



1 28 U.S.C. § 1915(g).

2 Plaintiff has had three prior actions dismissed which qualify as strikes under 28 U.S.C. §  
3 1915(g): 1) Sierra v. Grannis, 1: 08-cv-0887 RTB CAB (E.D. Cal.), dismissed as frivolous on  
4 February 21, 2009 (ECF No. 18); 2) Sierra v. United States District Court, 1: 10-cv-1019 SKO  
5 (E.D. Cal.), dismissed for failing to state any claims on February 8, 2011 (ECF No. 28); 3) Sierra  
6 v. Moon, 1:11-cv-1214 LJO MJS (PC) (E.D. Cal.), dismissed as frivolous and for failing to state a  
7 claim on July 3, 2012 (ECF No. 32).

8 The imminent danger exception to 28 U.S.C. § 1915(g) applies only if it is clear that the  
9 danger existed when the complaint was filed. Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th  
10 Cir. 2007). The danger must be real and proximate, Ciarpaglini v. Saini, 352 F.3d 328, 330 (7th  
11 Cir. 2003), and must be ongoing. Andrews, 493 F.3d at 1056. Allegations of imminent danger  
12 that are overtly speculative or fanciful may be rejected. Id. at 1057 n.11. For the following  
13 reasons, the undersigned finds that plaintiff has not met the imminent injury exception.

14 Plaintiff's complaint is difficult to understand. However, it appears that plaintiff alleges  
15 that prison officials have failed to treat him for lower back problems. Plaintiff appears to allege  
16 that he suffered these back problems as long ago as 1985. Plaintiff raised similar, if not the same  
17 claims, in Sierra v. Moon, 1: 11-cv-1214 LJO MJS (PC). In that action, plaintiff alleged that  
18 defendants planned to move him from an acute care hospital housing unit to a housing unit with a  
19 lower level of care and failed to diagnose his alleged paraplegia as other than a faked disability.  
20 (See 1: 11-cv-1214 LJO MJS (PC) at ECF No. 16 at 2.) In 1:11-cv-1214 LJO MJS (PC), plaintiff  
21 also claimed that he suffered from paraplegia from injuries, possibly sustained in 1982, leaving  
22 him with a painful nerve disorder unnoticed by defendants who wrongly accused him of having  
23 an acute mental disorder. (Id. at 3.)

24 The district court in 1: 11-cv-1214 LJO MJS (PC), found that plaintiff's claims alleging an  
25 untreated back injury were frivolous because they were combined with patently frivolous claims  
26 alleging plaintiff's legal ownership of Nike business worldwide, etc.<sup>1</sup> (Id. at 3-5.) While

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27 <sup>1</sup> In his application to proceed in forma pauperis filed in the instant action, plaintiff alleges that  
28 he owns several professional sports teams including the San Francisco Giants, the Oakland

1 plaintiff's instant complaint does not include other patently frivolous claims, the fact that plaintiff  
2 raised the same claims regarding his alleged back problems in 1:11-cv-1214 LJO MJS (PC)  
3 indicates that plaintiff is not in imminent danger of serious physical injury. For these reasons, the  
4 undersigned finds that plaintiff has not met the imminent danger exception to 28 U.S.C. §  
5 1915(g).

6 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff's application to proceed in  
7 forma pauperis (ECF No. 15) be denied; and plaintiff be ordered to pay the filing fee.

8 These findings and recommendations are submitted to the United States District Judge  
9 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
10 after being served with these findings and recommendations, plaintiff may file written objections  
11 with the court and serve a copy on all parties. Such a document should be captioned  
12 "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that  
13 failure to file objections within the specified time may waive the right to appeal the District  
14 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

15 Dated: July 28, 2016

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18 KENDALL J. NEWMAN  
19 UNITED STATES MAGISTRATE JUDGE

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27 Raiders, the San Jose Sharks and the Sacramento Kings. (ECF No. 15 at 2.) Because these  
28 claims are clearly frivolous, they are disregarded. In any event, the Certificate of Funds Form  
certified by prison officials in support of plaintiff's application to proceed in forma pauperis  
states that plaintiff has no money in his prison trust account. (Id. at 3.)