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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHNNY RAMEY,  
Plaintiff,  
v.  
J. FRANCO, et al.,  
Defendants.

No. 2:16-cv-2107 JAM CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. By findings and recommendations filed February 8, 2018, the undersigned recommended granting defendant’s motion to revoke plaintiff’s in forma pauperis status because he had accrued at least three strikes under 28 U.S.C. § 1915(g) and had not demonstrated that he was under imminent danger of serious physical injury at the time he filed the operative complaint. (ECF No. 39.) Plaintiff filed timely objections to the findings and recommendations (ECF No. 42), to which defendant has not responded.

In his objections, plaintiff alleges that although he had been moved to a building within the prison where defendant did not work, he remained in the same prison, and defendant has once again been assigned to work in the building where plaintiff is housed. (Id. at 2-3.) He further alleges that because of defendant’s demonstrated disregard for previous instructions to stop harassing plaintiff, there is a constant risk that defendant will reinitiate his harassment, leading to

1 sleep deprivation and hospitalization, as it did in the past. (Id. at 2-3, 5.) Though not clear, it  
2 appears that plaintiff may be alleging that defendant has already resumed his retaliatory  
3 harassment of plaintiff. (Id. at 2.) These facts are sufficient to demonstrate that plaintiff was  
4 subject to an ongoing danger of serious physical injury at the time he filed the second amended  
5 complaint and therefore falls within the imminent danger exception. Andrews v. Cervantes, 493  
6 F.3d 1047, 1056-57 (9th Cir. 2007) (allegations of an ongoing danger meet the imminent danger  
7 requirement); Williams v. Paramo, 775 F.3d 1182, 1189 (9th Cir. 2015) (“[I]t is sufficient for the  
8 prisoner to allege that he faces an “ongoing danger,” even if he is not “directly exposed to the  
9 danger at the precise time he filed the complaint.” (quoting Andrews, 493 F.3d at 1056)).

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. The recommendation to grant defendant’s motion to revoke plaintiff’s in forma  
12 pauperis status (ECF No. 39) is withdrawn.
- 13 2. Defendant’s motion to revoke plaintiff’s in forma pauperis status (ECF No. 28) is  
14 denied.
- 15 3. Defendant shall file a response to the second amended complaint within twenty-one  
16 days of the date of this order.

17 Dated: March 19, 2018

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20 CAROLYN K. DELANEY  
21 UNITED STATES MAGISTRATE JUDGE

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