

1 that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon
2 which relief may be granted, unless the prisoner is under imminent danger of serious physical
3 injury.” 28 U.S.C. § 1915(g).

4 **III. DISCUSSION**

5 The Court may take judicial notice of court records. *United States v. Howard*, 381 F.3d
6 873, 876 n.1 (9th Cir. 2004). Here, judicial notice is taken of three of Plaintiff’s prior actions:
7 *Linthecome v. Deputy Lillo*, 2:11-cv-00100-UA-AJW, which was dismissed on January 21, 2011,
8 for failure to state a claim; *Linthecome v. Unknown*, 2:11-cv-04184-UA-AJW, which was
9 dismissed on June 28, 2011, for failure to state a claim; and *Linthecome v. CDCR Parole Agents,*
10 *et al.*, 2:11-cv-05708-UA-AJW, which was dismissed on July 26, 2011, as frivolous, malicious,
11 and for failure to state a claim. Plaintiff is thus subject to 28 U.S.C. § 1915(g) and is precluded
12 from proceeding *in forma pauperis* unless he demonstrates that at the time of filing this action, he
13 was under imminent danger of serious physical injury.

14 The Court has reviewed Plaintiff’s Complaint and finds that he does not meet the
15 imminent danger exception. *See Andrews v. Cervantes*, 493 F.3d 1047, 1053 (9th Cir. 2007).
16 Plaintiff’s allegations are based on allegations that Defendant Castaneda increased Plaintiff’s
17 “Static-99 score” which has caused him to be targeted by law enforcement and subsequently
18 falsely arrested and incarcerated four times. (Doc. 1, pp. 4-7.) Plaintiff seeks monetary damages
19 in addition to correction of his Static-99 score, release from custody, and relief from further
20 parole. (*Id.*, p. 7.) None of Plaintiff’s allegations demonstrate that he was under an imminent
21 danger at the time he filed this action. In fact, although he alleges that the tampering of his Static-
22 99 score occurred at NKSP, Plaintiff was at the West Valley Detention Center in Rancho
23 Cucamonga, California when he filed this action. (*See id.*, p. 1.) Thus, even if these
24 circumstances amounted to imminent danger, Plaintiff was not subjected to it when he filed this
25 action since he was no longer held at NKSP. *Andrews*, at 1053.

26 Based on the foregoing, the Court finds that Plaintiff fails to allege an imminent danger of
27 serious physical injury necessary to bypass the restriction of § 1915(g) on filing suit without
28 prepayment of the filing fee since he previously received three strikes. Plaintiff may not proceed

1 *in forma pauperis* and must submit the appropriate filing fee in order to proceed with this action.

2 **IV. ORDER**

3 The Court HEREBY ORDERS that:

- 4 1. Plaintiff's motion to proceed *in forma pauperis*, filed on May 24, 2017, (Doc. 10),
5 is DENIED;
- 6 2. Within twenty-one (21) days of the date of service of this order, plaintiff is
7 required to pay in full the \$400.00 filing fee for this action;
- 8 3. Plaintiff's failure to comply with this order shall result in the dismissal of this
9 action without prejudice; and
- 10 4. The Clerk's Office shall send Plaintiff a habeas corpus petition form.¹

11 IT IS SO ORDERED.

12 Dated: July 14, 2017

13 /s/ Sheila K. Olerto
14 UNITED STATES MAGISTRATE JUDGE

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¹ It appears that Plaintiff may wish to pursue his allegations as an action in habeas corpus as one of the documents attached to the Complaint was titled as such. (*See* Doc. 1, p. 8.)