1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 DANIEL HARPER, Case No. 2:21-cv-00130-JDP (PC) 12 Plaintiff. FINDINGS AND RECOMMENDATIONS DENYING MOTION TO PROCEED IN FORMA 13 v. PAUPERIS AND REQUIRING PAYMENT OF FILING FEE IN FULL WITHIN TWENTY-ONE 14 CDCR, et al., **DAYS** 15 Defendants. ECF No. 2 16 **OBJECTIONS DUE WITHIN 14 DAYS** 17 ORDER TO ASSIGN CASE TO DISTRICT JUDGE 18 19 20 Plaintiff, a state prisoner proceeding without counsel, has filed a complaint alleging 21 claims under 42 U.S.C. § 1983, and an application to proceed in forma pauperis. ECF No. 1 & 2. 22 In an order filed March 4, 2021, I observed that plaintiff appeared to be prohibited from proceeding in forma pauperis because he has previously had three actions dismissed for failure to 23 state a claim. ECF No. 7; 28 U.S.C. § 1915(g). I noted that plaintiff would still be permitted to 24 proceed in forma pauperis if his complaint alleged that he is in imminent danger of serious 25 26 physical injury. Because the complaint's allegations—which relate to disciplinary proceedings and plaintiff's placement in administrative segregation—did not show that plaintiff was imminent 27 28 danger, plaintiff was ordered to show cause within twenty-one days why, in spite of his "three-

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striker" status, he should be allowed to proceed *in form pauperis*. ECF No. 2. Plaintiff was also warned that failure to provide an adequate justification for being allowed to proceed *in forma pauperis* would result in a recommendation that his application be denied.

The deadline has passed, and plaintiff has not responded to the court's March 4, 2021 order. Accordingly, it is ORDERED that the Clerk of Court shall randomly assign a United States District Judge to this case.

Further, it is RECOMMENDED that:

- 1. Plaintiff's application to proceed *in forma pauperis*, ECF No. 2, be denied for the reasons set forth in the March 4, 2021 order.
- 2. Plaintiff be ordered to pay the \$402 filing fee within twenty-one days of any order adopting these findings and recommendations.
- 3. If plaintiff fails to pay the \$400 filing fee within twenty-one days of any order adopting these findings and recommendations, this action be dismissed without prejudice.

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

IT IS SO ORDERED.

Dated: May 4, 2021

JEREMY D. PETERSON

UNITED STATES MAGISTRATE JUDGE