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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 GREGORY C. BONTEMPS,

12 Plaintiff,

13 vs.

14 D. HICKS, et al.,

15 Defendants.  
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1:16-cv-01854-EPG

ORDER THAT PLAINTIFF'S  
APPLICATION TO PROCEED IN  
FORMA PAUPERIS BE DENIED UNDER  
28 U.S.C. § 1915(g), AND PLAINTIFF BE  
REQUIRED TO PAY FILING FEE IN  
FULL

(ECF No. 9)

18 **I. BACKGROUND**

19 Gregory C. Bontemps ("Plaintiff") is a state prisoner proceeding *pro se* with this civil  
20 rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this  
21 action on Oct. 20, 2016. (ECF No. 1.) On December 27, 2016, Plaintiff filed an application to  
22 proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (ECF No. 9.)

23 On December 19, 2016, Plaintiff consented to Magistrate Judge jurisdiction in this  
24 action pursuant to 28 U.S.C. § 636(c) (ECF No. 8), and no other parties have made an  
25 appearance. Therefore, pursuant to Appendix A(k)(4) of the Local Rules of the Eastern District  
26 of California, the undersigned shall conduct any and all proceedings in the case until such time  
27 as reassignment to a District Judge is required. Local Rule Appendix A(k)(3).

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

2 28 U.S.C. § 1915 governs proceedings *in forma pauperis*. Section 1915(g) provides  
3 that “[i]n no event shall a prisoner bring a civil action . . . under this section if the prisoner  
4 has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an  
5 action or appeal in a court of the United States that was dismissed on the grounds that it is  
6 frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the  
7 prisoner is under imminent danger of serious physical injury.”

8 **III. ANALYSIS**

9 Plaintiff initiated this action on October 20, 2016. Prior to this date, Plaintiff had been  
10 involved with two different cases that had denied or revoked Plaintiff’s *in forma pauperis*  
11 status:

- 12 1. Bontemps v. Sotak, No. 2:09-CV-2115-MCE-EFB, 2015 WL 812360 (E.D.  
13 Cal. Feb. 25, 2015), report and recommendation adopted, No. 2:09-CV-2115-  
14 MCE, 2015 WL 1469870 (E.D. Cal. Mar. 30, 2015); and  
15 2. Bontemps v. Harper, No. 2:13-cv-00506-MCE-EFB, 2016 WL 1339577  
16 (E.D. Cal. Apr. 5, 2016), report and recommendation adopted, No. 2:13-cv-  
17 00506-MCE-EFB, 2016 WL 3135840 (E.D. Cal. June 2, 2016).

18 These two decisions examined Plaintiff’s prior case filings, and both Courts concluded  
19 that Plaintiff had three or more cases that constituted as strikes under the “three-strike” rule in  
20 28 U.S.C. § 1915(g). Upon carefully reviewing these two decisions, the Court finds that the  
21 analysis in Sotak and Harper is properly supported by existing law. Thus, the Court agrees  
22 with and hereby adopts the analysis and conclusions. Therefore, the review of the actions filed  
23 by Plaintiff reveals that Plaintiff is subject to the “three-strike” rule in 28 U.S.C. § 1915(g) and  
24 is precluded from proceeding *in forma pauperis* unless Plaintiff was, at the time the Complaint  
25 was filed, under imminent danger of serious physical injury.

26 The availability of the imminent danger exception turns on the conditions a prisoner  
27 faced at the time the complaint was filed, not at some earlier or later time. See Andrews v.  
28 Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007). “[A]ssertions of imminent danger of less

1 obviously injurious practices may be rejected as overly speculative or fanciful.” Id. at 1057  
2 n.11. Imminent danger of serious physical injury must be a real, present threat, not merely  
3 speculative or hypothetical. To meet his burden under § 1915(g), an inmate must provide  
4 “specific fact allegations of ongoing serious physical injury, or a pattern of misconduct  
5 evidencing the likelihood of imminent serious physical injury.” Martin v. Shelton, 319 F.3d  
6 1048, 1050 (8th Cir. 2003). “Vague and utterly conclusory assertions” of harm are insufficient.  
7 White v. Colorado, 157 F.3d 1226, 1231–32 (10th Cir. 1998). That is, the “imminent danger”  
8 exception is available “for genuine emergencies,” where “time is pressing” and “a threat . . . is  
9 real and proximate.” Lewis v. Sullivan, 279 F.3d 526, 531 (7th Cir. 2002).

10 The Court has reviewed Plaintiff’s Complaint for this action and finds that Plaintiff does  
11 not meet the imminent danger exception. See Andrews, 493 F.3d at 1053. In the Complaint,  
12 Plaintiff describes that on March 18, 2016, Correctional Sergeant D. Hicks conducted an  
13 inappropriate, unclothed body search of the plaintiff. Plaintiff alleges that Sergeant Hicks  
14 forced the appellant, and another inmate, to submit to an unclothed body search while no other  
15 disabled inmates had to do so. Plaintiff contends that Sergeant Hicks threatened to write a  
16 CDC Form 115, Rules Violation Report against Plaintiff. Plaintiff alleges that the search was  
17 racially discriminating and resulted in an injured lower back and right foot.

18 Plaintiff makes no claims that he is at the risk of violence and the Complaint makes no  
19 mention of any factual allegations showing that Plaintiff was under any specific danger of harm  
20 at the time he filed the Complaint. Plaintiff fails to describe any specific incident, threat, or  
21 knowledge upon which he bases his assertion that he was under imminent danger of serious  
22 bodily harm. These facts do not support the existence of an imminent danger of serious  
23 physical injury when Plaintiff commenced this action. Moreover, Plaintiff has not shown the  
24 requisite nexus between any of his claims in the complaint and his allegation of imminent  
25 danger.<sup>1</sup> Stine v. Federal Bureau of Prisons, 2015 WL 5255377 at \*5 (E.D. Cal. Sept. 9, 2015)  
26 (A “three strikes” prisoner seeking to litigate IFP must allege facts that plausibly show he is in  
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28 <sup>1</sup> Plaintiff brings a claim in the Complaint for racial discrimination. (ECF No. 1.)

1 imminent danger, and the allegations in the complaint must reveal a nexus between at least one  
2 cause of action and the imminent danger).

3 **IV. CONCLUSION AND RECOMMENDATIONS**

4 The Court finds that under 28 U.S.C. § 1915(g), Plaintiff may not proceed *in forma*  
5 *pauperis* in this action, and must submit the appropriate filing fee in order to proceed with this  
6 action. Accordingly, Plaintiff's application to proceed *in forma pauperis* (ECF No. 9) is  
7 denied, and Plaintiff is required to pay the \$400.00 filing fee in full to proceed with this action.  
8 Failure to follow the directives in this order will result in dismissal of the case.

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

- 10 1. Pursuant to 28 U.S.C. § 1915(g), Plaintiff's application to proceed *in forma*  
11 *pauperis* (ECF No. 9) in this action is DENIED; and  
12 2. Plaintiff shall pay the \$400.00 filing fee in full within 30 days in order to  
13 proceed with this action.  
14 3. Failure to comply with this order or pay the filing fee will result in dismissal of  
15 this action.

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17 IT IS SO ORDERED.

18 Dated: January 20, 2017

19 /s/ Eric P. Gray  
20 UNITED STATES MAGISTRATE JUDGE  
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