



1 the grounds that it is frivolous, malicious, or fails to state a claim upon which relief  
2 may be granted, unless the prisoner is under imminent danger of serious physical  
injury.

3 28 U.S.C. § 1915(g). In determining whether a dismissal counts as a “strike” under § 1915(g),  
4 “the reviewing court looks to the dismissing court’s action and the reasons underlying it. . . . This  
5 means that the procedural mechanism or Rule by which the dismissal is accomplished, while  
6 informative, is not dispositive.” *Knapp v. Hogan*, 738 F.3d 1106, 1109 (9th Cir. 2013) (internal  
7 citation omitted). The Ninth Circuit has “interpreted the final form of dismissal under the statute,  
8 ‘fail[ure] to state a claim upon which relief may be granted,’ to be essentially synonymous with a  
9 Federal Rule of Civil Procedure 12(b)(6) dismissal.” *Id.* (alteration in original).

## 10 **II. ANALYSIS**

### 11 **A. Strikes**

12 Plaintiff filed this action on October 23, 2023. (ECF No. 1). The Court takes judicial  
13 notice of the following five cases, each of which counts as a “strike”: (1) *Caetano v. Kings*  
14 *County Sheriff, et al.*, 1:22-cv-222-JLT-BAM (E.D. Cal.) (dismissed March 18, 2022, as frivolous  
15 and for failure to state a claim); (2) *Caetano v. Kings County Sheriff, et al.*, 1:22-cv-261-JLT-  
16 *HBK* (E.D. Cal.) (dismissed April 28, 2022, as frivolous); (3) *Caetano v. Depository Trust*  
17 *Company, et al.*, 1:22-cv-679-JLT-SKO (E.D. Cal.) (dismissed September 30, 2022, as frivolous  
18 and for failure to state a claim); (4) *Caetano v. Board of State and Community Corrections, et al.*,  
19 1:22-cv-687-JLT-SKO (E.D. Cal.) (dismissed May 30, 2023, for failure to state a claim); and  
20 (5) *Caetano v. Internal Revenue Service, et al.*, 1:22-cv-837-JLT-SAB (E.D. Cal.) (dismissed  
June 20, 2023, as frivolous and for failure to state a claim).

### 21 **B. Imminent Danger**

22 Because Plaintiff had at least three “strikes” prior to filing this action, Plaintiff is  
23 precluded from proceeding *in forma pauperis* unless Plaintiff was, at the time the complaint was  
24 filed, in imminent danger of serious physical injury. The availability of the imminent danger  
25 exception “turns on the conditions a prisoner faced at the time the complaint was filed, not at  
26 some earlier or later time.” *Andrews v. Cervantes*, 493 F.3d 1047, 1053 (9th Cir. 2007).  
27 “Imminent danger of serious physical injury must be a real, present threat, not merely speculative  
28 or hypothetical.” *Blackman v. Mjening*, No. 1:16-CV-01421-LJO-GSA (PC), 2016 WL 5815905,

1 at \*1 (E.D. Cal. Oct. 4, 2016). To meet his burden under § 1915(g), Plaintiff must provide  
2 “specific fact allegations of ongoing serious physical injury, or a pattern of misconduct  
3 evidencing the likelihood of imminent serious physical injury.” *Martin v. Shelton*, 319 F.3d 1048,  
4 1050 (8th Cir. 2003). “[V]ague and utterly conclusory assertions” of imminent danger are  
5 insufficient. *White v. Colorado*, 157 F.3d 1226, 1231-32 (10th Cir. 1998). The “imminent danger”  
6 exception is available “for genuine emergencies,” where “time is pressing” and “a threat . . . is  
7 real and proximate.” *Lewis v. Sullivan*, 279 F.3d 526, 531 (7th Cir. 2002).

8 Additionally, there is a nexus requirement between the danger alleged and the claims  
9 asserted: “Thus, in order to qualify for the § 1915(g) imminent danger exception, a three-strikes  
10 prisoner must allege imminent danger of serious physical injury that is both fairly traceable to  
11 unlawful conduct alleged in his complaint and redressable by the court.” *Ray v. Lara*, 31 F.4th  
12 692, 701 (9th Cir. 2022). Because Plaintiff is *pro se*, in making the imminent danger  
13 determination, the Court must liberally construe Plaintiff’s allegations. *Andrews*, 493 F.3d at  
14 1055.

