

1 GEB CMK (Oct. 31, 2006 E.D. Cal.) (order dismissing action for failure to state a claim); (2)
2 Wilson v. Dovey, No. 2:06-cv-1032 FCD EFB (Mar. 8, 2007 E.D. Cal.) (order dismissing action
3 for failure to state a claim); and (3) Wilson v. Dovey, No. 2:06-cv-2553 JKS EFB (Mar. 11, 2008
4 E.D. Cal.) (order dismissing action for failure to state a claim). See also Wilson v. Hubbard, No.
5 2:07-cv-1558 WBS GGH (Oct. 16, 2009 E.D. Cal.) (order designating plaintiff a three strikes
6 litigant for purposes of section 1915(g)).

7 Plaintiff is therefore precluded from proceeding in forma pauperis in this action unless the
8 complaint makes a plausible allegation that the prisoner faced “imminent danger of serious
9 physical injury” at the time of filing. See 28 U.S.C. § 1915(g); Andrews v. Cervantes, 493 F.3d
10 1047, 1055 (9th Cir. 2007). For the exception to apply, the court must look to the conditions the
11 “prisoner faced at the time the complaint was filed, not at some earlier or later time.” Andrews,
12 493 F.3d at 1053, 1056 (requiring that prisoner allege “an ongoing danger” to satisfy the
13 imminency requirement). Courts need “not make an overly detailed inquiry into whether the
14 allegations qualify for the exception.” Id. at 1055.

15 Plaintiff has not alleged any facts which suggest that he is under imminent danger of
16 serious physical injury.¹ Thus, plaintiff must submit the appropriate filing fee in order to proceed
17 with this action.

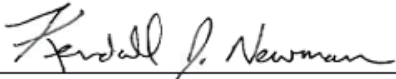
18 ¹ Indeed, the bulk of plaintiff’s complaint is duplicative of the pleading addressed in Case No.
19 2:07-cv-1192 GEB DAD, in which plaintiff raised the double-celling claims he exhausted in the
20 grievances submitted in 2007. (For example, compare Case No. 2:07cv1192: ECF No. 19 at 3-5
21 with Case No. 2:16-cv-1607: ECF No. 1 at 3-5 (mid-page stopping at “7-15-2007”); Case No.
22 2:07cv1192: ECF No. 19 at 15-21 (¶¶ 5-26) with Case No. 2:16-cv-1607: ECF No. 1 at 11-17
23 (¶¶ 5-27). The defendants in Case No. 2:07-cv-1192, many of them also named in the instant
24 action, were granted summary judgment on February 15, 2012. Id. at ECF No. 86. Moreover,
25 such double-celling claims are likely barred either under collateral estoppel or the statute of
26 limitations.

27 Plaintiff also includes claims concerning not being required to take elevators, but the
28 reviewing official confirmed that plaintiff has the right to not take the elevator, so such claim
does not present a threat of imminent danger. (ECF No. 1 at 153.) Finally, it appears that
plaintiff could not have exhausted his retaliation claim because his facts supporting such claim
took place in July of 2016, and this action was filed on July 13, 2016. (ECF No. 1 at 6.) Thus,
plaintiff could not have pursued such claim through the third level of review prior to bringing this
action as required under Booth v. Churner, 532 U.S. 731, 733-34 (2001). Title 42 U.S.C. §
1997e(a) states that “No action shall be brought . . . until such administrative remedies as are
available are exhausted.” Id.

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In accordance with the above, IT IS HEREBY ORDERED that plaintiff shall submit, within twenty-one days from the date of this order, the appropriate filing fee. Plaintiff's failure to comply with this order will result in a recommendation that this action be dismissed.

Dated: September 7, 2016


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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