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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 CHARLES McCOY,
12 Inmate #488-128,

13 Plaintiff,

14 vs.

15 WENDY McMAHON, President, CBS;
16 JULIE McNAMARA, Representative,
17 CBS,

18 Defendants.
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20

Case No. 3:22-cv-00385-CAB-BGS

**ORDER DENYING MOTION TO
PROCEED IN FORMA PAUPERIS
AS BARRED BY 28 U.S.C. § 1915(g)
[ECF No. 2]**

AND

**DISMISSING CIVIL ACTION
WITHOUT PREJUDICE FOR
FAILURE TO PAY FILING FEE
REQUIRED BY 28 U.S.C. § 1914(a)**

21 Plaintiff Charles McCoy, incarcerated at Southeast Correctional Institution (“SCI”)
22 in Lancaster, Ohio, is proceeding pro se and has filed a civil rights Complaint (“Compl.”)
23 pursuant to 42 U.S.C. § 1983. *See* Compl. ECF No. 1. McCoy did not prepay the civil
24 filing fee required to commence a civil action at the time he filed his Complaint; instead,
25 he filed a Motion to Proceed In Forma Pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a).
26 *See* ECF No. 2.

27 While his allegations are sparse, it appears McCoy seeks to sue the President and a
28 another representative of CBS Paramount Television for copyright infringement and

1 “plagiarizing [his] pitch” for a CBS sitcom entitled “B Positive.” *See* Compl. at 2–4. He
2 seeks injunctive relief preventing “any further rerunning” of the sitcom during the 2022
3 season and \$3 million in compensatory damages. *Id.* at 7.

4 **I. Motion to Proceed IFP**

5 A. Standard of Review

6 “All persons, not just prisoners, may seek IFP status.” *Moore v. Maricopa County*
7 *Sheriff’s Office*, 657 F.3d 890, 892 (9th Cir. 2011). Prisoners like McCoy, however, “face
8 an additional hurdle.” *Id.*

9 In addition to requiring prisoners to “pay the full amount of a filing fee,” in “monthly
10 installments” or “increments” as provided by 28 U.S.C. § 1915(a)(3)(b), the Prison
11 Litigation Reform Act (“PLRA”) amended section 1915 to preclude the privilege to
12 proceed IFP in cases where the prisoner:

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

17 28 U.S.C. § 1915(g). “This subdivision is commonly known as the ‘three strikes’
18 provision.” *Andrews v. King*, 398 F.3d 1113, 1116 n.1 (9th Cir. 2005). “Pursuant to
19 § 1915(g), a prisoner with three strikes or more cannot proceed IFP.” *Id.*; *see also Andrews*
20 *v. Cervantes*, 493 F.3d 1047, 1052 (9th Cir. 2007) (hereafter “*Cervantes*”) (under the
21 PLRA, “[p]risoners who have repeatedly brought unsuccessful suits may entirely be barred
22 from IFP status under the three strikes rule[.]”). The objective of the PLRA is to further
23 “the congressional goal of reducing frivolous prisoner litigation in federal court.” *Tierney*
24 *v. Kupers*, 128 F.3d 1310, 1312 (9th Cir. 1997).

25 “Strikes are prior cases or appeals, brought while the plaintiff was a prisoner, which
26 were dismissed on the ground that they were frivolous, malicious, or failed to state a claim,”
27 *Andrews*, 398 F.3d at 1116 n.1 (internal quotations omitted), “even if the district court
28 styles such dismissal as a denial of the prisoner’s application to file the action without

1 prepayment of the full filing fee.” *O’Neal v. Price*, 531 F.3d 1146, 1153 (9th Cir. 2008).
2 When courts “review a dismissal to determine whether it counts as a strike, the style of the
3 dismissal or the procedural posture is immaterial. Instead, the central question is whether
4 the dismissal ‘rang the PLRA bells of frivolous, malicious, or failure to state a claim.’” *El-*
5 *Shaddai v. Zamora*, 833 F.3d 1036, 1042 (9th Cir. 2016) (quoting *Blakely v. Wards*, 738
6 F.3d 607, 615 (4th Cir. 2013)).

