



1 28 U.S.C. § 1915(g). The court takes judicial notice<sup>2</sup> of the following lawsuits previously filed  
2 by plaintiff:

- 3 (1) Pierce v. Gonzales, 1:10-cv-0285 JLT (E.D. Cal.), December 3, 2012 order dismissing  
4 action for failing to state a claim and January 30, 2013 order revoking in forma  
5 pauperis status on appeal. Id., ECF Nos. 27 & 38.
- 6 (2) Pierce v. California State, CV 12-9211 UA (CW) (C.D. Cal.), November 20, 2012  
7 order denying leave to file action without prepayment of full filing fee on grounds that  
8 action was frivolous, malicious, or failed to state a claim. Id., ECF No. 5.
- 9 (3) Pierce v. McEwan, 2:12-cv-08240-UA-CW (C.D. Cal.), October 11, 2012 and  
10 November 9, 2012 orders denying leave to file action without prepayment of full filing  
11 fee on grounds that action was frivolous, malicious, or failed to state a claim. Id., ECF  
12 Nos. 2, 8.
- 13 (4) Pierce v. Warden of Lancaster, CV 13-1939 UA (CW) (C.D. Cal.) (March 28, 2013  
14 order denying leave to file action without prepayment of full filing fee on grounds that  
15 action was frivolous, malicious, or failed to state a claim). Id., ECF No. 2.
- 16 (5) Pierce v. Lancaster State Prison, 2:13-cv-8126 (C.D. Cal.), December 3, 2013, order  
17 denying leave to file action without prepayment of full filing fee on grounds that  
18 action failed to state a cognizable claim.<sup>3</sup> Id., ECF No. 6.

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21 <sup>2</sup> Judicial notice may be taken of court records. Valerio v. Boise Cascade Corp., 80  
22 F.R.D. 626, 635 n.1 (N.D. Cal. 1978), aff'd, 645 F.2d 699 (9th Cir. 1981), cert. denied, 454 U.S.  
1126 (1981).

23 <sup>3</sup> In addition to finding that plaintiff failed to state a cognizable claim, the court also found that  
24 the action was barred under the “Three Strikes” provision. Pierce v. Lancaster State Prison, 2:13-  
25 cv-8126 (C.D. Cal.), ECF No. 6. Because the denial of leave to file the action without  
26 prepayment of the full filing fee was not based solely on a three strikes finding, the court may  
27 count the dismissal as an additional strike. Cf. El-Shaddai v. Zamora, 833 F.3d 1036, 1042 (9th  
28 Cir. 2016) (“Where a dismissal is based solely on a finding that the plaintiff has previously  
incurred at least three strikes, without any additional finding that the instant action is itself  
frivolous, malicious, or fails to state a claim, the dismissal does not count as an additional  
strike.”). Even if Pierce v. Lancaster State Prison is not included in the strike count, plaintiff has  
incurred more than three qualifying dismissals.

1           The court’s review of the above records reveals that on at least three occasions, lawsuits  
2 filed by plaintiff have been dismissed on the grounds that they were frivolous or malicious or  
3 failed to state a claim upon which relief may be granted. Therefore, this court finds that plaintiff  
4 is precluded from proceeding in forma pauperis in this action unless plaintiff is “under imminent  
5 danger of serious physical injury.” 28 U.S.C. § 1915(g). To meet the exception, plaintiff must  
6 have alleged facts that demonstrate that he was “under imminent danger of serious physical  
7 injury” at the time of filing the complaint. Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th Cir.  
8 2007) (“[I]t is the circumstances at the time of the filing of the complaint that matters for  
9 purposes of the ‘imminent danger’ exception to § 1915(g).”).

