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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

ALLEN HAMMLER,  
  
                    Plaintiff,  
  
          v.  
  
MR. J. BURNS, et al.,  
  
                    Defendants.

Case No. 1:20-cv-00489-SAB (PC)  
  
ORDER DIRECTING CLERK OF COURT  
TO RANDOMLY ASSIGN A DISTRICT  
JUDGE TO THIS ACTION  
  
FINDINGS AND RECOMMENDATIONS  
RECOMMENDING THAT THE ACTION  
BE DISMISSED FOR FAILURE TO PAY  
THE FILING FEE  
  
(ECF No. )

Allen Hammler (“Plaintiff”), a state prisoner, is appearing *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983.

Plaintiff filed a complaint and a motion to file a new case in this action on April 6, 2020.<sup>1</sup> Plaintiff did not pay the filing fee or submit an application to proceed in this action *in forma pauperis*.

**I.**  
**DISCUSSION**

On April 9, 2020, the Court ordered Plaintiff to show cause why he should not be

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<sup>1</sup> As stated in the Court’s April 9, 2020 order, Plaintiff’s motion stated that he is subject to a prefiling order. However, Plaintiff is subject to a prefiling order in the Southern District of California due to being found to be a vexatious litigant. See Hammler v. Alvarez, No. 3:18-cv-00326-AJB-WVG (S.D. Cal. Aug. 13, 2019). Plaintiff does not include a copy of the order in his current filing. The Court does not find a prefiling order in the Eastern District of California for Plaintiff. (ECF No. 3.)

1 required to pay the \$400.00 filing in fee because he has suffered three or more strikes under 28  
2 U.S.C. § 1915(g), and he failed to demonstrate that, at the time of filing the complaint, he was  
3 under imminent danger of serious physical injury. (ECF No. 3.) Plaintiff filed a response on  
4 April 27, 2020. (ECF No. 4.)

5 In his response, Plaintiff does not dispute that he has suffered three or more strikes under  
6 28 U.S.C. §1915(g). Rather, Plaintiff argues that he is in imminent danger of serious physical  
7 injury. Plaintiff submits that he is a mental health patient and housed in the Administrative  
8 Segregation Unit (“ASU”) at California State Prison, Corcoran. Plaintiff contends that inmates  
9 housed in the ASU for mental health issues are amenable to mental degradation and internal  
10 physical dangers. Plaintiff contends his well-being depends on being able to attend his religious  
11 services via television. However, Plaintiff has been threatened that his television will be taken  
12 away.

13 As stated in the Court’s April 9, 2020 order, the complaint filed in this action alleges that  
14 Plaintiff “is being deprived of his personal property, which includes his legal property and his  
15 television that he needs to listen to evangelistic services. He has to listen to these services three  
16 to four times a day “to keep the ‘Evil Dupi’ and ‘Bad Vides’ of the Environment from ‘vexing  
17 his spirit,’ in other terms taunting his soul.” (Compl. 5, ECF 1.) He filed a grievance that was  
18 addressed by the officer who deprived him of his property. Plaintiff received his television on  
19 October 20, 2018 and was able to attend services but then he was issued a 90 day loss of his  
20 property due to a rule violation. Plaintiff requested to see a psychologist to try to get his  
21 television back and was told that he would be seen when the psychologist was done with his  
22 current client. Plaintiff thought that correctional officer Burns would interfere with his ability to  
23 see the psychologist so told staff to inform the psychologist that he was suicidal. Officer Burns  
24 found out about it and went to talk to the psychologist. Plaintiff and Officer Burns ended up in a  
25 shouting match and Plaintiff said that he was going to sue him. Officer Burns told him that was  
26 his right and asked him if he needed a 602 to file an appeal. The psychologist came to see  
27 Plaintiff and he explained what happened. Plaintiff brings multiple claims based on the denial of  
28 his freedom to practice religion due to his television set being taken from him.” (Order at 2-3,

1 ECF No. 3.)

2 As the Court previously determined, Plaintiff’s complaint contains no allegations  
3 demonstrating that he is at imminent danger of serious physical injury. The incidents alleged in  
4 the complaint occurred in 2018 through the beginning of 2019 and involved a deprivation of  
5 property that Plaintiff contends violated his right to free exercise of religion. (*Id.* at 3.)

