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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID W. WILSON,
Plaintiff,
v.
NICOLE M. TUCCI, et al.,
Defendants.

No. 2:15-cv-2404-KJM-CMK P

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge as provided by Eastern District of California local rules.

On September 7, 2016, the Magistrate Judge filed findings and recommendations, which were served on the parties and which contained notice that the parties may file objections within a specified time. Objections to the findings and recommendations have been filed.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304(f), this court has conducted a *de novo* review of this case. Having reviewed the file, the court declines to adopt the findings and recommendations and refers the matter back to the assigned magistrate judge for further proceedings consistent with this order.

The magistrate judge finds that plaintiff has previously been found to be barred from proceeding in forma pauperis in accordance with the provisions of 28 U.S.C. § 1915(g). ECF No. 15 at 2. The finding is supported by the cases cited in the findings and

1 recommendations. *Id.* The magistrate judge also finds that “nothing in the complaint indicates
2 plaintiff is or was under imminent danger of serious physical injury.” *Id.* While this appears
3 correct with respect to most of the allegations of the complaint, it is not clear that it is correct with
4 respect to the allegations found in the paragraphs identified as number 9 on page 5¹ and number
5 50 on page 31 of the complaint, ECF No. 1. A prisoner who adequately alleges facts which
6 support application of “the ‘imminent danger’ exception” to the 1915(g) bar must be allowed to
7 proceed in forma pauperis even if “the ‘imminent danger’ exception applies to only one claim.”
8 *Andrews v. Cervantes*, 493 F.3d 1047, 1054 (9th Cir. 2007).

9 Good cause appearing, this matter will be referred back to the assigned magistrate
10 judge for further consideration in light of *Andrews* and this order. Accordingly, IT IS HEREBY
11 ORDERED that:

- 12 1. The findings and recommendations filed September 7, 2016, are not adopted;
- 13 and
- 14 2. This matter is referred back to the assigned magistrate judge for further
15 proceedings consistent with this order.

16 DATED: March 10, 2017

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18 _____
19 UNITED STATES DISTRICT JUDGE
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27 _____
28 ¹ All references to page numbers are to the page numbers assigned by the court’s Electronic Case Filing (ECF) system and not necessarily to page numbers within a particular document.