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5 **UNITED STATES DISTRICT COURT**

6 EASTERN DISTRICT OF CALIFORNIA  
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9 NICHOLAS PATRICK,

10 Plaintiff,

11 v.

12 DIAZ, et al.,

13 Defendants.  
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Case No. 1:17-cv-01121-SKO (PC)

**ORDER TO SHOW CAUSE WHY:**

**(1) PLAINTIFF'S *IN FORMA PAUPERIS*  
STATUS SHOULD NOT BE REVOKED AND  
(2) PLAINTIFF SHOULD NOT BE REQUIRED  
TO PAY THE FILING FEE**

**(Doc. 1)**

**TWENTY-ONE (21) DAY DEADLINE**

**CLERK OF THE COURT TO  
ASSIGN A DISTRICT JUDGE**

17 Plaintiff, Nicholas Patrick, is a state prisoner proceeding *pro se* and *in forma pauperis* in  
18 this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the complaint in this action on  
19 August 14, 2017. On that same date, Plaintiff filed an application to proceed in forma pauperis,  
20 which was granted after the action was transferred to this Court. (Docs. 2, 6.)

21 “In no event shall a prisoner bring a civil action . . . under this section if the prisoner has,  
22 on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or  
23 appeal in a court of the United States that was dismissed on the grounds that it is frivolous,  
24 malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under  
25 imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

26 The Court may take judicial notice of court records. *United States v. Howard*, 381 F.3d  
27 873, 876 n.1 (9th Cir. 2004). Here, judicial notice is taken of *Patrick v. Reyes, et al.*, 1:15-cv-  
28 01790-LJO-MJS (PC), closed October 28, 2016, on Plaintiff's voluntary dismissal after order

1 finding failure to state a claim; *Patrick v. Reynaga, et al.*, 1:16-cv-00239-LJO-MJS (PC), closed  
2 May 16, 2017, for failure to obey court order after finding Plaintiff failed to state a claim and  
3 failed to file an amended complaint; and *Patrick v. Petroff, et al.*, 1:16-cv-00945-AWI-MJS (PC),  
4 closed June 28, 2017, for failure to state a claim. Thus, Plaintiff had three strikes under §1915(g)  
5 before he filed this action.

6 Plaintiff may only proceed *in forma pauperis* in this action if his allegations show that he  
7 was under imminent danger of serious physical injury at the time it was filed. In this action,  
8 Plaintiff complains of events that occurred at the Substance Abuse Treatment Facility in  
9 Corcoran, California (“SATF”). However, when Plaintiff filed this action, he was housed at  
10 MuleCreek State Prison (“MCSP”) in Ione, California. (See Doc. 1, p. 1.) The Complaint  
11 contains allegations regarding incidents that occurred at SATF. Plaintiff does not state any  
12 allegations of wrongdoing at MCSP and he was not in imminent danger of serious physical injury  
13 at the time he filed suit, which precludes him from proceeding *in forma pauperis* in this action.  
14 *Andrews v. Cervantes*, 493 F.3d 1047, 1056-57 (9th Cir. 2007).

15 Plaintiff had three strikes under 28 U.S.C. §1915(g) before he filed this action. The  
16 allegations in this action do not establish that Plaintiff was facing imminent danger of serious  
17 physical injury at the time the Complaint was filed when he was housed at MCSP.

18 Accordingly, it is **HEREBY ORDERED** that, within twenty-one days of the date of  
19 service of this order, Plaintiff **SHALL** show cause why his *in forma pauperis* status should not be  
20 revoked; alternatively, Plaintiff may file a notice of voluntary dismissal. The Clerk of the Court  
21 is directed to assign a district judge to this action.

22 IT IS SO ORDERED.

23 Dated: November 14, 2017

24 /s/ *Sheila K. Oberto*  
25 UNITED STATES MAGISTRATE JUDGE  
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