



1           **II.     THREE-STRIKES PROVISION OF 28 U.S.C. § 1915**

2           28 U.S.C. § 1915 governs proceedings *in forma pauperis*. “In no event shall a prisoner  
3 bring a civil action . . . under this section if the prisoner has, on 3 or more prior occasions, while  
4 incarcerated or detained in any facility, brought an action or appeal in a court of the United States  
5 that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon  
6 which relief may be granted, unless the prisoner is under imminent danger of serious physical  
7 injury.” 28 U.S.C. § 1915(g).

8           **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

