claim upon which relief

