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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DAVID W. WILSON,  
Plaintiff,

v.

CALIFORNIA STATE PRISON  
CORCORAN, et al.,  
Defendants.

**Case No. 1:18-cv-00424-MJS (PC)**

**FINDINGS AND RECOMMENDATIONS  
TO DENY MOTION TO PROCEED IN  
FORMA PAUPERIS**

**(ECF No. 2)**

**ORDER DIRECTING CLERK OF COURT  
TO ASSIGN DISTRICT JUDGE**

**FOURTEEN-DAY OBJECTIONS  
DEADLINE**

Plaintiff is a state prisoner proceeding pro se in this civil rights action filed on March 28, 2018. (ECF No. 1.) Plaintiff has not prepaid the filing fee as required by Local Rule 121(c). Accompanying his complaint was a motion to proceed in forma pauperis. (ECF No. 2.) For the reasons set forth below, the motion should be denied.

**I. Motion to Proceed In Forma Pauperis**

Plaintiff 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 frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner

1 is under imminent danger of serious physical injury.”

2 **A. Actions Dismissed for Failure to State Claim**

3 Plaintiff has brought four actions that were dismissed for failing to state a claim.  
4 See Wilson v. Tilton, No. 2:06-cv-01031-LKK-PAN (E.D. Cal. Sept. 12, 2006); Wilson v.  
5 Schwartz, No. 2:05-cv-01649-GEB-CMK (E.D. Cal. Oct. 31, 2006); Wilson v. Dovey, No.  
6 2:06-cv-01032-FCD-EFB (E.D. Cal. March 8, 2007); Wilson v. Veal, No. 2:06-cv-00067-  
7 FCD-KJM (E.D. Cal. June 4, 2007).

8 All of Plaintiff's actions noted above were dismissed before March 28, 2018,  
9 when Plaintiff filed the present action. Thus, Plaintiff is subject to 28 U.S.C. § 1915(g)  
10 and is precluded from proceeding in forma pauperis in this action unless at the time the  
11 complaint was filed, he was under imminent danger of serious physical injury.

12 **B. Imminent Danger Exception**

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

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

1 are insufficient to show imminent danger); Luedtke v. Bertrand, 32 F.Supp.2d 1074,  
2 1077 (E.D. Wis. 1999) (“[p]laintiff’s vague allegation of a conspiracy among the  
3 defendants to beat, assault, injure, harass and retaliate against him are not enough.  
4 These allegations are insufficient and lack the specificity necessary to show an  
5 imminent threat of serious physical injury.”).

6 Here, Plaintiff’s complaint fails to reflect that Plaintiff is at imminent risk of  
7 suffering “serious physical injury.”

8 Although the complaint is largely incomprehensible and its allegations difficult to  
9 decipher, it alleges the following multitude of alleged constitutional violations: Plaintiff  
10 was transferred in retaliation for engaging in a protected act, and the transfer did not  
11 ensure compliance with his rights under the Americans with Disabilities Act (“ADA”);  
12 Defendants have deprived him of certain items, such as a fan and special mattress, he  
13 considers medical necessities; he has been seen by a nurse practitioner, while being  
14 denied visits by a medical doctor; he seeks but has been denied special transport  
15 accommodations, an air mattress with an electric fan, a ban on further video doctor’s  
16 visits, the return of his toenail clippers, special accommodations on searches conducted  
17 when he is out of his cell, a special therapeutic diet, access to the library five days a  
18 week, a requirement that all kitchen personnel who handle food wear caps and aprons,  
19 and enactment of a long list of procedural and physical changes to the prison. (ECF  
20 No. 1 at 20-24.)

21 The Court can identify no allegations in the foregoing or otherwise that indicate  
22 Plaintiff is exposed to imminent physical danger from which he needs the Court’s  
23 protection.

24 **II. Conclusion**

25 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court assign a District  
26 Judge to this action to address the following recommendations.

27 Furthermore, IT IS HEREBY RECOMMENDED that Plaintiff’s motion to proceed in  
28 forma pauperis (ECF No. 2) be denied and that Plaintiff be required to submit the filing

1 fee within 14 days of an Order adopting these recommendations.

2       These Findings and Recommendations will be submitted to the United States  
3 District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. §  
4 636(b)(1). Within **fourteen (14) days** after being served with these Findings and  
5 Recommendations, the parties may file written objections with the Court. The document  
6 should be captioned “Objections to Magistrate Judge’s Findings and  
7 Recommendations.” The parties are advised that failure to file objections within the  
8 specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772  
9 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir.  
10 1991)).

11 IT IS SO ORDERED.

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13 Dated: March 31, 2018

14 /s/ Michael J. Seng  
15 UNITED STATES MAGISTRATE JUDGE  
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