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4 UNITED STATES DISTRICT COURT  
5 EASTERN DISTRICT OF CALIFORNIA  
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7 TONY BLACKMAN,  
8 Plaintiff,  
9 vs.  
10 M. MJENING, et al.,  
11 Defendants.  
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1:16-cv-01421-LJO-GSA-PC

ORDER DENYING APPLICATION TO  
PROCEED IN FORMA PAUPERIS  
UNDER 28 U.S.C. § 1915(g) AND  
DISMISSING ACTION, WITHOUT  
PREJUDICE TO REFILE WITH  
SUBMISSION OF \$400.00 FILING FEE  
IN FULL  
(ECF Nos. 1, 2.)

ORDER FOR CLERK TO CLOSE  
CASE

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15 **I. BACKGROUND**

16 Tony Blackman (“Plaintiff”) is a state prisoner proceeding pro se with this civil rights  
17 action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on  
18 September 16, 2016, in the Sacramento Division of the U. S. District Court, Eastern District of  
19 California, together with a motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.  
20 (ECF Nos. 1, 2.) On September 23, 2016, this case was transferred to the Fresno Division of  
21 the Eastern District of California. (ECF No. 4.).

22 **II. THREE-STRIKES PROVISION OF 28 U.S.C. § 1915(g)**

23 28 U.S.C. § 1915 governs proceedings in forma pauperis. Section 1915(g) provides that  
24 “[i]n no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3  
25 or more prior occasions, while incarcerated or detained in any facility, brought an action or  
26 appeal in a court of the United States that was dismissed on the grounds that it is frivolous,  
27 malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is  
28 under imminent danger of serious physical injury.”

1 **III. ANALYSIS**

2 A review of the actions filed by Plaintiff reveals that Plaintiff is subject to 28 U.S.C. §  
3 1915(g) and is precluded from proceeding in forma pauperis unless Plaintiff was, at the time  
4 the Complaint was filed, under imminent danger of serious physical injury. The Court has  
5 found evidence on the court record of five 1915(g) “strikes” against Plaintiff, which were all  
6 entered before this action was brought by Plaintiff on September 16, 2016.<sup>1</sup> The Court takes  
7 judicial notice of these cases: (1) 1:99-cv-05822-REC-HGB-P Blackman v. Hartwell  
8 (E.D.Cal.) (dismissed on March 12, 2001, for failure to state a claim); (2) 1:04-cv-06389-AWI-  
9 NEW (DLB)-P Blackman v. Taxdhal (E.D.Cal.) (dismissed on May 18, 2007, for failure to  
10 state a claim); (3) 3:05-cv-05390-SI Blackman v. Medina (N.D. Cal.) (dismissed on March 13,  
11 2006 for failure to state a claim); (4) 3:06-cv-06398-SI Blackman v. Variz (N.D.Cal.)  
12 (dismissed on December 18, 2006 for failure to state a claim); and (5) 1:06-cv-00081-GSA-PC  
13 Blackman v. Evans (E.D.Cal.) (dismissed on February 3, 2009, for failure to state a claim).

14 The availability of the imminent danger exception turns on the conditions a prisoner  
15 faced at the time the complaint was filed, not at some earlier or later time. See Andrews v.  
16 Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007). “[A]ssertions of imminent danger of less  
17 obviously injurious practices may be rejected as overly speculative or fanciful.” Id. at 1057  
18 n.11. Imminent danger of serious physical injury must be a real, present threat, not merely  
19 speculative or hypothetical. To meet his burden under § 1915(g), an inmate must provide  
20 “specific fact allegations of ongoing serious physical injury, or a pattern of misconduct  
21 evidencing the likelihood of imminent serious physical injury.” Martin v. Shelton, 319 F.3d  
22 1048, 1050 (8th Cir. 2003). “Vague and utterly conclusory assertions” of harm are insufficient.  
23 White v. Colorado, 157 F.3d 1226, 1231–32 (10th Cir. 1998). That is, the “imminent danger”  
24 exception is available “for genuine emergencies,” where “time is pressing” and “a threat . . . is  
25 real and proximate.” Lewis v. Sullivan, 279 F.3d 526, 531 (7th Cir. 2002).

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<sup>1</sup> The Court has examined the orders dismissing the five cases and finds that they constitute “strikes”  
within the meaning of § 1915(g).

1 The Court has reviewed Plaintiff's Complaint for this action and finds that Plaintiff  
2 does not meet the imminent danger exception. See Andrews, 493 F.3d at 1053. In the  
3 Complaint, Plaintiff alleges that Defendants rejected his appeals, denied him access to the law  
4 library, confiscated his documents, allowed an inmate to attack Plaintiff with food, retaliated  
5 and discriminated against Plaintiff, violated his rights to due process, unlawfully placed him in  
6 administrative segregation, and refused to give him a copy of his trust account statement.  
7 Plaintiff also complains that a deputy district attorney used "nuclear power radio waves  
8 radiation pressure to control people conscious mind and impulse feeling." (Compl., ECF No. 1  
9 at p. 26.) The Complaint is devoid of any showing that Plaintiff was under imminent danger of  
10 serious physical injury at the time he filed the Complaint.

11 Therefore, Plaintiff may not proceed in forma pauperis in this action, and must submit  
12 the appropriate filing fee in order to proceed with this action. Accordingly, Plaintiff's motion  
13 to proceed in forma pauperis shall be denied, and this action shall be dismissed, without  
14 prejudice to refiling with the submission of the \$400.00 filing fee in full.

15 **IV. CONCLUSION**

16 Based on the foregoing, it is HEREBY ORDERED that:

- 17 1. Pursuant to 28 U.S.C. § 1915(g), Plaintiff's motion to proceed in forma pauperis  
18 in this action is DENIED;
- 19 2. This action is DISMISSED, without prejudice to refiling with the submission of  
20 the \$400.00 filing fee in full; and
- 21 3. The Clerk is directed to CLOSE this case.

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23 IT IS SO ORDERED.

24 Dated: October 4, 2016

25 /s/ Lawrence J. O'Neill  
26 UNITED STATES CHIEF DISTRICT JUDGE  
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