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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DEXTER BROWN,  
  
Plaintiff,  
  
v.  
  
EDMUND G. BROWN, Jr., et al.,  
  
Defendants.

No. 2:18-cv-2141-EFB P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff, a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983, seeks leave to proceed in forma pauperis. See 28 U.S.C. § 1915(a). For the reasons stated below, the court finds that plaintiff has not demonstrated he is eligible to proceed in forma pauperis.

A prisoner may not proceed in forma pauperis:

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, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). Court records show that plaintiff has been designated a three-strikes

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1 litigant for purposes of § 1915(g)<sup>1</sup> and plaintiff’s complaint fails to allege facts that adequately  
2 demonstrate he is under imminent danger of serious physical injury.<sup>2</sup> Plaintiff’s application for  
3 leave to proceed in forma pauperis must therefore be denied pursuant to § 1915(g). Plaintiff must  
4 submit the appropriate filing fee in order to proceed with this action.

5 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court randomly assign a  
6 United States District Judge to this action.

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

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

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

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22 <sup>1</sup> See *Brown v. Sagireddy*, No. 2:17-cv-2041-KJM-AC (E.D. Cal. May 2, 2018), ECF No.  
23 14.

24 <sup>2</sup> To meet his burden under § 1915(g) to adequately allege “imminent danger of serious  
25 physical injury,” plaintiff must provide “specific fact allegations of ongoing serious physical  
26 injury, or a pattern of misconduct evidencing the likelihood of imminent serious physical injury.”  
27 *Martin v. Shelton*, 319 F.3d 1048, 1050 (8th Cir. 2003). “Vague and utterly conclusory  
28 assertions” of harm are insufficient. *White v. Colorado*, 157 F.3d 1226, 1231-32 (10th Cir. 1998).  
That is, the “imminent danger” exception is available “for genuine emergencies,” where “time is  
pressing” and “a threat . . . is real and proximate.” *Lewis v. Sullivan*, 279 F.3d 526, 531 (7th Cir.  
2002).

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

3 Dated: October 10, 2018.

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5 EDMUND F. BRENNAN  
6 UNITED STATES MAGISTRATE JUDGE  
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