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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LANCE WILLIAMS,  
Plaintiff,  
v.  
ROMERO, et al.,  
Defendants.

No. 2:17-cv-1884 GEB DB P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se with an action under 42 U.S.C. § 1983. Before the court is plaintiff’s motion to proceed in forma pauperis. For the reasons set forth below, this court finds plaintiff fails to meet the standards to proceed in forma pauperis and recommends his motion to proceed in forma pauperis be denied and plaintiff be required to pay the filing fee if he wishes to proceed with this action.

**IN FORMA PAUPERIS STATUTE**

The Prison Litigation Reform Act of 1995 (“PLRA”) permits a federal court to authorize the commencement and prosecution of any suit without prepayment of fees by a person who submits an affidavit indicating that the person is unable to pay such fees. However,

[i]n no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous,



1 earlier or later time. See Andrews v. Cervantes, 493 F.3d at 1053. “[A]ssertions of imminent  
2 danger of less obviously injurious practices may be rejected as overly speculative or fanciful.” Id.  
3 at 1057 n.11. Imminent danger of serious physical injury must be a real, present threat, not  
4 merely speculative or hypothetical. To meet his burden under § 1915(g), an inmate must provide  
5 “specific fact allegations of ongoing serious physical injury, or a pattern of misconduct  
6 evidencing the likelihood of imminent serious physical injury.” Martin v. Shelton, 319 F.3d  
7 1048, 1050 (8th Cir. 2003). “Vague and utterly conclusory assertions” of harm are insufficient.  
8 White v. Colorado, 157 F.3d 1226, 1231-32 (10th Cir. 1998). That is, the “imminent danger”  
9 exception is available “for genuine emergencies,” where “time is pressing” and “a threat . . . is  
10 real and proximate.” Lewis v. Sullivan, 279 F.3d 526, 531 (7th Cir. 2002).

11 The court has reviewed plaintiff’s complaint filed September 11, 2017. (ECF No. 1.)  
12 Plaintiff alleges that in March 2015 defendants used excessive force when they refused to open a  
13 mechanical door which had closed on him and were deliberately indifferent to his medical needs  
14 when they denied him medical care. As relief, plaintiff seeks compensatory and punitive  
15 damages. (Id. at 3-6.)

16 Plaintiff does not make any allegation that there was a real and proximate threat to his  
17 physical safety at the time he filed his complaint. See Andrews, 493 F.3d at 1053 (citing Lewis v.  
18 Sullivan, 279 F.3d 526, 531 (7th Cir. 2002); Kinnell v. Graves, 265 F.3d 1125, 1128 (10th Cir.  
19 2001)). Therefore, plaintiff fails to meet the imminent danger exception to § 1915(g). Plaintiff  
20 should only be permitted to proceed with this action if he pays the filing fee.


21 Accordingly, IT IS HEREBY RECOMMENDED as follows:

- 22 1. Plaintiff’s motion to proceed in forma pauperis (ECF No. 2) be denied; and
- 23 2. Plaintiff be ordered to pay the \$400 filing fee to proceed in this action.

24 These findings and recommendations will be submitted to the United States District Judge  
25 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
26 after being served with these findings and recommendations, plaintiff may file written objections  
27 with the court. The document should be captioned “Objections to Magistrate Judge's Findings  
28 and Recommendations.” Plaintiff is advised that failure to file objections within the specified

1 time may result in waiver of the right to appeal the district court's order. Martinez v. Ylst, 951  
2 F.2d 1153 (9th Cir. 1991).

3 Dated: January 26, 2018

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6 DEBORAH BARNES  
7 UNITED STATES MAGISTRATE JUDGE  
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12 DB/prisoner-civil rights/will1884.3 strikes fr  
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