

1 The Court has reviewed Plaintiff's complaint and finds that his allegations do not satisfy
2 the imminent danger exception to section 1915(g).² Andrews v. Cervantes, 493 F.3d 1047,
3 1053–55 (9th Cir. 2007). In his complaint, Plaintiff alleges that he is being denied medical
4 treatment because he has requested to be added to the medication Surboxin based on his history
5 of heroin abusive behavior, but has been waiting for over 6 months for a doctor's appointment.
6 (ECF No. 1, p. 3.) Plaintiff alleges that because he is being denied medical treatment his life is in
7 jeopardy of overdosing every day. (Id. at 5.)

8 The Court does not find that the delay in Plaintiff's medical appointment will lead to
9 imminent danger of serious physical injury at the time of the filing of the complaint. By
10 Plaintiff's own admission, he has been awaiting this specific treatment and appointment for the
11 past six months. It is also unclear based on Plaintiff's conclusory allegations how he is in
12 jeopardy of overdosing during his incarceration, that Plaintiff will be prescribed the specific
13 medication requested, or that the specific medication would prevent such an overdose from
14 occurring. Therefore, Plaintiff has failed to allege that he was in any imminent danger of serious
15 physical injury at the time the complaint was filed. Plaintiff has not satisfied the exception from
16 the three strikes bar under 28 U.S.C. § 1915(g), and Plaintiff must pay the \$400.00 filing fee if he
17 wishes to litigate this action.

18 Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a
19 District Judge to this action.

20
21 Corrs. & Rehab, Case No. 2:07-cv-00155-GEB-CMK (E.D. Cal.) (dismissed March 30, 2007 for failure to state a
22 claim); (2) Soto v. Cal. Dep't of Corrs., Case No. 2:06-cv-01476-LKK-DAD (E.D. Cal.) (dismissed May 8, 2007 as
23 legally frivolous and for failure to state a claim); (3) Soto v. CA Dep't of Corrs., Case No. 2:07-cv-01908-FCD-EFB
24 (E.D. Cal.) (dismissed August 12, 2008 for failure to state a claim); (4) Soto v. Cal. Dep't of Corrs., Case No. 2:07-
25 cv-01777-JAM-KJM (E.D. Cal.) (dismissed October 9, 2008 for failure to state a claim following failure to file an
26 amended complaint in response to a screening order dismissing complaint for failure to state a claim); (5) Soto v.
27 Jordan, Case No. 2:08-cv-02687-LKK-GGH (E.D. Cal.) (dismissed February 20, 2009 for failure to state a claim);
28 (6) Soto v. San Quentin State Prison, Case No. 3:11-cv-05023-SI (N.D. Cal.) (dismissed May 19, 2012 for failure to
state a claim following failure to file an amended complaint in response to a screening order dismissing complaint for
failure to state a claim).

See Harris v. Mangum, 863 F.3d 1133, 1142 (9th Cir. 2017) (“[W]hen we review a dismissal to determine
whether it counts as a strike, the style of the dismissal or the procedural posture is immaterial. Instead, the central
question is whether the dismissal rang the PLRA bells of frivolous, malicious, or failure to state a claim.”) (citing El-
Shaddai v. Zamora, 833 F.3d 1036, 1042 (9th Cir. 2016)) (internal quotations omitted).

² The Court expresses no opinion on the merits of Plaintiff's claims.

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

Further, it is HEREBY RECOMMENDED that:

1. The motion to proceed *in forma pauperis*, (ECF No. 2), be DENIED, pursuant to 28 U.S.C. § 1915(g); and
2. Plaintiff be ORDERED to pay the \$400 initial filing fee in full to proceed with this action.

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

IT IS SO ORDERED.

Dated: December 7, 2020

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE