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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORY C. BONTEMPS,
Plaintiff,
v.
S. JOCHIM, et al.,
Defendants.

No. 2:16-cv-2625-EFB P

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983.¹ He seeks leave to proceed in forma pauperis. *See* 28 U.S.C. § 1915(a). For the reasons explained below, the court finds that plaintiff has not demonstrated he is eligible to proceed in forma pauperis.

A prisoner may not proceed in forma pauperis:

if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). Court records reflect that on at least three prior occasions, plaintiff has

¹ This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1) and is before the undersigned pursuant to plaintiff’s consent. *See* E.D. Cal. Local Rules, Appx. A, at (k)(4).

1 brought actions in this court while incarcerated that were dismissed as frivolous, malicious, or for
2 failure to state a claim upon which relief may be granted. *See, e.g., Bontemps v. Sotak*, No. 2:09-
3 cv-2115-MCE-EFB (E.D. Cal. Mar. 30, 2015) (designating plaintiff as a three-strikes litigant);
4 *Bontemps v. Harper*, No. 2:13-cv-506-MCE-EFB (E.D. Cal. June 2, 2016) (same).

5 The section 1915(g) exception applies if the complaint makes a plausible allegation that
6 the prisoner faced “imminent danger of serious physical injury” at the time of filing. 28 U.S.C.
7 § 1915(g); *Andrews v. Cervantes*, 493 F.3d 1047, 1055 (9th Cir. 2007). For the exception to
8 apply, the court must look to the conditions the “prisoner faced at the time the complaint was
9 filed, not at some earlier or later time.” *Andrews*, 493 F.3d at 1053, 1056 (requiring that prisoner
10 allege “an ongoing danger” to satisfy the imminency requirement). Courts need “not make an
11 overly detailed inquiry into whether the allegations qualify for the exception.” *Id.* at 1055.

12 Plaintiff complains that on July 11, 2016, he experienced two hours of severe pain in his
13 fractured foot when he was denied access to his air pump for use with his air cast. ECF No. 1 at
14 3. Although plaintiff wrote “imminent danger” on the cover of his complaint, *see id.* at 1, these
15 allegations fail to demonstrate that he faced an imminent danger of serious physical injury at the
16 time he filed the complaint, on November 3, 2016. Thus, the imminent danger exception does not
17 apply. Plaintiff’s application for leave to proceed in forma pauperis must therefore be denied
18 pursuant to § 1915(g). Plaintiff must submit the appropriate filing fee in order to proceed with
19 this action.

20 Accordingly, because plaintiff has not paid the filing fee and cannot proceed in forma
21 pauperis, it is hereby ORDERED that:

- 22 1. Plaintiff’s application to proceed in forma pauperis (ECF Nos. 5, 6) is denied; and
- 23 2. Plaintiff shall submit, within twenty-one days from the date of this order, the
24 appropriate filing fee. Plaintiff’s failure to comply with this order will result in dismissal.

25 Dated: April 27, 2017.

26 
27 EDMUND F. BRENNAN
28 UNITED STATES MAGISTRATE JUDGE