6 As an initial matter, the Court did not grant Plaintiff authorization to demonstrate  
7 “imminent” danger as it already determined that, *at the time he filed the complaint*, he failed to  
8 demonstrate such danger. Second, Plaintiff’s current contentions relating to his mental health  
9 condition are *not connected* to the allegations in his complaint relating to the deprivation of his  
10 television to practice his religion, particularly given that the allegations in the complaint relate to  
11 incidents that occurred in 2018 and 2019.<sup>2</sup> Indeed, in the complaint, Plaintiff seeks the following  
12 as relief:

13 Plaintiff seeks \$70,000 dollars on each of the claim(s), separately, seeks \$70,000  
14 pun[i]tive on each of the claim(s) separately, and cost of suit/action being brought and  
15 maintained - throughout litigation including closing costs and any administrative fees  
16 connected and preliminary and permanent injunction precluding punishment Plaintiff in  
17 excess of statute, and precluding denial of right to attend religious services via television  
18 unless security risk exists.

19 (Compl. at 32, ECF No. 1.)

20 Thus, Plaintiff’s potential mental health problems do not show he “faced ‘imminent  
21 danger of serious physical injury’ *at the time of filing*,” because Plaintiff presented different  
22 claims and grounds for relief. See Andrews v. Cervantes, 493 F.3d 1047, 1055 (9th Cir. 2007)  
23 (emphasis added). Third, Plaintiff’s long-standing mental health problems do not show he “faced

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24 <sup>2</sup> “[T]he complaint of a three-strikes litigant must reveal a nexus between the imminent danger it  
25 alleges and the claims it asserts, in order for the litigant to qualify for the ‘imminent danger’  
26 exception of section 1915(g). In deciding whether such a nexus exists, we will consider (1)  
27 whether the imminent danger of serious physical injury that a three-strikes litigant alleges is  
28 fairly traceable to unlawful conduct asserted in the complaint and (2) whether a favorable  
judicial outcome would redress that injury. The three-strikes litigant must meet both  
requirements in order to proceed [in forma pauperis].” Stine v. Fed. Bureau of Prisons, No. 1:13-  
cv-1883 AWI MJS, 2015 WL 5255337, at \*3 (E.D. Cal. Sept. 9, 2015) (quoting Pettus v.  
Morgenthau, 554 F.3d. 293, 298-99 (2d Cir. 2009)); see also Asemani v. Islamic Republic of  
Iran, No. 18-cv-06382-CRB (PR), 2019 WL 366492, at \*2 (N.D. Cal. Jan. 3, 2019) (same);  
Williams v. Allison, No. 3:19-cv-00087-BAS-BGS, 2019 WL 1077551, at \*2 (S.D. Cal. Mar. 7,  
2019) (same).

1 ‘imminent danger of serious physical injury’ at the time of filing,” and Plaintiff’s current claims  
2 are based on nothing more than speculation.<sup>3</sup> Accordingly, Plaintiff is not entitled to proceed in  
3 forma pauperis, and he should be ordered to pay the filing fee in full or suffer dismissal of the  
4 action.

5 **II.**

6 **ORDER AND RECOMMENDATION**

7 Based on the foregoing, it is HEREBY ORDERED that the Clerk of Court shall  
8 randomly assign a Fresno District Judge to this action.

9 Further, it is HEREBY RECOMMENDED that Plaintiff be required to pay the \$400.00  
10 filing fee for this action as he is not entitled to proceed in forma pauperis.

11 This Findings and Recommendation will be submitted to the United States District Judge  
12 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen (14)**  
13 **days** after being served with this Findings and Recommendation, Plaintiff may file written  
14 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s  
15 Findings and Recommendation.” Plaintiff is advised that failure to file objections within the  
16 specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834,  
17 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

18  
19 IT IS SO ORDERED.

20 Dated: April 29, 2020

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22 \_\_\_\_\_  
23 UNITED STATES MAGISTRATE JUDGE

23 <sup>3</sup> The availability of the imminent danger exception turns on the conditions a prisoner faced at the time the  
24 complaint was filed, not at some earlier or later time. See Andrews, 493 F.3d at 1053. “[A]ssertions of imminent  
25 danger of less obviously injurious practices may be rejected as overly speculative or fanciful.” Id. at 1057 n. 11.  
26 Imminent danger of serious physical injury must be a real, present threat, not merely speculative or hypothetical. To  
27 meet his burden under § 1915(g), an inmate must provide “specific fact allegations of ongoing serious physical  
28 injury, or a pattern of misconduct evidencing the likelihood of imminent serious physical injury.” Martin v. Shelton,  
319 F.3d 1048, 1050 (8th Cir. 2003). “Vague and utterly conclusory assertions” of harm are insufficient. White v.  
Colorado, 157 F.3d 1226, 1231-32 (10th Cir. 1998). That is, the “imminent danger” exception is available “for  
genuine emergencies,” where “time is pressing” and “a threat...is real and proximate.” Lewis v. Sullivan, 279 F.3d  
526, 531 (7th Cir. 2002).

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