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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNETH ALAN SIERRA,

Plaintiff,

v.

DIRECTOR OF DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION, et al.,

Defendants.

No. 2: 16-cv-1067 MCE KJN P

ORDER

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. On July 28, 2016, the undersigned recommended that plaintiff's application to proceed in forma pauperis be denied on grounds that plaintiff had three prior actions dismissed which qualified as strikes under 28 U.S.C. § 1915(g). (ECF No. 24.) The undersigned also found that plaintiff did not meet the imminent injury exception to 28 U.S.C. § 1915(g). (Id.)

Plaintiff's complaint is difficult to understand. However, it appears that plaintiff alleges that prison officials have failed to treat him for lower back problems. Plaintiff appears to allege that he suffered these back problems as long ago as 1985. Plaintiff raised similar, if not the same claims, in Sierra v. Moon, 1: 11-cv-1214 LJO MJS (PC). In that action, plaintiff alleged that defendants planned to move him from an acute care hospital housing unit to a housing unit with a lower level of care and failed to diagnose his alleged paraplegia as other than a faked disability. (See 1: 11-cv-1214 LJO MJS (PC) at ECF No. 16 at 2.) In 1:11-cv-1214 LJO MJS (PC), plaintiff also claimed that he suffered from paraplegia from injuries,

1 possibly sustained in 1982, leaving him with a painful nerve  
2 disorder unnoticed by defendants who wrongly accused him of  
having an acute mental disorder. (Id. at 3.)

3 The district court in 1:11-cv-1214 LJO MJS (PC) found that  
4 plaintiff's claims alleging an untreated back injury were frivolous  
because they were combined with patently frivolous claims alleging  
5 plaintiff's legal ownership of Nike business worldwide, etc.  
[Footnote omitted.] (Id. at 3-5.) While plaintiff's instant complaint  
6 does not include other patently frivolous claims, the fact that  
7 plaintiff raised the same claims regarding his alleged back problems  
in 1: 11-cv-1214 LJO MJS (PC) indicates that plaintiff is not in  
8 imminent danger of serious physical injury. For these reasons, the  
undersigned finds that plaintiff has not met the imminent danger  
exception to 28 U.S.C. § 1915(g).

9 (Id. 24 at 2-3.)

10 On August 23, 2016, plaintiff filed objections to the findings and recommendations. (ECF  
11 No. 26.) Attached are several documents indicating that plaintiff used a wheelchair for several  
12 years. For example, plaintiff attached a form dated November 23, 2011, stating that he was a full-  
13 time wheelchair user. (Id. at 51.) Plaintiff attached a chrono dated November 22, 2011, stating  
14 that he was permanently and totally disabled. (Id. at 53.) Plaintiff attached a classification  
15 chrono dated August 8, 2012, stating that he was totally disabled, used a wide wheelchair and  
16 could do "no standing or walking at all." (Id. at 54.) Plaintiff attached another classification  
17 chrono from 2014 stating that he was "totally disabled (bedridden)." (Id. at 57.) Plaintiff  
18 attached a medical chrono from July 22, 2014, stating that he required a large size wheelchair.  
19 (Id. at 58.) Plaintiff also attached medical records stating that he requested that his bed be close to  
20 the sink. (Id. at 61.) Plaintiff attached the August 18, 2014 chrono granting this request. (Id. at  
21 63.)

22 Plaintiff also attached to his objections a form titled "Disability Placement Verification."  
23 (Id. at 65.) This document indicates that plaintiff is allowed an "intermittent wheelchair,"  
24 meaning he may use it outside of his cell only. Plaintiff wrote on this document that Correctional  
25 Officer Walker handed him this document on April 13, 2016. (Id.)

26 On September 1, 2016, the undersigned issued an order finding that a claim by plaintiff  
27 challenging the denial of a wheelchair for in-cell use may met the imminent injury exception to  
28 28 U.S.C. § 1915(g) if plaintiff alleged that he suffered serious risk of harm, or has suffered

1 serious harm, as a result of not being able to use his wheelchair in his cell. (ECF No. 28 at 2.)  
2 For that reason, the undersigned vacated the July 28, 2016 findings and recommendations and  
3 granted plaintiff leave to file an amended complaint raising his claim alleging denial of access to  
4 a wheelchair for in-cell use. (Id.)


5 On December 16, 2016, plaintiff filed an amended complaint. (ECF No. 36.) The  
6 amended complaint is difficult to understand. Plaintiff appears to allege that he is still being  
7 denied access to a wheelchair for in-cell use. Plaintiff also appears to allege that his bed is no  
8 longer located near his sink.

9 Although questionable, plaintiff's denial of access to a wheelchair for in-cell use and not  
10 having his bed near the sink in his cell may meet the imminent danger exception to 28 U.S.C.  
11 § 1915(g). However, after reviewing the amended complaint, the undersigned cannot determine  
12 whether plaintiff has met this exception. Accordingly, in an abundance of caution, the  
13 undersigned directs Supervising Deputy Attorney Monica Anderson to file a status report  
14 addressing the following issues: 1) is plaintiff allowed to use a wheelchair in his cell and, if not,  
15 why not? and 2) was plaintiff's bed previously near the sink in his cell and if yes but it is no  
16 longer true, why not?

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. Within fourteen days of the date of this order, Supervising Deputy Attorney General  
19 Monica Anderson shall file the status report discussed above;
- 20 2. The Clerk of the Court is directed to serve a copy of this order on Supervising Deputy  
21 Attorney General Monica Anderson.

22 Dated: December 23, 2016

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25 KENDALL J. NEWMAN  
26 UNITED STATES MAGISTRATE JUDGE

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