

1 AJW (C.D. Cal. November 22, 2004)(denying IFP and dismissing for failure to state a claim); 2)
2 Williams v. Hubbard, et al., Case No. 2:10-cv-01717-UA-FFM (C.D. Cal. July 6, 2010)
3 (dismissing case for failure to state a claim); 3) Williams v. Young, 2:08-cv-01737-WBS-CMK
4 (E.D. Cal. July 29, 2010) (adopting Findings and Recommendations and dismissing case for
5 failing to state a claim); 4) Williams v. Soto, Appeal No. 14-15524 (9th Cir. May 14,
6 2014)(denying plaintiff’s application to proceed in forma pauperis because the appeal was
7 frivolous, and the case was later dismissed for failure to prosecute because plaintiff failed to pay
8 the filing fee); and, 5) Williams v. Hubbard, et al., Ninth Circuit Appeal No. 10-56230 (Nov. 4,
9 2010) (denying appellant’s motion to proceed IFP because “the appeal is frivolous”).¹

10 As plaintiff had at least three “strikes” prior to filing this action, he is precluded from
11 proceeding in forma pauperis unless he was in imminent danger of serious physical injury at the
12 time that he filed the complaint. The availability of the imminent danger exception “turns on the
13 conditions a prisoner faced at the time the complaint was filed, not at some earlier or later time.”
14 Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007). “Imminent danger of serious
15 physical injury must be a real, present threat, not merely speculative or hypothetical.” Blackman
16 v. Mjening, Case No. 1:16-cv-01421-LJO-GSA-PC, 2016 WL 5815905, at *1 (E.D. Cal. Oct. 4,
17 2016). To meet his burden under Section 1915(g), plaintiff must provide “specific fact
18 allegations of ongoing serious physical injury, or a pattern of misconduct evidencing the
19 likelihood of imminent serious physical injury.” Martin v. Shelton, 319 F.3d 1048, 1050 (8th Cir.
20 2003). “[V]ague and utterly conclusory assertions” of imminent danger are insufficient. White v.
21 Colorado, 157 F.3d 1226, 1231-32 (10th Cir. 1998); see also Martin, 319 F.3d at 1050
22 (“[C]onclusory assertions” are “insufficient to invoke the exception to § 1915(g)...”). The
23 “imminent danger” exception is available “for genuine emergencies,” where “time is pressing”
24 and “a threat or prison condition is real and proximate.” Lewis v. Sullivan, 279 F.3d 526, 531

25 ¹ The court “may take notice of proceedings in other courts, both within and without the federal
26 judicial system, if those proceedings have a direct relation to matters at issue.” United States ex
27 rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992)
28 (citation and internal quotation marks omitted) (collecting cases); see also Fed. R. Evid. 201(b)(2)
(court may take judicial notice of facts that are capable of accurate determination by sources
whose accuracy cannot reasonably be questioned).

1 (7th Cir. 2002).

2 In this case, plaintiff's imminent danger allegations are based on his conditions of
3 confinement at the California Medical Facility since March 30, 2022. Specifically, plaintiff
4 alleges that the height of his lower bunk is too low and causes him pain. Due to this increased
5 pain, plaintiff "risk[s] falling when rising or sitting to lay down, as there are no handrails or
6 anything to hold onto for support." ECF No. 1 at 4. A review of the docket indicates that
7 plaintiff was transferred to R.J. Donovan Correctional Facility on or about August 12, 2022. See
8 ECF No. 7.

9 In reviewing these allegations of imminent danger, the court first notes that plaintiff filed
10 the instant complaint on June 22, 2022, after he had been housed on the lower bunk for
11 approximately three months. See Houston v. Lack, 487 U.S. 266 (1988) (establishing the prison
12 mailbox rule). However, there are no specific allegations linking plaintiff's increased pain to a
13 possible slip and fall injury in his cell. The undersigned therefore finds that plaintiff's concerns
14 related to his risk of falling off his bunk are speculative and do not plausibly suggest a concrete
15 risk of imminent physical injury or rise to the level of a genuine emergency. See Thompson v.
16 Paleka, Case No. CIV 17-00531 SOM-KJM, 2017 WL 5309608, at *2 (D. Haw. Nov. 13, 2017)
17 (finding prisoner's claims of having contracted a rash from a dirty shower, and being denied
18 access to a nerve specialist for back pain insufficient to meet § 1915(g)'s "imminent danger"
19 exception). Therefore, plaintiff does not meet the imminent danger exception of 28 U.S.C. §
20 1915(g).

21 Based on the above analysis, the court recommends denying plaintiff's motion for leave to
22 proceed in forma pauperis. The court further recommends that pursuant to the three-strikes
23 provision of 28 U.S.C. § 1915(g), plaintiff be required to pay the \$402.00 filing fee in full before
24 proceeding with his § 1983 action.

25 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court shall randomly assign a
26 district judge to this case.

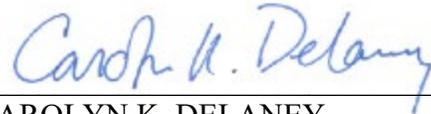
27 IT IS HEREBY RECOMMENDED that:

- 28 1. Plaintiff's motion for leave to proceed in forma pauperis (ECF No. 2) be denied.

1 2. Plaintiff be granted fourteen days within which to pay the \$402 filing fee for this
2 action.

3 These findings and recommendations are submitted to the United States District Judge
4 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
5 after being served with these findings and recommendations, any party may file written
6 objections with the court and serve a copy on all parties. Such a document should be captioned
7 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
8 objections shall be served and filed within fourteen days after service of the objections. The
9 parties are advised that failure to file objections within the specified time may waive the right to
10 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

11 Dated: November 28, 2022



12 _____
13 CAROLYN K. DELANEY
14 UNITED STATES MAGISTRATE JUDGE

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