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

DENNIS G. CLAIBORNE,
Plaintiff,
v.
KOSHER, *et al.*,
Defendants.

Case No. 2:08-cv-01607-LDG

ORDER

Plaintiff is a prisoner proceeding pro se who has filed a complaint pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. The Court has previously determined that Plaintiff cannot bring a civil action under §1915 because he has filed more than three cases which were dismissed as frivolous, malicious, or for failing to state a claim upon which relief could be granted. See 28 U.S.C. 1915(g)

Section 1915(g), however, contains an exception for complaints which allege the plaintiff is under “imminent danger of serious physical injury.” While the plaintiff asserts that his complaint is filed under the “imminent danger clause,” a review of his complaint

1 refutes the assertion. Plaintiff alleges that, on a date nearly two years prior to the filing of
2 his complaint, he was denied access to an elevator in the Yard 1 & 2 Education building at
3 California State Prison - Solano. Ultimately, he alleges, he fell down the stairs injuring his
4 back. He further alleges that he has subsequently been transferred to the High Desert
5 State Prison. Plaintiff alleges that he has been treated for his injuries. The present
6 complaint concerns the asserted continued denial of elevator access at a prison where the
7 defendant is no longer housed. Accordingly, as the present complaint alleges facts
8 establishing that the plaintiff is not under imminent danger of serious physical injury,


9 THE COURT **ORDERS** that Plaintiff's Request to Proceed *In Forma Pauperis* (#2) is
10 DENIED;

11 THE COURT FURTHER **ORDERS** that Plaintiff's Complaint (#1) is DISMISSED.

12 THE COURT FURTHER **ORDERS** that Plaintiff's Motion to Appoint Counsel (#7) is
13 DENIED.

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DATED this 29 day of March, 2011.


Lloyd D. George
United States District Judge