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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHAI ALKEBU-LAN,

Plaintiff,

No. 2:11-cv-0291 LKK KJN P

vs.

K. DICKINSON, Warden, et al.,

Defendants.

ORDER

_____ /

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On April 16, 2013, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. Plaintiff has filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a de novo review of this case. Upon careful review of the entire file, the court declines to adopt the magistrate judge’s findings and recommendations.

The magistrate judge found Plaintiff’s allegations that he faced “imminent” danger of serious

1 physical injury to be unsubstantiated because, at the time of filing the initial complaint, “the alleged
2 danger had been ‘imminent’ for a period of two years, and the only relief sought by plaintiff was
3 damages.” Findings & Recommendations, ECF NO. 41, at 5. This court cannot agree with the
4 magistrate judge’s interpretation of Plaintiff’s original complaint.

5 In Plaintiff’s original complaint, Plaintiff claimed that his “life has been under imminent
6 danger of serious physical injury” “from 11-25-2008 to present” because Defendants “subjected
7 Petitioner to a series of psychological and physical tortures, including lacing his canteen with
8 hallucin[o]genic drugs which caused mental health issues/placement, [and] near death.” Pl’s
9 Compl., ECF No. 1, at 3. As relief, Plaintiff requested, in part, “the termination of all
10 employees/defendants involved and the disbanding of all State of California prison unions which
11 condoned this criminal behavior.” Id. at 3-4.

12 The fact that Plaintiff alleged that he faced “imminent” danger for a period of two years
13 before he filed his original complaint does not cut against his argument that the danger was
14 imminent. Plaintiff’s complaint appears to allege that the Defendants’ actions were continuous and
15 ongoing over the course of those two years prior to the initial filing. As such, any resulting “danger
16 of serious physical injury” that Plaintiff faced over the course of those two years was likely ongoing
17 as well. The alleged ongoing nature of Defendants’ actions bolsters, as opposed to diminishes,
18 Plaintiff’s claims that the danger he faced was “imminent.” See Andrews v. Cervantes, 493 F.3d
19 1047, 1056-57 (9th Cir. 2007) (“a prisoner who alleges that prison officials continue with a practice
20 that has injured him or others similarly situated in the past will satisfy the ‘ongoing danger’ standard
21 and meet the imminence prong of the three-strikes exception”).

22 Although Plaintiff’s request that the court terminate “all employees/defendants involved”
23 and disband “all State of California prison unions which condoned this criminal behavior” is, to say
24 the least, overbroad, it appears to this court to be a clear request for injunctive relief, in addition to
25 Plaintiff’s request for damages.

26 As to Plaintiff’s second amended complaint, the magistrate judge found that “Plaintiff did

1 not seek injunctive relief,” but instead, “seeks only damages . . . without reference to any current
2 danger of serious physical injury.” Findings & Recommendations, ECF NO. 41, at 5.

3 Plaintiff, however, does seek injunctive relief in his second amended complaint. Plaintiff
4 asks the court to “terminate Defendants” and to “rule an injunction to end all CDCR unions and for
5 the federal government to take control of all CDCR prisons and California’s prison industrial
6 complex.” Pl’s Second Am. Compl., ECF No. 24, at 3. Again, even though Plaintiff’s requested
7 relief is more than unlikely to be granted, it does present a request for injunctive relief, in addition
8 to his sought damages.

9 Furthermore, Plaintiff’s request for injunctive relief refers, at least in part, to the allegations
10 in his second amended complaint that he “has lost some vision in his right eye, has emotional
11 breakdowns, and suffered a heart attack” as a result of Defendants’ administration of unwanted
12 medications to Plaintiff. See id. at 6, 8, 11, 12. At this threshold stage, the court finds that
13 Plaintiff’s assertions regarding his lost vision, emotional breakdowns, and prior heart attack
14 sufficiently demonstrate that he alleges a current danger of serious physical injury. See Andrews
15 v. Cervantes, 493 F.3d at 1057 (“§ 1915(g) merely establishes a threshold procedural question and
16 does not ask the court to evaluate the merits of the suit”).

17 In any event, the explicitness with which a prisoner plaintiff requests injunctive relief should
18 not determine whether he has sufficiently alleged an "imminent danger of serious physical injury."
19 One can imagine a scenario in which a prisoner plaintiff, who has previously filed three insufficient
20 lawsuits, would then file a clear and genuine claim that he faces imminent serious physical injury
21 at the hands of a defendant. If that plaintiff fails to specifically request that the court enjoin the
22 defendant's behavior, or fails to properly articulate his desire that the behavior cease, that failure
23 should not diminish the sufficiency of his primary and basic assertion that he faces an imminent
24 danger of serious physical injury. To find otherwise would be to create, by a judicial sleight of hand,
25 additional hurdles for the prisoner plaintiff to overcome: in addition to showing that he is "under
26 imminent danger of serious physical injury," as required by the statute, the court would also be


1 implicitly requiring the plaintiff to allege that he wishes that threat would stop, by a court order
2 enjoining said behavior.

3 For these reasons, the court DECLINES to adopt the magistrate judge's April 16, 2013
4 finding that Plaintiff has failed to demonstrate an "imminent danger of serious physical injury" for
5 purposes of 28 U.S.C. § 1915(g).

6 The court REMANDS this case to the magistrate judge for such further proceedings as may
7 be appropriate.

8 IT IS SO ORDERED.

9 DATED: July 9, 2013.

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13 LAWRENCE K. KARLTON
14 SENIOR JUDGE
15 UNITED STATES DISTRICT COURT
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