



1 prosecute and failure to state a claim); (2) *Stribling v. Tobias*, No. 2:16-cv-00399-MCE-EFB  
2 (E.D. Cal.), ECF No. 17 (September 2, 2016 order dismissing action for failure to prosecute and  
3 failure to state a claim); and (3) *Stribling v. Chooljian*, No. 2:18-cv-00266-CAS-FFM (C.D. Cal.),  
4 ECF No. 5 (January 17, 2018 order dismissing action as frivolous, failing to state a claim, and  
5 seeking monetary relief from a defendant immune from such relief).

6 The section 1915(g) exception applies if the complaint makes a plausible allegation that  
7 the prisoner faced “imminent danger of serious physical injury” at the time of filing. 28 U.S.C.  
8 § 1915(g); *Andrews v. Cervantes*, 493 F.3d 1047, 1055 (9th Cir. 2007). In this case, plaintiff  
9 alleges that on three occasions in 2016, a correctional officer improperly handled his legal mail.  
10 ECF No. 1 at 4. These allegations do not demonstrate that plaintiff was under an imminent  
11 danger of serious physical injury when he filed this action on April 10, 2018. Plaintiff’s  
12 application for leave to proceed in forma pauperis must therefore be denied pursuant to § 1915(g).  
13 Plaintiff must submit the appropriate filing fee in order to proceed with this action.

14 Accordingly, IT IS HEREBY ORDERED that the Clerk randomly assign a United States  
15 District Judge to this action.

16 Further, because plaintiff has not paid the filing fee and is not eligible to proceed in forma  
17 pauperis, IT IS HEREBY RECOMMENDED that:

- 18 1. Plaintiff’s application to proceed in forma pauperis (ECF No. 4) be denied; and
- 19 2. Plaintiff be ordered to pay the \$400 filing fee within fourteen days from the date of any  
20 order adopting these findings and recommendations and be warned that failure to do so will result  
21 in the dismissal of this action.

22 These findings and recommendations are submitted to the United States District Judge  
23 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
24 after being served with these findings and recommendations, any party may file written  
25 objections with the court and serve a copy on all parties. Such a document should be captioned  
26 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections


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within the specified time may waive the right to appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

Dated: May 2, 2018.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE