

1 Title 28 U.S.C. § 1915 generally permits any court in the United States to authorize the
2 commencement and prosecution of any suit without prepayment of fees by a person who submits
3 an affidavit indicating that the person is unable to pay such fees. However,

4 [i]n no event shall a prisoner bring a civil action or appeal a
5 judgment in a civil action or proceeding under this section if the
6 prisoner has, on 3 or more prior occasions, while incarcerated or
7 detained in any facility, brought an action or appeal in a court of the
8 United States that was dismissed on the grounds that it is frivolous,
malicious, or fails to state a claim upon which relief may be
granted, unless the prisoner is under imminent danger of serious
physical injury.

9 28 U.S.C. § 1915(g).

10 On February 1, 2018, in Keenan v. Wilkins, 2:16-cv-347 KJM KJN P, the Honorable
11 Kimberly J. Mueller granted defendants’ motion to revoke plaintiff’s in forma pauperis status
12 pursuant to Title 28 U.S.C. § 1915(g).¹ Judge Mueller found that plaintiff had three prior strikes
13 pursuant to Title 28 U.S.C. § 1915(g). For the reasons stated by Judge Mueller in her February 1,
14 2018 order in 2:16-cv-347, the undersigned finds that plaintiff has three prior strikes in the instant
15 action.

16 There is an exception to § 1915(g)’s three-strikes bar if the plaintiff “makes a plausible
17 allegation that [he] faced ‘imminent danger of serious physical injury’ at the time of filing.”
18 Andrews v. Cervantes, 493 F.3d 1047, 1055 (9th Cir. 2007); see also Williams v. Paramo, 775
19 F.3d 1182, 1189 (9th Cir. 2015) (holding that a prisoner may also be required to demonstrate
20 imminent danger at the time the notice of appeal is filed). The imminent danger exception “turns
21 on the conditions a prisoner faced at the time the complaint was filed, not at some earlier or later
22 time.” Andrews, 493 F.3d at 1053.

23 For the reasons stated herein, the undersigned finds that plaintiff does not meet the
24 imminent danger exception. Plaintiff filed the complaint on July 5, 2017. Plaintiff alleged that in
25 in May 2016, defendants at California State Prison-Sacramento (“CSP-Sac”) removed a medical
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27 ¹ Judicial notice may be taken of court records. Valerio v. Boise Cascade Corp., 80 F.R.D. 626,
28 635 n.1 (N.D. Cal. 1978), aff’d, 645 F.2d 699 (9th Cir.), cert. denied, 454 U.S. 1126 (1981).

1 hold before he could receive back surgery in violation of his Eighth Amendment right to adequate
2 medical care. Plaintiff alleged that on June 24, 2016, he was transferred to R. J. Donovan
3 Correctional Facility (“RJDCF”). Plaintiff alleges that following his transfer to RJDCF, he did
4 not receive his legal property. Plaintiff alleged that at the time he filed the complaint, he had not
5 received all of his legal property from CSP-Sac.

6 Plaintiff’s claim that he did not have all of his legal property at the time he filed the
7 complaint does not involve a claim alleging imminent danger of serious physical injury.
8 Plaintiff’s claims alleging that he did not receive back surgery, and was wrongly transferred to
9 RJDCF in June 2016, does not demonstrate the existence of an imminent danger of serious
10 physical injury when he filed the complaint approximately one year later in July 2017. For these
11 reasons, plaintiff does not meet the imminent danger exception to 28 U.S.C. § 1915(g).

12 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff’s in forma pauperis status
13 be revoked, and plaintiff be ordered to pay the filing fee of \$400 for this action.

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

21 Dated: February 22, 2018

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24 KENDALL J. NEWMAN
25 UNITED STATES MAGISTRATE JUDGE

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