7 Once a prisoner has accumulated three strikes, section 1915(g) prohibits his pursuit
8 of any subsequent IFP civil action or appeal in federal court unless he “makes a plausible
9 allegation that [he] faced ‘imminent danger of serious physical injury’ at the time of filing.”
10 *Cervantes*, 493 F.3d at 1051–52 (quoting 28 U.S.C. § 1915(g)). “[T]he PLRA [also]
11 requires a nexus between the alleged imminent danger and the violations of law alleged in
12 the prisoner’s complaint.” *Ray v. Lara*, 31 F.4th 692, 700 (9th Cir. 2022). Thus, to qualify
13 for an exception, “a three-strikes prisoner must allege imminent danger of serious physical
14 injury that is both fairly traceable to unlawful conduct alleged in his complaint and
15 redressable by the court.” *Id.* at 701.

16 B. Discussion

17 As noted, McCoy’s factual allegations are bare, but he appears to claim Defendants
18 committed fraud and acts of negligence in violation of the Copyright Act of 1976. *See*
19 *Compl.* at 3, 4. His Complaint includes no “plausible allegations” to suggest he “faced
20 ‘imminent danger of serious physical injury’ at the time of filing.” *Cervantes*, 493 F.3d at
21 1055 (quoting 28 U.S.C. § 1915(g)). Even if he *had* alleged to face imminent danger at
22 SCI at the time of filing, any such danger could not possibly stem from the violations of
23 law alleged in his Complaint—copyright infringement against representatives of a global
24 media conglomerate, whose counties of residence are alleged to be unknown.¹ *See Ray*,
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27 ¹ The Court notes that McCoy chose to file this action in the Southern District of California,
28 but does not allege that his claim arose here, or that either Defendant resides or may be
found in San Diego or Imperial Counties. *See* 28 U.S.C. 84(d) (“The Southern District

1 31 F.3d at 701.

2 Thus, regardless of their questionable merit, McCoy’s copyright infringement
3 allegations clearly do not meet § 1915(g)’s imminent danger exception. *See e.g., Ruth v.*
4 *Warden*, 2021 WL 130007, at *2 (E.D. Cal. Jan. 14, 2021) (finding allegations that a
5 prisoner’s “personal property and original ideals (patents, copyrights, and trademarks)
6 ha[d] been stolen” insufficient to qualify for § 1915(g)’s imminent danger exception),
7 *report and recommendation adopted*, 2021 WL 695050 (E.D. Cal. Feb. 23, 2021).

8 Defendants typically carry the initial burden to produce evidence demonstrating a
9 prisoner is not entitled to proceed IFP, *Andrews*, 398 F.3d at 1119, but “in some instances,
10 the district court docket may be sufficient to show that a prior dismissal satisfies at least
11 one on the criteria under § 1915(g) and therefore counts as a strike.” *Id.* at 1120. Therefore,
12 this Court takes judicial notice of federal court docket proceedings available on PACER²
13 and finds that Plaintiff Charles McCoy, currently identified as Ohio Inmate #488-128,
14 while incarcerated, has had three prior civil actions dismissed on the grounds that they were
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17 comprises the counties of Imperial and San Diego.”). McCoy has used the Court’s form
18 Complaint under the Civil Rights Act, 42 U.S.C. § 1983, *see* Compl. at 1, but he does not
19 allege either Defendant violated his federal constitutional rights while acting under color
20 of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988); *Naffe v. Frye*, 789 F.3d 1030,
21 1035-36 (9th Cir. 2015). Instead, McCoy alleges violations of the Copyright Act of 1976.
22 *See* Compl. at 3, 4. In copyright cases, venue is proper “in the district in which the
defendant or his agent resides or may be found.” *See* 28 U.S.C. § 1400(a); *Lumiere v. Mae*
Edna Wilder, Inc., 261 U.S. 174, 176 (1923).