10           Plaintiff has not alleged any facts which suggest that he is under imminent danger of  
11 serious physical injury. In his complaint, plaintiff names as defendants President Barack Obama,  
12 the United States Government, the California Department of Corrections, the Honorable Jennifer  
13 L. Thurston, the Honorable Carlos T. Bea, the Honorable Susan P. Graber, Attorney General  
14 Kamala D. Harris, Inspector General Robert A. Barton, and the Office of Internal Affairs. See  
15 ECF No. 1 at 2. Although it is not entirely clear, plaintiff appears to challenge the dismissal  
16 without prejudice of plaintiff’s second amended complaint filed in Pierce v. Gonzales, Case No.  
17 1:10-cv-0285 JLT, ECF No. 24, 2011 U.S. Dist. LEXIS 21888 (E.D. Cal. Feb. 17, 2011).<sup>4</sup> See  
18 ECF No. 1 at 3. Plaintiff appears to allege that defendants engaged in fraud, conspiracy, and  
19 obstruction of justice; that his complaint in Pierce v. Gonzales stated a claim for relief and was  
20 not frivolous; and that defendants were aware of defendants’ guilt but nevertheless allowed  
21 plaintiff’s claims to be dismissed by the district court and thereafter denied on appeal. See ECF  
22 No. 1 at 1, 3-11.

23           Because the court finds that plaintiff has not made the requisite showing of “imminent  
24 danger” to qualify for an exception to the “three strikes” bar under § 1915(g), the undersigned

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25 <sup>4</sup> In his second amended complaint, plaintiff alleged claims related to law library access, mail  
26 service, laundry services, religious services, inmate appeals, administrative segregation, and  
27 medical treatment. See Pierce v. Gonzales, Case No. 1:10-cv-0285 JLT, 2011 U.S. Dist. LEXIS  
28 21888, \*2-33 (E.D. Cal. Feb. 17, 2011). The court determined that plaintiff’s allegations failed to  
state a claim for relief, and plaintiff’s second amended complaint was dismissed without  
prejudice to the filing of a third amended complaint. See id. at \*33-34.

1 will recommend that plaintiff be denied in forma pauperis status and be required to pay the full  
2 filing fee in order to proceed with this action.

3 Plaintiff has also filed a document (ECF No. 11) in which he asserts judicial misconduct  
4 and illegal solicitation of funds by the court based on the court's orders (ECF Nos. 6 & 8)  
5 requiring him to pay the filing fee or submit an in forma pauperis affidavit. Plaintiff seems to  
6 assert that he is not filing a civil rights complaint and should therefore be allowed to proceed  
7 without paying the filing fee.<sup>5</sup> See ECF No. 7 at 1; ECF No. 11 at 2. Plaintiff is mistaken. All  
8 parties instituting any civil action, suit or proceeding in a district court of the United States, other  
9 than a writ of habeas corpus, must pay a filing fee of \$350.00 plus the \$50.00 administrative fee.<sup>6</sup>  
10 See 28 U.S.C. §§ 1914(a), 1915(a). This rule applies to all incarcerated person regardless of the  
11 nature of their claims.

12 Accordingly, IT IS HEREBY RECOMMENDED that:

- 13 1. Plaintiff's requests to proceed in forma pauperis (ECF Nos. 9 & 10) be denied;
- 14 2. Plaintiff be required to pay the filing of \$400.00 in full within twenty-one (21) days of  
15 the adoption of these findings and recommendations, should that occur; and
- 16 3. Failure to pay the filing fee in full as directed result in dismissal of this action.

17 These findings and recommendations are submitted to the United States District Judge  
18 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days  
19 after being served with these findings and recommendations, plaintiff may file written objections  
20 with the court. Such document should be captioned "Objections to Magistrate Judge's Findings  
21 and Recommendations." Local Rule 304(d). Plaintiff is advised that failure to file objections

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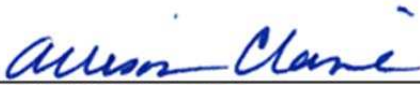
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26 <sup>5</sup> It is not clear what type of action plaintiff purports to be bringing.

27 <sup>6</sup> If leave to file in forma pauperis is granted, a plaintiff will still be required to pay the filing fee  
28 but will be allowed to pay it in installments. Litigants proceeding in forma pauperis are not  
required to pay the \$50.00 administrative fee.

1 within the specified time may waive the right to appeal the District Court's order. Martinez v.  
2 Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: November 28, 2016

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5 ALLISON CLAIRE  
6 UNITED STATES MAGISTRATE JUDGE  
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