15 Plaintiff’s complaint sues the California Department of Corrections and Rehabilitation  
16 (CDCR) and Kern Valley State Prison (KVSP) Warden C. Pfeiffer. (ECF No. 1, p. 3). Plaintiff  
17 asserts three claims.

18 Plaintiff’s first claim appears to allege that the CDCR is not sending envelopes to the  
19 United States Federal Marshal regarding service of process for his litigation. (*Id.* at 4).

20 Plaintiff’s second claim is not comprehensible and appears to assert a sovereign-citizen  
21 type argument about being both a trust and trustee, culminating in the assertion that he is being  
22 unlawfully detained at KVSP. (*Id.* at 5). This is a similar type of argument that Plaintiff has raised  
23 before that other courts have rejected as frivolous. See *Caetano v. Internal Revenue Serv.*, No.  
24 1:22-CV-00837-JLT-SAB, 2023 WL 3319158, at \*4 (E.D. Cal. May 9, 2023), *report and*  
25 *recommendation adopted*, 2023 WL 4087634 (E.D. Cal. June 20, 2023) (“Even while Plaintiff  
26 does not expressly state that he is a ‘sovereign citizen,’ the Court finds Plaintiff’s allegations,  
27 explanations, and exhibits are all demonstrative of the fact that Plaintiff’s claims are entirely  
28 rooted in the ‘Redemptionist’ theory of the sovereign citizen ideology. The ‘Redemptionist’  
theory is another frivolous legal theory that has been rejected by countless federal courts.”);

1 *Caetano v. Kings Cnty. Sheriff*, No. 1:22-CV-0261 JLT HBK, 2022 WL 1271344, at \*3 (E.D.  
2 Cal. Apr. 28, 2022), *appeal dismissed*, No. 22-16067, 2022 WL 18358075 (9th Cir. Aug. 17,  
3 2022) (“To the extent Plaintiff’s allegations are based on a sovereign citizen ideology—in  
4 referring to his body as a ‘Sovereign’ and a vessel—courts uniformly and summarily have  
5 rejected arguments premised on such ideology as frivolous and meritless.”).

6 Plaintiff’s final claim asserts that the CDCR is withholding trust account statements to  
7 prevent him from filing litigation. (ECF No. 1, p. 6).

8 Such allegations are insufficient to show that there is a real and imminent threat to  
9 Plaintiff’s personal safety under the standards described above. None of these allegations fairly  
10 implicate his person safety at all, let alone show ongoing serious physical injury, or a pattern of  
11 misconduct evidencing the likelihood of imminent serious physical injury.

12 Accordingly, because Plaintiff is a “three-striker” and does not appear to have been in  
13 imminent danger when he filed this action, the Court will recommend that Plaintiff be required to  
14 pay the \$402 filing fee in full if he wants to proceed with the action.

### 14 **III. CONCLUSION AND RECOMMENDATIONS**

15 The Court concludes that, under § 1915(g), Plaintiff may not proceed *in forma pauperis* in  
16 this action.

17 Accordingly, IT IS RECOMMENDED that:

- 18 1. Plaintiff’s application to proceed *in forma pauperis* be denied. (ECF No. 2).
- 19 2. Pursuant to 28 U.S.C. § 1915(g), Plaintiff be directed to pay the \$402.00 filing fee in  
20 full if he wants to proceed with this action.
- 21 3. Plaintiff be advised that failure to pay the filing fee in full will result in the dismissal  
22 of this case.

23 These findings and recommendations will be submitted to the United States district judge  
24 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen  
25 (14) days after being served with these findings and recommendations, Plaintiff may file written  
26 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s  
27 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the  
28 specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834,

1 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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3 IT IS SO ORDERED.

4 Dated: November 27, 2023

/s/ Eric P. Gray  
UNITED STATES MAGISTRATE JUDGE

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