1		
2		
3		
4		
5		
6		
7		
8	UNITED STATE	S DISTRICT COURT
9	EASTERN DISTRICT OF CALIFORNIA	
10		
11	EDWARD THOMAS,	Case No. 1:16-cv-01393-LJO-JLT (PC)
12	Plaintiff,	ORDER TO SHOW CAUSE WHY
13	v.	PLAINTIFF'S <i>IN FORMA PAUPERIS</i> STATUS SHOULD NOT BE REVOKED
14	S. PARKS, et al.,	AND PLAINTIFF BE REQUIRED TO PAY THE FILING FEE
15	Defendants.	(Doc. 8)
16		TWENTY-ONE (21) DAY DEADLINE
17		
18	Shortly after filing the complaint, Plaintiff filed an application to proceed in forma	
19	pauperis, which was granted. (Docs. 7, 8.)	
20	"In no event shall a prisoner bring a civil action under this section if the prisoner has,	
21	on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or	
22	appeal in a court of the United States that wa	s dismissed on the grounds that it is frivolous,
23	malicious, or fails to state a claim upon which	h relief may be granted, unless the prisoner is under
24	imminent danger of serious physical injury."	28 U.S.C. § 1915(g).
25	The Court may take judicial notice of	court records. United States v. Howard, 381 F.3d
26	873, 876 n.1 (9th Cir. 2004). The Court take	s note that in Thomas v. Felker, et al., 2:09-cv-02486
27	GEB CKD ¹ (<i>Felker</i> , Doc. 64.), the Court fou	nd that order found that three dismissals of
28	¹ The Ninth Circuit held that Plaintiff's appeal the	ereon was so insubstantial as to not warrant further review and

1	Plaintiff's previous actions qualified as strikes: Thomas v. Terhune, No. 1:03-cv-5467 (E.D.
2	Cal.), dismissed April 18, 2006 for failure to state a claim; Thomas v. Terhune, No. 06-15901 (9th
3	Cir.), first appeal of the dismissal of No. 1:03-cv-5467 (E.D. Cal.), dismissed on September 8,
4	2006 for failure to prosecute after Plaintiff failed to both pay filing fees and show good cause why
5	the appeal should not be summarily affirmed; ² Thomas v. Lamarque, No. 07-16437 (9th Cir.),
6	appeal of No. 3:03-cv-3873 (N.D. Cal.), Order of July 30, 2007, denying without prejudice
7	plaintiff's "various motions and requests challenging the conditions of his current confinement at
8	HDSP and seeking some sort of injunctive relief." The district court certified that plaintiff's
9	appeal of the order was "not taken in good faith" and revoked his IFP status. The Ninth Circuit
10	affirmed, based on its review of the record, that plaintiff was not entitled to IFP status for the
11	appeal. The Ninth Circuit dismissed the appeal for "failure to prosecute" on January 9, 2009,
12	after plaintiff failed to either pay the filing fees or oppose a motion to dismiss filed by defendants-
13	appellees. ³ Thus, Plaintiff had three strikes under §1915(g) before he filed this action on
14	September 20, 2016.
15	The only way that Plaintiff may proceed in forma pauperis in this action is if his
16	allegations show that he was under imminent danger of serious physical injury at the time it was
17	filed. In this action, Plaintiff complains of events that occurred at the Substance Abuse Treatment
18	Facility in Corcoran, California. However, Plaintiff's allegations in this action are largely based
19	on difficulties with obtaining copies of legal documents he prepared for other inmates and his
20	access to the law library as well as acts of harassment and retaliation which Plaintiff alleges
21	violated his due process rights and hampered his access to the courts.
22	Plaintiff had three strikes under 28 U.S.C. §1915(g) before he filed this action. The
23	allegations in this action do not establish that Plaintiff was facing imminent danger of serious
24	
25	Plaintiff was not permitted to proceed. <i>See In re Edward Thomas</i> , No. 09-80085 (9th Cir.) filed September 6, 2012. ² In <i>O'Neil v. Price</i> , 531 F.3d 1146, 1153-56 (9th Cir. 2008), the Ninth Circuit held that when an action is
26	dismissed for failing to pay the filing fee ('failure to prosecute') after the court revokes a plaintiff's IFP status, the dismissal counts as a 'strike' under § 1915(g).) See also Benyamini v. Mendoza, 2012 WL 1378526 at *2 (E.D. Cal.
27	2012) ("[W]hen the appeal of a district court dismissal as frivolous is, itself, frivolous, then the appeal dismissal is also a strike."), citing <i>Adepegba v. Hammons</i> , 103 F.3d 383, 387-388 (5th Cir.1996).
28	³ The District Court held, under <i>O'Neil, supra</i> , 531 F.3d 1153-1156, that Plaintiff's appeal filed in <i>Thomas v. Lamarque</i> , No. 07-16437 (9th Cir.) constituted a third strike under § 1915(g).
	2

1	physical injury at the time the Complaint was filed.
2	Accordingly, within 21 days, the plaintiff SHALL show cause in writing why his in
3	forma pauperis status should not be revoked and that he be required to pay the filing fee in full;
4	alternatively, Plaintiff may file a notice of voluntary dismissal.
5	
6	IT IS SO ORDERED.
7	Dated: March 28, 2018 /s/ Jennifer L. Thurston UNITED STATES MAGISTRATE JUDGE
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	3