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5	UNITED STATES DISTRICT COURT	
6	EASTERN DISTRICT OF CALIFORNIA	
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8	CHRISTOPHER SCOTT RIDER,	Case No. 1:18-cv-00208-LJO-SKO (PC)
9	Plaintiff,	FINDINGS AND RECOMMENDATIONS TO REVOKE PLAINTIFF'S <i>IN FORMA</i>
10	V.	PAUPERIS STATUS
11	SHERMAN, et al.,	(Docs. 2, 8, 9, 10)
12	Defendants.	TWENTY-ONE (21) DAY DEADLINE
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14	I. <u>INTRODUCTION</u>	
15	Plaintiff is a prisoner proceeding pro se pursuant to 42 U.S.C. § 1983 and has requested	
16	leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Because Plaintiff incurred	
17	three strikes prior to filing this action, on March 20, 2018, findings and recommendations issued	
18	to deny Plaintiff's motions to proceed in forma pauperis. However, in his objections, Plaintiff	
19	stated that the conditions of which he complains in this action were not isolated, and that similar	
20	conditions occur with some frequency at the Substance Abuse Treatment Facility ("SATF"), in	
21	Corcoran, California. (Doc. 12.) This was accepted to meet the ongoing imminent danger	
22	exception to section 1915 and Plaintiff's in forma pauperis application was granted. (Doc. 13,	
23	citing Andrews v. Cervantes, 493 F.3d 1047, 1056-57 (9th Cir. 2007).)	
24	In reviewing the Complaint for screening, however, the Court has determined that the	
25	imminent danger exception to section 1915 does not apply because Plaintiff was not housed at	
26	SATF when he filed this action. Thus, the Court recommends that Plaintiff's in forma pauperis	
27	status be revoked and this action be dismissed without prejudice to refiling upon prepayment of	
28	the filing fee.	

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II.

## THREE-STRIKES PROVISION OF 28 U.S.C. § 1915

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

III. DISCUSSION

9 The Court may take judicial notice of court records. United States v. Howard, 381 F.3d 10 873, 876 n.1 (9th Cir. 2004). Here, judicial notice is taken of three of Plaintiff's prior lawsuits: 11 (1) Rider v. Hernandez, et al., CAED No. 1:07-cv-01862-LJO-SMS, dismissed for failure to state 12 a claim on February 22, 2008; (2) Rider v. Storey, CASD No. 3:09-cv-01979-JM-POR, 13 dismissed for failure to state a claim on October 22, 2009; and (3) Rider v. Carter, et al., CASD 14 No. 3:09-cv-02316-L-WMC, dismissed for failure to state a claim on December 4, 2009. These 15 actions were dismissed several years before Plaintiff filed the present action on February 9, 2018. 16 Thus, Plaintiff is subject to 28 U.S.C. § 1915(g) and is precluded from proceeding in forma 17 *pauperis* in this action unless, at the time the Complaint was filed, he was under imminent danger 18 of serious physical injury.

19 The circumstances Plaintiff alleges, being served food contaminated with fecal matter 20 from the staging area for food before it is loaded into delivery trucks, which occurs with some 21 frequency, (Docs. 1, 12), would satisfy the "ongoing danger" exception to the PLRA for in forma 22 pauperis purposes. See Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007). However, 23 when Plaintiff filed this action, he was housed at R.J. Donovan R.J. Donovan Correctional 24 Facility at Rock Mountain ("RJD") in San Diego, California. (See Doc. 1, p. 1.) The Complaint 25 contains allegations regarding incidents that occurred at SATF. Plaintiff does not state any 26 allegations of similar wrongdoing at RJD and was not in imminent danger of serious physical 27 injury at the time he filed suit. Andrews v. Cervantes, 493 F.3d 1047, 1056-57 (9th Cir. 2007). 28 Thus, Plaintiff is precluded from proceeding *in forma pauperis*, and it is recommended that this

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1	action be dismissed without prejudice to refiling upon prepayment of the filing fee.	
2	IV. <u>CONCLUSION and RECOMMENDATION</u>	
3	Based on the foregoing, it is HEREBY RECOMMENDED that Plaintiff's in forma	
4	pauperis status be revoked and this action be dismissed without prejudice to refiling upon	
5	prepayment of the filing fee.	
6	These Findings and Recommendations will be submitted to the United States District	
7	Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within	
8	twenty-one (21) days of the date of service of these Findings and Recommendations, Plaintiff	
9	may file written objections with the Court. The document should be captioned "Objections to	
10	Magistrate Judge's Findings and Recommendations." Plaintiff's failure to file objections within	
11	the specified time may result in the waiver of his rights on appeal. <i>Wilkerson v. Wheeler</i> , 772	
12	F.3d 834, 839 (9th Cir. 2014) (citing <i>Baxter v. Sullivan</i> , 923 F.2d 1391, 1394 (9th Cir. 1991)).	
13	1.50 054, 057 (701 Cit. 2014) (citing <i>Daner v. Sutuvan</i> , 725 1.20 1571, 1574 (701 Cit. 1771)).	

- 14 IT IS SO ORDERED.
- 15 Dated: <u>May 8, 2018</u>
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|s| Sheila K. Oberto

UNITED STATES MAGISTRATE JUDGE