23 ² A court may take judicial notice of its own records, *see Molus v. Swan*, Civil Case No.
24 3:05-cv-00452-MMA-WMc, 2009 WL 160937, *2 (S.D. Cal. Jan. 22, 2009) (citing *United*
25 *States v. Author Services*, 804 F.2d 1520, 1523 (9th Cir. 1986)); *Gerritsen v. Warner Bros.*
26 *Entm’t Inc.*, 112 F. Supp. 3d 1011, 1034 (C.D. Cal. 2015), and “may take notice of
27 proceedings in other courts, both within and without the federal judicial system, if those
28 proceedings have a direct relation to matters at issue.” *Bias v. Moynihan*, 508 F.3d 1212,
1225 (9th Cir. 2007) (quoting *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir.
2002)); *see also United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*,
971 F.2d 244, 248 (9th Cir. 1992).

1 frivolous, malicious, or failed to state a claim upon which relief may be granted.

2 They are:

3 (1) *McCoy v. Martin*, Civil Case No. 2:06-cv-00915-GCS-MRA (S.D.
4 Ohio, Eastern Division, Nov. 15, 2006) (Report and Recommendation
5 [“R&R”] to Dismiss Complaint “for failure to state a claim under 42 U.S.C.
6 § 1983”) (Doc. No. 3 at 3); *id.*, (S.D. Ohio, Eastern Division, Jan. 30, 2007)
7 (Order Adopting R&R, Overruling Objection, and Directing Clerk to enter
8 Judgment for Defendant) (Doc. No. 8) (strike one);

9 (2) *McCoy v. Oswalt*, Civil Case No. 2:07-cv-00230-MHW-TPK (S.D.
10 Ohio, Eastern Division, March 22, 2007) (R&R to Dismiss civil action “in its
11 entirety” both for failing to state a claim and as frivolous pursuant to 28 U.S.C.
12 § 1915(e)(2)) (Doc. No. 8 at 5–6); *id.*, (S.D. Ohio, Eastern Division, June 7,
13 2007) (Order Adopting R&R and Denying Motion to Amend/Correct) (Doc.
14 No. 11) (strike two); and

15 (3) *McCoy v. Stokes*, Civil Case No. 2:12-cv-00655-JLG-TPK (S.D. Ohio,
16 Eastern Division, Sept. 10, 2012) (R&R to Dismiss Complaint for failing to
17 state a claim pursuant to 28 U.S.C. § 1915(e)(2)) (Doc. No. 7); *id.* (S.D. Ohio,
18 Eastern Division, Oct. 25, 2012) (Opinion and Order Adopting R&R,
19 Overruling Objections, Dismissing Complaint for failing to state a claim, and
20 Denying Motion to Amend) (Doc. No. 10) (strike three).

21 Accordingly, because McCoy has, while incarcerated, accumulated three “strikes”
22 pursuant to § 1915(g), and he fails to make any “plausible allegations” that he faced
23 imminent danger of serious physical injury at the time he filed his Complaint, he is not
24 entitled to the privilege of proceeding IFP in this civil action. *See Cervantes*, 493 F.3d at
25 1055; *Rodriguez v. Cook*, 169 F.3d 1176, 1180 (9th Cir. 1999) (finding that 28 U.S.C.
26 § 1915(g) “does not prevent all prisoners from accessing the courts; it only precludes
27 prisoners with a history of abusing the legal system from continuing to abuse it while
28 enjoying IFP status”); *see also Franklin v. Murphy*, 745 F.2d 1221, 1231 (9th Cir. 1984)
29 (“[C]ourt permission to proceed IFP is itself a matter of privilege and not right.”).

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1 **II. Conclusion and Order**

2 For the reasons discussed, the Court **DENIES** McCoy's Motion to Proceed IFP
3 (ECF No. 2) as barred by 28 U.S.C. § 1915(g); **DISMISSES** this civil action without
4 prejudice based on McCoy's failure to pay the full statutory and administrative \$402 civil
5 filing fee required by 28 U.S.C. § 1914(a); **CERTIFIES** that an IFP appeal from this Order
6 would be frivolous and not taken in good faith pursuant to 28 U.S.C. § 1915(a)(3); and
7 **DIRECTS** the Clerk of the Court to close the case.

8 **IT IS SO ORDERED.**

9 Dated: July 20, 2022

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12 Hon. Cathy Ann Bencivengo
13 United States District Judge
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