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7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF CALIFORNIA**
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10 JESSE L. YOUNGBLOOD,

11 Plaintiff,

12 v.

13 D. URIBE, *et al.*

14 Defendants.
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Case No. 1:17-cv-1132-EPG-PC

**ORDER FOR PLAINTIFF TO SHOW
CAUSE WHY HIS APPLICATION TO
PROCEED IN FORMA PAUPERIS
SHOULD NOT BE DENIED**

(ECF No. 2)

THIRTY DAY DEADLINE

18 **I. BACKGROUND**

19 Jesse L. Youngblood (“Plaintiff”) is a state prisoner proceeding *pro se* in this civil
20 rights action filed pursuant to 42 U.S.C. § 1983. On August 23, 2017, Plaintiff filed an
21 application to proceed *in forma pauperis*. (ECF No. 2). On August 26, 2017, Plaintiff
22 consented to magistrate judge jurisdiction in this action pursuant to 28 U.S.C. § 636(c), (ECF
23 No. 5), and no other parties have made an appearance. Therefore, the undersigned shall
24 conduct any and all proceedings in this action until such time as reassignment to a District
25 Judge is required. Local Rule Appendix A(k)(3).

26 28 U.S.C. § 1915 governs proceedings *in forma pauperis*. Section 1915(g) provides
27 that “[i]n no event shall a prisoner bring a civil action... under this section if the prisoner has,
28 on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action

1 or appeal in a court of the United States that was dismissed on the grounds that it is frivolous,
2 malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is
3 under imminent danger of serious physical injury.”

4 Section 1915(g) appears to preclude Plaintiff from proceeding *in forma pauperis*.
5 Plaintiff appears to have more than three “strikes.” *See, e.g., Youngblood v. Clark*, No.:1:15-
6 cv-01746 (E.D. Cal. August 15, 2017) (dismissing action for failure to state a claim);
7 *Youngblood v. Warden*, Case No. 4:13-cv-04366 (N.D. Cal. November 12, 2013) (dismissing
8 action for failure to state a claim); *Youngblood v. Evans*, Case No. 4:13-cv-02097 (N.D. Cal.
9 May 14, 2013) (dismissing action as frivolous and for failure to state a claim); *Youngblood v.*
10 *Warden*, Case No. 4:12-cv-04423 (N.D. Cal. February 4, 2013) (dismissing action as frivolous
11 and for failure to state a claim).

12 Furthermore, based on the complaint, it does not appear that Plaintiff is in imminent
13 danger. The availability of the imminent danger exception “turns on the conditions a prisoner
14 faced at the time the complaint was filed, not at some earlier or later time.” *Andrews v.*
15 *Cervantes*, 493 F.3d 1047, 1053 (9th Cir. 2007). “Imminent danger of serious physical injury
16 must be a real, present threat, not merely speculative or hypothetical.” *Blackman v. Mjening*,
17 No. 116CV01421LJOGSAPC, 2016 WL 5815905, at *1 (E.D. Cal. Oct. 4, 2016). To meet his
18 burden under § 1915(g), Plaintiff must provide “specific fact allegations of ongoing serious
19 physical injury, or a pattern of misconduct evidencing the likelihood of imminent serious
20 physical injury.” *Martin v. Shelton*, 319 F.3d 1048, 1050 (8th Cir. 2003). “[V]ague and utterly
21 conclusory assertions” of harm are insufficient. *White v. Colorado*, 157 F.3d 1226, 1231–32
22 (10th Cir. 1998). The “imminent danger” exception is available “for genuine emergencies,”
23 where “time is pressing” and “a threat... is real and proximate.” *Lewis v. Sullivan*, 279 F.3d
24 526, 531 (7th Cir. 2002).

25 Based on the facts alleged in the complaint (ECF No. 1), it does not appear that Plaintiff
26 is in imminent danger of serious physical injury. Plaintiff alleges that on August 5, 2015, while
27 in a dining hall facility at Corcoran State Prison, he was directed by Correctional Officer D.
28 Uribe to sit at a dining hall table and was caused to sustain injury when the dining hall table

1 flipped over. His injuries required surgical treatment. After surgery, his wounds were to be
2 cleaned and dressed daily. But, Jane Doe, an employee at Corcoran State Prison, refused to
3 clean and dress his wounds, causing Plaintiff to contract an infection in his right thumb. His
4 right thumb was treated with antibiotics, but he has sustained permanent loss of use of 80% of
5 his right thumb. Plaintiff, however, does not allege or appear to be in imminent danger of
6 serious physical injury.

7 Therefore, the Court will order Plaintiff to show cause why it should not deny
8 Plaintiff's application to proceed *in forma pauperis* and require Plaintiff to pay the \$400 filing
9 fee.

10 Accordingly, based on the foregoing, IT IS ORDERED that Plaintiff has thirty (30)
11 days from the date of service of this order to show cause why the Court should not deny his
12 application to proceed *in forma pauperis* and require him to pay the \$400 filing fee. Failure to
13 respond to this order will result in dismissal of this action.

14 IT IS SO ORDERED.

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16 Dated: October 3, 2017

17 /s/ Eric P. Grogan
18 UNITED STATES MAGISTRATE JUDGE
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