

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARLOS HENDON,

 Plaintiff,

 v.

DAVEY,

 Defendant.

No. 1:17-cv-00661-DAD-SAB

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DENYING
APPLICATION TO PROCEED IN FORMA
PAUPERIS, AND DIRECTING PLAINTIFF
TO PAY THE \$400 FILING FEE WITHIN
THIRTY DAYS FROM THE DATE OF
SERVICE OF THIS ORDER

(Doc. Nos. 2, 4)

Plaintiff Carlos Hendon is appearing *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On May 15, 2017, the assigned magistrate judge filed a findings and recommendations, recommending that plaintiff’s application to proceed *in forma pauperis* be denied, and plaintiff be required to pay the \$400 filing fee. (Doc. No. 4.) The findings and recommendations were served on plaintiff and contained notice that objections thereto were to be filed within thirty days. (*Id.*) On May 24, 2017, and again on June 12, 2017, plaintiff filed objections to the findings and recommendations.

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a
2 *de novo* review of this case. Having carefully reviewed the entire file, including plaintiff's
3 objections, the court finds the findings and recommendations to be supported by the record and
4 by proper analysis. In his objections, plaintiff contends in conclusory fashion that he will soon be
5 transferred back to Corcoran's Security Housing Unit ("SHU"); however, plaintiff makes no
6 specific allegations supporting his claim in this regard. Plaintiff's complaint relates to alleged
7 conditions of confinement in the Corcoran SHU in 2015, and plaintiff is presently confined at
8 California State Prison, Sacramento. Any claim that plaintiff will be returned to the Corcoran
9 SHU is speculative, at best. Such speculative allegations fall short of establishing "imminent
10 danger of serious physical injury." *Andrews v. Cervantes*, 493 F.3d 1047, 1053 (9th Cir. 2007)
11 ("[T]he availability of the exception turns on the conditions a prisoner faced at the time the
12 complaint was filed, not at some earlier or later time."). Indeed, plaintiff made these same
13 allegations in *Hendon v. Davey*, 2:17-cv-00169-KJN (PC), wherein the court rejected plaintiff's
14 argument, denied *in forma pauperis* status, and dismissed his action on May 4, 2017, after
15 plaintiff had failed to pay the required filing fee.

16 Accordingly,

- 17 1. The May 15, 2017 findings and recommendations (Doc. No. 4) are adopted in full;
- 18 2. Plaintiff's application to proceed *in forma pauperis* (Doc. No. 2) is denied; and
- 19 3. Within thirty days from the date of service of this order, plaintiff shall pay the required
20 \$400 filing fee; and
- 21 4. Any failure on plaintiff's part to pay the required filing fee within the time provided
22 by this order will result in the dismissal of this action.

23 IT IS SO ORDERED.

24 Dated: July 10, 2017

25 
UNITED STATES DISTRICT JUDGE