

1 **II.**

2 **LEGAL STANDARD**

3 The Prison Litigation Reform Act of 1995 (PLRA) was enacted “to curb frivolous prisoner
4 complaints and appeals.” Silva v. Di Vittorio, 658 F.3d 1090, 1099-1100 (9th Cir. 2011). Pursuant to
5 the PLRA, the in forma pauperis statute was amended to include section 1915(g), a non-merits related
6 screening device which precludes prisoners with three or more “strikes” from proceeding in forma
7 pauperis unless they are under imminent danger of serious physical injury. Andrews, 493 F.3d at
8 1050. The statute provides that “[i]n no event shall a prisoner bring a civil action ... under this section
9 if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought
10 an action or appeal in a court of the United States that was dismissed on the grounds that it is
11 frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is
12 under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

13 **III.**

14 **DISCUSSION**

15 Plaintiff has suffered three or more strikes under section 1915(g). See, e.g., Dupree v. U.S.
16 Copyright Office, No. 2:11-cv-1700 WBS KJN (dismissed as frivolous and for failure to state claim);
17 Dupree v. United States District Court, No. 2:11-cv-0263 DAD (dismissed as frivolous); Dupree v.
18 Santiago, et al., No. 2:11-cv-0309 EFB (dismissed for failure to state a claim); see also Dupree v.
19 Denny, No. 2:16-cv-1271 JAM CKD P (finding plaintiff has suffered three strikes under section
20 1915(g), ECF No. 5.)

21 The issue now becomes whether Plaintiff has met the imminent danger exception, which
22 requires Plaintiff to show that he is under (1) imminent danger of (2) serious physical injury and which
23 turns on the conditions he faced at the time he filed suit on March 3, 2016. Andrews, 493 F.3d at
24 1053-1056. Conditions which posed imminent danger to Plaintiff at some earlier time are immaterial,
25 as are any subsequent conditions. Id. at 1053. While the injury is merely procedural rather than a
26 merits-based review of the claims, the allegations of imminent danger must still be plausible. Id. at
27 1055.

1 The Court has reviewed Plaintiff's complaint and finds that Plaintiff does not meet the
2 imminent danger exception. Andrews, 493 F.3d at 1053. Plaintiff's allegations stem from an alleged
3 conspiracy among government officials. There are no allegations that Plaintiff is presently in
4 imminent danger of physical harm. Accordingly, Plaintiff is ineligible to proceed in forma pauperis in
5 this action.

6 **IV.**

7 **RECOMMENDATIONS**

8 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 9 1. Plaintiff's application to proceed in forma pauperis be DENIED; and
10 2. Plaintiff be required to pay the \$400.00 filing fee within thirty days of service of the
11 Court's order adopting these Findings and Recommendations.

12 These Findings and Recommendations will be submitted to the United States District Judge
13 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **twenty-one (21)**
14 **days** after being served with these Findings and Recommendations, Plaintiff may file written
15 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
16 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
17 specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-
18 39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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20 IT IS SO ORDERED.

21 Dated: December 23, 2016

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24 UNITED STATES MAGISTRATE JUDGE
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