



1 States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim  
2 upon which relief may be granted, unless the prisoner is under imminent danger of serious  
3 physical injury.” 28 U.S.C. § 1915(g). This provision is commonly known as the “three strikes”  
4 rule. *See, e.g., Richey*, 807 F.3d at 1206. An action is “frivolous” if it is “of little weight or  
5 importance: having no basis in law or fact.” *Andrews v. King*, 398 F.3d 1113, 1121 (9th Cir.  
6 2005) (citation and quotation marks omitted). An action “fails to state a claim upon which relief  
7 may be granted” if it is subject to dismissal under Federal Rule of Civil Procedure 12(b)(6). *Id.*  
8 An action is “malicious” if it was filed “with the intention or desire to harm another.” *Id.*  
9 (citation and quotation marks omitted).

10 The Magistrate Judge cited three previous actions in her findings and recommendations.  
11 First, in a case filed in this district by *Khademi* in 2018 while he was a pretrial detainee in a  
12 county jail, another judge of this court dismissed the complaint for failure to state a claim under  
13 Rule 12(b)(6). *Khademi v. Vanderwende*, No. 18-2798, 2019 WL 3936066, at \*5 (E.D. Cal. Aug.  
14 20, 2019), *adopted in full* by Order (Sept. 17, 2019), ECF No. 27. This was his first “strike”  
15 under § 1915(g). Second, *Khademi* appealed the district judge’s order. The Ninth Circuit  
16 affirmed in an unpublished memorandum disposition “because *Khademi* failed to allege facts  
17 sufficient to state a plausible claim.” *See Khademi v. Vanderwende*, 812 F. App’x 588 (9th Cir.  
18 2020) (unpublished). The circuit did not dismiss the appeal or find it frivolous or malicious. For  
19 that reason, the appeal, though unsuccessful, was not itself a “strike.” *El-Shaddai v. Zamora*, 833  
20 F.3d 1036, 1046 (9th Cir. 2016) (“[A]ppellate affirmances do not count as strikes unless the court  
21 expressly states that the appeal itself was frivolous, malicious or failed to state a claim.” (citation  
22 omitted)).

23 Third, in a case filed in this district by *Khademi* in 2023 while he was incarcerated in a  
24 county jail, another judge of this court dismissed the complaint because the limitations period had  
25 run. *See Findings & Recommendations, Khademi v. Los Rios Community Coll. Dist.*, No. 23-  
26 0260 (E.D. Cal. Apr. 24, 2023), ECF No. 3, *adopted in full* by Order (June 14, 2023), ECF No. 6.  
27 This was a dismissal for failure to state a claim, as it was apparent from the face of the complaint

1 that the limitations period had run. The Magistrate Judge determined this was Khademi's third  
2 "strike."

3 Because only two of the actions cited in the Magistrate Judge's order qualify as "strikes"  
4 under § 1915(g), the court cannot adopt the Magistrate Judge's findings on their own terms. The  
5 court takes judicial notice, however, that judges of this court have dismissed at least two other  
6 actions filed by Khademi while he was incarcerated for failure to state a claim. *See Khademi v.*  
7 *Superior Court*, No. 19-1494 (E.D. Cal. Oct. 16, 2020); *Khademi v. Jimmanz*, No. 21-1394 (E.D.  
8 Cal. Apr. 1, 2022). The court therefore agrees with the Magistrate Judge that Khademi cannot  
9 proceed in forma pauperis. He has not shown an "imminent danger of serious physical injury."  
10 28 U.S.C. § 1915(g).

11 The findings and recommendations (ECF No. 8) are **adopted in part** as explained above.  
12 Plaintiff's request for leave to proceed in forma pauperis (ECF No. 7) is **denied**. He is granted  
13 fourteen days within which to pay the \$402 filing fee for this action. Failure to pay the filing fee  
14 will result in dismissal.

15 IT IS SO ORDERED.

16 DATED: December 28, 2023.

17   
CHIEF UNITED STATES DISTRICT JUDGE