



1 physical injury.”<sup>1</sup> Plaintiff has previously been notified that he is subject to § 1915(g).<sup>2</sup>

2 The Court has reviewed Plaintiff’s complaint and finds that his allegations do not satisfy  
3 the imminent danger exception to section 1915(g).<sup>3</sup> *Andrews v. Cervantes*, 493 F.3d 1047,  
4 1053–55 (9th Cir. 2007). In the complaint, Plaintiff alleges that in December 2023, a  
5 neurological surgeon diagnosed Plaintiff as needing surgery for severe spine abnormalities and  
6 ordered pre-surgery diagnostics, including MRIs of the cervical and lumbar spines. Two attempts  
7 of the MRIs were made but were unsuccessful, due to Plaintiff’s claustrophobia and shrapnel in  
8 Plaintiff’s right arm. On August 1, 2024, KVSP Facility D Dr. Devine, named as a defendant in  
9 this action, cancelled Plaintiff’s MRI tests, his neurological surgeon follow-up, and by those  
10 actions cancelled Plaintiff’s back surgery. After a video examination of Plaintiff, Defendant  
11 Devine stated that in her opinion Plaintiff did not need an MRI and did not meet the criteria for  
12 one. Plaintiff told Defendant Devine that he needed the surgery, as he suffers severe chronic  
13 daily ambulation, pain, numbness, incontinence, and many other ailments resulting from his  
14 spinal abnormalities. (ECF No. 1.)

15 “Imminent danger of serious physical injury must be a real, present threat, not merely  
16 speculative or hypothetical.” *Blackman v. Mjening*, 2016 WL 5815905, at \*1 (E.D. Cal. Oct. 4,  
17 2016). To meet his burden under § 1915(g), Plaintiff must provide “specific fact allegations of  
18 ongoing serious physical injury, or a pattern of misconduct evidencing the likelihood of imminent  
19 serious physical injury.” *Martin v. Shelton*, 319 F.3d 1048, 1050 (8th Cir. 2003). “[V]ague and  
20 utterly conclusory assertions” of imminent danger or insufficient. *White v. Colorado*, 157 F.3d  
21 1226, 1231–32 (10th Cir. 1998).

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22 <sup>1</sup> The Court takes judicial notice of the following United States District Court cases: (1) *Bibbs v. Tilton*, Case No.  
23 1:11-cv-01012-GSA (E.D. Cal.) (dismissed on January 13, 2014 for failure to state a claim); (2) *Bibbs v. Reich*, Case  
24 No. 3:21-cv-06079-CRB (N.D. Cal.) (defendants’ motion to dismiss granted and certain claims dismissed as barred  
25 by applicable statute of limitations on March 15, 2023; remaining claim dismissed for failure to state a claim on April  
21, 2023); (3) *Bibbs v. Keefe Commissa*, Case No. 2:24-cv-05350-PA-DTB (C.D. Cal.) (dismissed on August 1, 2024  
as frivolous and malicious).

26 <sup>2</sup> See, e.g., *Bibbs v. Doe 2*, Case No. 3:23-cv-02271-RSH-BLM (S.D. Cal.) (denying request for leave to proceed *in*  
27 *forma pauperis* after finding that plaintiff has had three or more prior actions dismissed as frivolous, malicious, or for  
failure to state a claim upon which relief may be granted); *Bibbs v. Lewis*, Case No. 3:24-cv-00514-JAH-LR (S.D.  
Cal.) (same).

28 <sup>3</sup> The Court expresses no opinion on the merits of Plaintiff’s claims.



1 **15-page limit may not be considered.** The parties are advised that failure to file objections  
2 within the specified time may result in the waiver of the “right to challenge the magistrate’s  
3 factual findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing  
4 *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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6 IT IS SO ORDERED.

7 Dated: November 22, 2024

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE

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