

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 25 2021

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MICHAEL R. SPENGLER,

No. 20-55990

Petitioner-Appellant,

D.C. No. 2:20-cv-06892-DOC-SP

v.

MEMORANDUM*

TTCF EYE CLINIC; et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
David O. Carter, District Judge, Presiding

Submitted August 17, 2021**

Before: SILVERMAN, CHRISTEN, and LEE, Circuit Judges.

California state prisoner Michael R. Spengler appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action for failure to pay the filing fee after denying Spengler's application to proceed in forma pauperis ("IFP"). We have jurisdiction under 28 U.S.C. § 1291. We review de novo.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Andrews v. Cervantes, 493 F.3d 1047, 1052 (9th Cir. 2007). We reverse and remand.

The district court denied Spengler’s application to proceed IFP on the basis that Spengler has had three or more prior actions or appeals dismissed as frivolous, malicious, or for failure to state a claim, and that he only alleged he was in imminent danger of serious physical injury as to a subset of his claims. *See* 28 U.S.C. § 1915(g). However, Spengler’s plausible allegation of an imminent danger of serious physical injury in connection with his claim for deliberate indifference to his serious medical needs entitles him to proceed IFP as to the entirety of his complaint. *See Andrews*, 493 F.3d at 1053-54 (“[O]nce a prisoner satisfies the [imminent danger] exception to the three-strikes rule and otherwise qualifies for IFP status, the district court must docket the entire complaint and resolve all of its claims, without requiring the upfront payment of the filing fee.”).

REVERSED and REMANDED.